

**COUNTY COUNCIL**

MICHAEL H. VINCENT, PRESIDENT  
JOHN L. RIELEY, VICE PRESIDENT  
CYNTHIA C. GREEN  
DOUGLAS B. HUDSON  
MARK G. SCHAEFFER



**Sussex County**

DELAWARE  
sussexcountyde.gov  
(302) 855-7743

**SUSSEX COUNTY COUNCIL**

**AGENDA**

**March 19, 2024**

**10:00 AM**

**AMENDED ON March 18, 2024 at 11:15 a.m. \*\*\*\***

**Call to Order**

**Approval of Agenda**

**Approval of Minutes - March 12, 2024**

[Draft Minutes 031224](#)

**Reading of Correspondence**

**Public Comments**

**Todd Lawson, County Administrator**

1. Recognition of Retiree - Joe Thomas
2. Administrator's Report

**Gina Jennings, Finance Director**

1. Discussion and Possible Approval of State of Delaware Dog Control Memorandum of Understanding (MOU)  
[Dog Control MOU](#)
2. American Rescue Plan Act Grant Update and Recommendation  
[ARPA](#)



**Karen Brewington, Director of Human Resources**

1. **Discussion and Recommendation of Stop-Loss Insurance Coverage**  
[Stop-Loss Insurance Coverage](#)

**Vince Robertson, Assistant County Attorney**

1. **Discussion and Possible Introduction of a Proposed Ordinance related to Perimeter Buffers**  
[Perimeter Buffer Proposed Ordinance](#)

**Jamie Whitehouse, Planning & Zoning Director**

1. **Review of Accessory Dwelling Unit Recommendations**  
[Accessory Dwelling Unit](#)

**Mike Harmer, County Engineer**

1. **Piney Neck Regional Wastewater Facility Diversion Transmission System, Project S20-31**  
**A. Request to Approve Progressive Design-Build Approach**  
[Piney Neck Regional WW Facility](#)

**John Ashman, Director of Utility Planning & Design Review**

1. **South Greenwood Area of the Sussex County Unified Sanitary Sewer District – Resolution Declaring the District Area**  
[South Greenwood Area of SCUSSD](#)

**Hans Medlarz, County Engineer, Ret.**

1. **Wolfe Neck Regional Wastewater Facility**  
**A. Approval of Lagoon Solar Lease Agreement**  
[Lagoon Solar RFP](#)

**Introduction of Proposed Zoning Ordinances**

[Ord Intro CZ2002](#)

**Council Members' Comments**

**\*\*\*Executive Session - Land Acquisition, Personnel, Job Applicants' Qualifications & Pending/Potential Litigation pursuant to 29 Del.C.§10004(b)**

**Possible action on Executive Session Items**

**Adjourn**

**\*\*\* Members of the Sussex County Council will attend a meeting with the Sussex Conservation District at 23818 Shortly Road, Georgetown, Delaware, starting at 12:00 p.m. \*\*\***

**\*\*\*\*Per 29 Del. C. § 10004(e)(6) and Attorney General Opinion No. 13-IB02, this agenda was amended to address a matter which arose unexpectedly after the initial posting of the agenda but before the commencement of the Council meeting. An Executive Session topic has been added to discuss a permitted topic in accordance with 29 Del. C. § 10004(b)(4). This matter requires immediate attention and must be addressed prior to the Council's next regularly scheduled meeting which is not scheduled until April 9, 2024.**

**-MEETING DETAILS-**

**In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on March 12, 2024 at 4:15 p.m. and at least seven (7) days in advance of the meeting.**

**This Agenda was prepared by the County Administrator and is subject to change to include the addition or deletion of items, including Executive Sessions, which arise at the time of the meeting.**

**Agenda items may be considered out of sequence.**

**The meeting will be streamed live at <https://sussexcountye.gov/council-chamber-broadcast>.**

**The County provides a dial-in number for the public to comment during the appropriate time of the meeting. **Note, the on-line stream experiences a 30-second delay.****

**Any person who dials in should listen to the teleconference audio to avoid the on-line stream delay.**

**To join the meeting via telephone, please dial:**

**Conference Number: 1-302-394-5036**

**Conference Code: 570176**

**Members of the public joining the meeting on the telephone will be provided an opportunity to make comments under the Public Comment section of the meeting and during the respective Public Hearing.**

**The Council meeting materials, including the “packet”, are electronically accessible on the County’s website at: <https://sussexcountye.gov/agendas-minutes/county-council>.**

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MARCH 12, 2024**

**A regularly scheduled meeting of the Sussex County Council was held on Tuesday, March 12, 2024, at 1:00 p.m., in Council Chambers, with the following present:**

|                              |                             |
|------------------------------|-----------------------------|
| <b>Michael H. Vincent</b>    | <b>President</b>            |
| <b>John L. Rieley</b>        | <b>Vice President</b>       |
| <b>Cynthia C. Green</b>      | <b>Councilwoman</b>         |
| <b>Douglas B. Hudson</b>     | <b>Councilman</b>           |
| <b>Mark G. Schaeffer</b>     | <b>Councilman</b>           |
| <b>Todd F. Lawson</b>        | <b>County Administrator</b> |
| <b>Gina Jennings</b>         | <b>Finance Director</b>     |
| <b>J. Everett Moore, Jr.</b> | <b>County Attorney</b>      |

**The Invocation and Pledge of Allegiance were led by Mr. Vincent.**

**Call to  
Order**

**Mr. Vincent called the meeting to order.**

**M 131 24  
Approve  
Agenda**

**Mr. Lawson reported that under 1:30 p.m. Public Hearings, Item No. 2, CU2406 can be removed, the applicant has asked for it to be rescheduled. A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to approve the Agenda, as amended.**

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**Minutes**

**The minutes from March 5, 2024, were approved by consensus.**

**Corre-  
spondence**

**Mr. Moore reported that there was no correspondence.**

**There were no public comments.**

**Public  
Comments**

**A Motion was made by Mr. Rieley, seconded by Mr. Hudson to approve the following item under the Consent Agenda:**

**M 132 24  
Approve  
Consent  
Agenda**

**Use of Existing Wastewater Infrastructure Agreement – IUA-1049-1  
Spring Lake Condominiums, Dewey Beach Area**

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;**

**Mr. Vincent, Yea**

**Recognition** Patricia Faucett was recognized for her upcoming retirement.

**Adminis-  
trator's  
Report** Mr. Lawson read the following information in his Administrator's Report:

**1. 2024 Conservation Stewardship Award**

I am pleased to announce that the Sussex County Engineering Department received the 2024 Conservation Stewardship Award for outstanding design of the Cannon Road-Inland Bays Road Water Quality Improvements project. Each year, the Sussex Conservation District recognizes organizations in various categories that have exceeded regulations to prepare, protect and preserve sensitive natural resources in the county. This project incorporates a unique blend of stormwater and wastewater best management practices to alleviate nuisance flooding and improve spray application capabilities within our facility.

[Attachments to the Administrator's Report are not attached to the minutes.]

**WS Sewer/  
CO No. 1** Hans Medlarz, County Engineer, Ret. presented change order no. 1 for the Western Sussex Unified Sewer District for Council's consideration.

**M 133 24  
Approve CO  
No. 1/WS  
Unified  
Sewer** A Motion was made by Mrs. Green, seconded by Mr. Schaeffer, that be it moved based upon the recommendation of the Sussex County Engineering Department that change order no. 1 for contract S19-29, Western Sussex Unified Sanitary Sewer District, Segment 5A be approved increasing the contract by \$221,735.00 contingent upon SRF concurrence.

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**General  
Labor/CO  
No. 1** Hans Medlarz, County Engineer, Ret. presented change order no. 1 for FY2022 general labor & equipment contract, project S22-01 for Council's consideration.

**M 134 24  
Approve CO  
No. 1/  
General  
Labor  
Contract** A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, that be it moved based upon the recommendation of the Sussex County Engineering Department that FY24 change order no. 1 for the contract S22-01, FY22 general labor & equipment be approved increasing the contract amount by \$1.9M.

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**Grant  
Requests**

**Mrs. Jennings presented grant requests for Council's consideration.**

**M 135 24 Little League Baseball (Nanticoke)** A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$1,500 (\$1,500 from Mr. Vincent's Councilmanic Grant Account) to Little League Baseball (Nanticoke) for new pitching machines.

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**M 136 24 Big Brothers Big Sisters of DE, Inc.** A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$2,000 (\$2,000 from Countywide Youth Grant Account) to Big Brothers Big Sister of Delaware Inc. for group mentoring program at the Stevenson House.

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**M 137 24 Milton Little League** A Motion was made by Mrs. Green, seconded by Mr. Hudson to give \$1,000 (\$1,000 from Mrs. Green's Councilmanic Grant Account) to Milton Little League for concession stand upgrades.

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**M 138 24 Sussex Technical High School** A Motion was made by Mr. Rieley, seconded by Mr. Hudson to give \$1,000 (\$1,000 from Countywide Youth Grant Account) to Sussex Technical High School for their journal club research on Acute Myeloid Leukemia.

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**Proposed** Mr. Schaeffer introduced a Proposed Ordinance entitled "AN ORDINANCE

**Ordinance Introductions** TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN ELECTRONIC MESSAGE CENTER SIGN TO BE LOCATED ON CERTAIN PARCELS OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.69 ACRES, MORE OR LESS” filed on behalf of Jose Sandoval.

Mr. Hudson introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.138 ACRE, MORE OR LESS” filed on behalf of Coastal Bay Homes, LLC.

**CC Member Comments** There were no Council Member comments.

**M 139 24 Go Into Executive Session** At 1:19 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to go into Executive Session for the purpose of discussing matters related to land acquisition, personnel & job applicants’ qualifications.

**Motion Adopted:** 5 Yeas

**Vote by Roll Call:** Mrs. Green, Yea; Mr. Schaeffer, Yea; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea

**Executive Session** At 1:21 p.m., an Executive Session of the Sussex County Council was held in the Caucus Room to discuss matters related to pending & potential litigation, personnel & job applicants’ qualifications. The Executive Session concluded at 1:54 p.m.

**M 140 24 Reconvene** At 1:58 p.m., a Motion was made by Mr. Hudson, seconded Mr. Rieley to come out of Executive Session back into Regular Session.

**Motion Adopted:** 4 Yeas, 1 Absent

**Vote by Roll Call:** Mrs. Green, Yea; Mr. Schaeffer, Absent; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea

**E/S Action** There was no action related to Executive Session matters.

**Public Hearing/ Western Sussex Regional Sewer** A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$2,797,264 OF GENERAL OBLIGATION BOND OF SUSSEX COUNTY IN CONNECTION WITH INCREASED COSTS ASSOCIATED WITH THE WESTERN SUSSEX REGIONAL SANITARY SEWER DISTRICT PROJECT AND AUTHORIZING ALL NECESSARY ACTIONS IN



**CONNECTION THEREWITH”.**

**Hans Medlarz, County Engineer, Ret. stated that this is for the funding side of the Western Sussex project. It was believed that prior to the change order, that all of the funding was covered. At this point, there is some deficit that can be accommodated with the debt service assessment.**

**There were no public comments.**

**The Public Hearing and public record were closed.**

**M 141 24  
Adopt  
Ordinance  
No. 2995/  
Western  
Sussex**

**A Motion was made by Mrs. Green, seconded by Mr. Hudson to Adopt Ordinance No. 2995 entitled “AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$2,797,264 OF GENERAL OBLIGATION BOND OF SUSSEX COUNTY IN CONNECTION WITH INCREASED COSTS ASSOCIATED WITH THE WESTERN SUSSEX REGIONAL SANITARY SEWER DISTRICT PROJECT AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH”.**

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**Rules**

**Mr. Moore read the rules and procedures for Public Hearings.**

**Public  
Hearing/  
CU2407**

**A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AUTO REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 3.50 ACRES MORE OR LESS” (property lying on the southwest side of Whispering Wind Land and on the north side of Hollyville Road [S.C.R. 305], approximately 0.50 mile south of Lawson Road [S.C.R. 296]) (911 Address: 25709 Whispering Wind Lane, Millsboro) (Tax Map Parcel: 234-21.00-140.01) filed on behalf of Lori & Jose Solis Marin.**

**The Planning & Zoning Commission held a Public Hearing on the application on February 7, 2024. At the meeting of February 7, 2024, the Planning & Zoning Commission recommended denial of the application for the 8 reasons as outlined.**

**Jamie Whitehouse, Planning & Zoning Director presented the application.**

**The Council found that Mr. Boris Berrera, Language Translator, spoke on behalf of the Applicants, Ms. Lori Solis Marin and Mr. Jose Solis Marin, who were also present on behalf of their application. Mr. Berrera stated, on behalf of Mr. Solis Marin, that the proposed business has been there for a**

**Public  
Hearing/  
CU2407  
(continued)**

**long time; that they have been there for about 10 years; that this is the only place that they know; that this is for general mechanical services; that it includes oil change and brake work; that the work is done inside; that there are facilities to dispose properly of the used motor oil; that they had a system installed to dispose of oil.**

**Mr. Rieley questioned pictures that were submitted by the applicants.**

**Mr. Berrera explained that at the previous hearing, the neighbors to the property brought a lawyer and pictures; that they now have an idea of what they should have done at the first hearing; that the neighbors are making the applicants look like bad people; that both parties crossed the line at some point; that the pictures were explained; that the pictures showed the neighbors put equipment, etc. on the applicants property; that there is a camera that is placed on the applicant's property; that it was questioned who the road belongs to; that the neighbor came onto the applicant's property to take pictures; that the road crosses onto the applicant's property; that the applicant has no trespassing signs posted on his property; that there are chickens that go onto the applicant's property but they do not belong to them; that the chickens scratch the paints and then the customers come back and ask for repairs.**

**Mr. Schaeffer discussed the violations that were discussed during the P&Z Commission meeting. Mr. Whitehouse replied that some of the buildings and structures on site have not gone through the permitting process because the question of the use came up first. The survey that was submitted by the applicant that is included in the record suggests that some of the buildings and structures are approximately 3.6 feet from the new property line by the subdivision. Mr. Whitehouse added that it was questioned that since the buildings have not gone through the full building permit process, are there setback violations. Therefore, it is questioned if there are variances that are needed for those buildings or is the survey incorrect. The survey shows that someone of the building did not meet a 5 feet separation distance.**

**Mr. Berrera stated that the applicant uses the main road to access their house; that there are two entrances off of the highway; that a discussion was held about the two roads and entrances; that another road was made for customers to use; that the applicant is able to stay on their property without bothering the neighbors; that there is a camper in the front of the property that is not the applicants, however, it is not on their property; that the camper has been there for a long time; that the plan is to get along with the neighbors; that whatever needs to be done to make the neighbors happy they will try to do it.**

**Mr. Whitehouse reported that the permitting history for the parcel shows that there was a detached garage applied for as an accessory structure to a dwelling on February 28, 2014. He added that it was a 26x50 foot detached garage which was given a CO in December of 2015. It appears that it went through on a residential capacity so it would need a building permit for a**

**Public  
Hearing/  
CU2407  
(continued)**

**commercial use. Mr. Whitehouse reported that it was discovered that there is an 8x8 detached shed and a 10x16 detached shed that do not appear to be permitted. In addition, a building permit has been received that includes modifications to the fence that was submitted on September 29, 2022. The applicant stated that they submitted a building permit on Friday.**

**Public comments were heard.**

**Dr. Juile Hattier spoke in support of the application; that for many years she has used this services of this gentleman to repair her vehicles; that they have been honest and very quiet when you come in; that everything is very orderly; that her vehicle is always delivered on time; that everything is very professional; that the vehicles are always lined up and tagged; that her keys are always tagged and it is very professionally run; that his wife handles all of the phone calls; that it would be a loss for her to not have this repair service; that she owns approximately 13 vehicles; that she has a small farm; that he has worked on many of her different vehicles; that she is in favor for this operation to continue.**

**Mr. Eric Clarke spoke in support of the application; that he has known the applicants for a long time; that they repair some of his diesel problems for the farm; that a lot of different businesses use their facility; that he knew them before they installed the back entrance; that the opposition used to get their vehicles repaired there as well; that he supports what they do.**

**Mr. Tim Willard, Esq. with Fuqua, Willard & Schab, P.A. spoke on behalf of Ms. Judy King, an adjacent property owner to the site. Mr. Willard stated that he attended the Planning Commission meeting; that they denied this unanimously; that the Commission stated that if the property owners had sought approval before any development occurred, it is not likely that this intense use would be approved in this location.**

**Mr. Rieley stated that there are businesses such as Tailbangers and other small businesses are in this area. Mr. Willard stated that it is surrounded by a lot of forest and farmland. Mr. Rieley added that the Council approved a car repair facility just across the entrance to Independence a few years ago.**

**Mr. Willard stated that when the property was subdivided in 2000, they just cut a line right down the middle; that Whispering Lane is on her property because DelDOT restricted their access to Whispering Lane; that in 2015 the applicant purchased the property; that they have been doing repair work but it has grown; that the Commission also stated that the applicant did not receive a DelDOT permit for the road and noted their setback violations; that Mr. Robertson also discussed the buildings that were not permitted during the meeting; that Mr. Willard read into the record what Mr. Robertson stated during the Commission meeting; that Mr. Schaeffer asked if the applicant could cure those issues with time; that Mr. Willard replied yes; that Whispering Lane is a long skinny lane that goes back to his client's home that is on her property; that when it was subdivided an**

**Public  
Hearing/  
CU2407  
(continued)**

ease<sup>ment</sup> was granted from the driveway on that roadway; that Mr. Vincent questioned what has changed that it took 9 years to be against this operation; that Mr. Willard replied the growth has increased significant in the last 9 years with the buildings and activity; that pictures were displayed of the property.

Ms. Judy King spoke in opposition to the Application. Ms. King has lived at the adjacent property since 2015; that a picture was shown of what the property looked like in 2015; that when she first moved there, there was not a car repair business; that there was a roofing business; that then they started a repair business; that she has used the business herself; that they are good mechanics; that the business just started growing and growing; that a picture was shown from 2018 showing the business was expanding; that her problem is that it kept growing and growing; that they have put down a lot of millings to create parking areas; that they cut down all of the trees in the back; that there are a lot of cars out there; that there is no buffering; that she has witnessed large fires and burning of things at the shop; that the applicants have been clearing all of the trees to the rear of the property and are burning the debris; that they are storing dumpsters there; that they are good people; that the operation has gotten so big that it affected her land; that someone is storing a camper on her property for the winter; that there are cameras installed on several poles by the applicant; that there are some cameras in the back near her house.

Mr. Willard submitted proposed conditions; that he discussed the 10 proposed conditions that he submitted.

The Public Hearing and public record were closed.

**M 142 24  
Defer  
Action/  
CU2407**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to defer action on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AUTO REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 3.50 ACRES MORE OR LESS”.

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**Public  
Hearing/  
CU2408**

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A CAR DEALERSHIP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.06 ACRES MORE OR LESS” (property lying on the west

**Public  
Hearing/  
CU2408  
(continued)**

side of Bi State Boulevard [Rt. 13A], approximately 0.32 mile south of Dorothy Road [Rt. 64]) (911 Address: 34900 Bi State Boulevard, Delmar) (Tax Map Parcel: 532-6.00-42.00) filed on behalf of Efren Fernando Acevedo.

The Planning & Zoning Commission held a Public Hearing on the application on February 7, 2024. At the meeting of February 21, 2024, the Planning & Zoning Commission recommended approval of the application for the 4 reasons and subject to the 13 recommended conditions as outlined.

Jamie Whitehouse, Planning & Zoning Director presented the application.

The Council found that Efrain Fernando Acevedo was present on behalf of his Application. Mr. Acevedo stated that he was requesting a Conditional Use to operate a small car dealership, no more than 15 cars, on his property; that he plans to sell most of them on the internet; that he does not plan on having a lot of activity there; that he submitted pictures of the property; that pictures were provided to show where the vehicles would be parked; that he did some clean up on the lot; that he trimmed some trees and bushes; that he does not plan on doing any other activities such as oil change or any mechanical work other than his own personal vehicles; that he had a copy of the dealer procedural manual; that one of the requirements is that the dealership must have an office with a desk and chair adequate to maintain records; that he plans on putting a small shed towards the front to make it a small office; that another requirement is that the dealership must have a sign on the premises; that according to the conditions, he is able to place a sign; that he does not plan to do any work to the lot other than regular maintenance; that he plans on renting porta johns for customers to use the bathroom.

There were no public comments.

The Public Hearing and public record were closed.

**M 143 24  
Defer  
Action/  
CU2408**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to defer action on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A CAR DEALERSHIP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.06 ACRES MORE OR LESS” for the reasons and conditions given by the Planning & Zoning Commission.

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**Public**

A Public Hearing was held on a Proposed Ordinance entitled “AN

**Hearing/  
CZ2006**

**ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND B-1 NEIGHBORHOOD BUSINESS ZONING DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 4.7 ACRES, MORE OR LESS” (property lying on the northeast side of John J. Williams Highway [Rt. 24] and the north side of Oak Orchard Road [Rt. 5] at the intersection of John J. Williams Highway [Rt. 24] and Oak Orchard Road [Rt. 5]) (911 Address: 31507 Oak Orchard Road, Millsboro) (Tax Map Parcel: 234-29.00-263.12 [p/o]) filed on behalf of Mahmut Yilmaz.**

**The Planning & Zoning Commission held a Public Hearing on the application on February 7, 2024. At the meeting of February 7, 2024, the Planning & Zoning Commission recommended approval of the application for the 11 reasons as outlined.**

**Jamie Whitehouse, Planning & Zoning Director presented the application.**

**The Council found that Mr. Mahmut Yilmaz, was present on behalf of his Application. Mr. Yilmaz stated that he wanted to put a building on the empty lot next to his shopping center to provide indoor sports; that he wants to do a nice sports center; that there would be indoor soccer, baseball, field hockey, etc.; that he also wants to do a trampoline park; that he spoke with neighboring business owners, and they are all in agreement that this is well needed; that DelDOT has approved the entrance; that the building is going to be almost 24,000 square feet and 24 feet tall; that there will be restrooms and showers; and that it would increase the amount of business of other small businesses in the area.**

**There were no public comments.**

**The Public Hearing and public record closed.**

**M 144 24  
Adopt  
Ordinance  
No. 2996/  
CZ2006**

**A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to Adopt Ordinance No. 2996 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND B-1 NEIGHBORHOOD BUSINESS ZONING DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 4.7 ACRES, MORE OR LESS” for the reasons given by the Planning & Zoning Commission as follows:**

- 1. C-2 Medium Commercial Zoning is designed to support retail sales and the performance of consumer services. It is intended to be located near arterial and collector roads.**
- 2. The Applicant’s property is 4.7 acres that currently has a split zoning of AR-1 and B-1 at the intersection of Route 24 and Route 5.**

**M 144 24  
Adopt  
Ordinance  
No. 2996/  
CZ2006  
(continued)**

- This is an appropriate location for C-2 Zoning.**
- 3. The property is currently developed with a shopping center that has existed for some time. This shopping center includes retail sales, a restaurant, and a gas station. It is appropriate to bring this entire property under one uniform commercial zoning classification, and C-2 zoning is the appropriate district based on the current use of this property.**
  - 4. The site is served by both central water and central sewer.**
  - 5. C-2 Zoning at this location at this intersection will benefit nearby residents of Sussex County by providing a convenient location for the uses permitted in that Zone.**
  - 6. Because this property is currently developed at a heavily travelled intersection, there is no evidence that this rezoning will have an adverse impact on neighboring properties or area roadways.**
  - 7. The site is in the “Coastal Area” according to the Sussex County Land Use Plan and Future Land Use Map. C-2 Zoning is appropriate in the Coastal Area according to the Plan.**
  - 8. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity and welfare of the County.**
  - 9. No parties appeared in opposition to the rezoning application.**
  - 10. Any future development or redevelopment of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.**
  - 11. For all of these reasons, the C-2 Zoning District is appropriate for this location.**

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**M 145 24  
Adjourn**

**A Motion was made by Mr. Rieley, seconded by Mr. Hudson to adjourn at 3:30 p.m.**

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**Respectfully submitted,**

**Tracy N. Torbert  
Clerk of the Council**

*{An audio recording of this meeting is available on the County's website.}*



GINA A. JENNINGS, MBA, MPA  
FINANCE DIRECTOR

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gjennings@sussexcountyde.gov



**Sussex County**

DELAWARE  
sussexcountyde.gov

TO: Sussex County Council  
The Honorable Michael H. Vincent, President  
The Honorable John L. Rieley, Vice President  
The Honorable Cynthia C. Green  
The Honorable Douglas B. Hudson  
The Honorable Mark G. Schaeffer

FROM: Gina A. Jennings  
Finance Director/Chief Operating Officer

SUBJECT: **DOG CONTROL MEMORANDUM OF UNDERSTANDING**

DATE: March 15, 2024

The County Council signed a Memorandum of Understanding (MOU) in December 2015 that transferred the County's authority of dog control to the Office of Animal Welfare beginning in 2016. The State of Delaware's authority of dog control was later formalized in Delaware Code in 2017, which moved the responsibility of dog control from Title 9 to Title 16. In 2021, the State of Delaware and the three counties signed a three-year Dog Control MOU. The MOU will expire in June. The State is proposing another three-year MOU, which is attached for your review. The pricing structure is still based on a per capita distribution among the three counties and the City of Wilmington.

The difference between the 2021 MOU and the new MOU is the allocation among the three Counties. The allocation is based on 2022's population rather than 2019's population. There is also a three percent escalation each of the next two years. The current cost of the County's MOU is \$887,901. The proposed cost for FY 2025 will be \$1,046,174, a \$158,273 increase.

Christina Motoyoshi, Executive Director of the Office of Animal Welfare, will give a presentation on the services they provide the County under this MOU.

The proposed MOU is attached.

Please let me know if you have any questions.

pc: Mr. Todd F. Lawson

Attachments



**DELAWARE HEALTH  
AND SOCIAL SERVICES**

**MEMORANDUM OF UNDERSTANDING # 25-005  
BETWEEN  
THE DIVISION OF PUBLIC HEALTH,  
DEPARTMENT OF HEALTH & SOCIAL SERVICES,  
STATE OF DELAWARE  
AND  
SUSSEX COUNTY  
TO  
ENFORCE DELAWARE DOG CONTROL AND DANGEROUS DOG STATUTES**

This Agreement is entered into between Delaware Department of Health and Social Services, Division of Public Health (DPH), and Sussex County (County).

**I. AUTHORITY/RESPONSIBILITIES OF OFFICE OF ANIMAL WELFARE**

In 2016, the Department of Health and Social Services, Division of Public Health, Office of Animal Welfare (OAW) assumed enforcement responsibilities for animal control, dangerous dogs, rabies control, and animal cruelty as provided in 16 Del. C. § 3031F. Delaware Animal Services (DAS) is the enforcement unit of the Office of Animal Welfare. Staffed by certified animal welfare officers in each county, the primary goals of DAS are to protect animals and enhance public safety. DAS takes all animals its officers pick up to the state's contracted shelter vendor for care, safe holding, and final disposition.

**II. THE ROLE OF OFFICE OF ANIMAL WELFARE TO ENFORCE DOG CONTROL**

**A. OAW receives reports in the following manner:**

1. By telephone: (302) 255-4646
2. In person: During field patrol
3. In writing: Via website <https://animalservices.delaware.gov> or mail to Office of Animal Welfare, H-166 Carvel Building, 1901 N. Du Pont Hwy, New Castle, DE 19720

**B. Scope of services provided by the OAW:**

1. DAS will receive calls 24 hours a day, 7 days a week from Sussex County residents. For assistance, residents may call 302-255-4646 or file a non-emergency complaint at <https://animalservices.delaware.gov>.
2. DAS officers are on duty from 9:00 AM to 9:00 PM Monday-Friday and 10:00 AM – 6:00 PM on weekends. On-call emergency services are provided after-hours. Operating hours may be adjusted seasonally to best accommodate call demand.

3. DAS will respond to calls regarding stray or aggressive dogs, dogs at large, and dog housing and welfare concerns as outlined in 16 *Del. C.* §§ 3041F-3048F. In addition, DAS will also respond to calls regarding seriously injured or endangered stray cats and investigate reports of animal cruelty.
4. DAS enforces rabies control laws and investigates all cases of human rabies exposures as directed by the Division of Public Health Epidemiology team to ensure animals are properly quarantined.
5. DAS will facilitate dog licensing and conduct kennel and retail dog outlet inspections and licensing.
6. DAS will provide resources and education to Sussex County residents for animal related concerns and questions.
7. OAW's contracted state animal shelter vendors will receive all stray, dangerous, injured, abused, and quarantined animals that are picked up or seized by the state. The shelter will provide proper housing, care and medical attention, as well as robust pet/owner reunification and adoption programs.
8. All stray animals will be taken to the shelter facility in the county where found and will be posted immediately to the State's online lost & found pet registry (<https://animalservices.delaware.gov>) to make it easier for pet owners to find and reclaim lost pets.

### **III. OAW PROCEDURES FOR REPORTING TO THE COUNTY**

- A. OAW will submit quarterly reports to the county containing the following information:
  1. Number and type of calls for service received
  2. Animal sheltering statistics

### **IV. COUNTY RESPONSIBILITY TO OAW**

- A. Sussex County is to submit payment to the Office of Animal Welfare for dog control and dangerous dog law enforcement services to county residents, per the Delaware State Budget, and enter into a three year MOU. The cost to Sussex County for animal control services is \$1,046,174 for FY25. This amount reflects the fair pricing structure agreed upon in 2023, based on a per capita rate.
- B. The County will submit payment to the Office of Animal Welfare at the beginning of each month in the amount \$87,181.17.
- C. The cost for FY26 increases 3% for services to \$1,077,558.90. The county will submit payment each month in the amount of \$89,796.58.
- D. And FY27 increases 3% for services to \$1,109,886. The county will submit payment each month in the amount of \$92,490.50.

### **V. ADMINISTRATIVE REQUIREMENTS**

- A. The Agreement shall commence on July 1, 2024 and terminate on June 30, 2027 unless specifically extended by an amendment signed by all parties to the MOU or terminated as referenced in Section V.B. of this Agreement.

- B. This Agreement may be terminated in whole or part upon thirty (30) calendar days written notice, with or without cause, by either the County or the DPH to the other party.
- C. This Agreement shall not be altered, changed, modified, or amended except by written consent of both parties to the Agreement.
- D. In the event of amendments to current Federal or State laws which nullify any term(s) or provision(s) of this Agreement, the remainder of the Agreement will remain unaffected.
- E. The County agrees that no information obtained pursuant to this Agreement may be released in any form except in compliance with applicable laws and policies on the confidentiality of information and except as necessary for the proper discharge of the County's obligations under this Agreement.
- F. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such in writing, signed by an authorized representative of the DPH and attached to the original Agreement.
- G. Nothing in this agreement shall be deemed a waiver of the doctrine of sovereign immunity on the part of the State of Delaware.
- H. The County agrees to save and hold harmless the Division from any liability which may arise as a result of the County's negligent performance, or and/or the negligent performance of the County's employees, under this agreement.

Remainder of page intentionally left blank.  
Signatures follow.

**IN WITNESS THEREOF**, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

**Sussex County**

**Division of Public Health**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Steven Blessing  
DPH Director

Todd F. Lawson  
\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

County Administrator  
\_\_\_\_\_  
Title

**Department of Health and Social Services**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Dava Newnam  
Deputy Cabinet Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Josette D. Manning, Esq.

\_\_\_\_\_  
Date

\_\_\_ ARPA

\_\_\_ IRM

\_\_\_ Training

\_\_\_ CM&P

\_\_\_ Division

GINA A. JENNINGS, MBA, MPA  
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**Sussex County**

DELAWARE  
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MEMORANDUM:

TO: Sussex County Council  
The Honorable Michael H. Vincent, President  
The Honorable John L. Rieley, Vice President  
The Honorable Cynthia C. Green  
The Honorable Douglas B. Hudson  
The Honorable Mark G. Schaeffer

FROM: Gina A. Jennings  
Finance Director/Chief Operating Officer

RE: **American Rescue Plan Act Grant Update**

DATE: March 15, 2024

At the March 8, 2022, Council meeting, I discussed the \$45.5 million that the County has been granted through the American Rescue Plan Act. At that time, I gave a presentation on the Treasury guidelines and made a recommendation on how to best utilize these funds following those guidelines. In March 2023, I gave an update on our spending. Now, a year later, I will be giving you a second update on our progress.

Because the funds need to be committed by December 31<sup>st</sup> of this year, you will hear that we have some funds that can be reallocated to meet the grant timeline requirements. I will be making a recommendation to reallocate these funds to some of our successful low-income ARPA and Cares Act programs. I will also be making a recommendation to grant money to the Food Bank, as they applied during our first round of grant applications, and we now have been able to work out the details to award them ARPA funding.

If you have any questions, please feel free to contact me.

pc: Todd F. Lawson

KAREN BREWINGTON  
DIRECTOR OF HUMAN RESOURCES  
(302) 855-7711 T  
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kbrewington@sussexcountype.gov



**Sussex County**  
DELAWARE  
sussexcountype.gov

MEMORANDUM

TO: Sussex County Council:  
The Honorable Michael H. Vincent, President  
The Honorable John L. Rieley, Vice President  
The Honorable Cynthia C. Green  
The Honorable Douglas B. Hudson  
The Honorable Mark G. Schaeffer

FROM: Karen Brewington  
Director Human Resources

DATE: March 7, 2024

SUBJECT: Stop Loss Insurance & Hartford Renewals

On Tuesday, I will be presenting the renewal proposal for Stop Loss insurance, also known as *excess insurance*. It provides protection for self-insured employers by serving as a reimbursement mechanism for catastrophic claims exceeding pre-determined levels. Our current annual specific deductible is \$295k with an aggregate specific deductible of \$100k.

Insurance Buyers Council (IBC) completed an RFQ with our current Stop Loss vendor, Highmark. The detailed analysis is included in your packets. IBC was able to negotiate a reduction in the original renewal from 12.49% to 8.98%. and reported a very favorable renewal in the context of medical stop loss policies. The detailed analysis is attached.

In addition, I will be discussing the renewal proposal for The Hartford Insurance. They are the County's current vendor for providing Basic & Supplemental Life Insurance, Accident, Death & Dismemberment, and Short- & Long-Term Disability. They have been our vendor since 2012 and have provided excellent customer service. The 2024 renewal proposal comes with a 0% increase in premiums, we have not seen a rate increase since 2021.

If you have any questions, please feel free to contact me.



**Sussex County Government**  
**Stop Loss Renewal Summary 2024**  
**HMI Insurance: Aggregate - Medical Only**

| Specific                                       | HMI Insurance                      |                 | HMI Insurance    |                 |                  |                  |
|--|------------------------------------|-----------------|------------------|-----------------|------------------|------------------|
|  | Aggregate: Medical; Contract: Paid |                 | Original Renewal | Revised Renewal | Renewal Option 1 | Renewal Option 2 |
| Stop Loss Benefits                             | Current                            |                 |                  |                 |                  |                  |
| Covered Benefits                               | Medical/Rx Card                    | Medical/Rx Card | Medical/Rx Card  | Medical/Rx Card | Medical/Rx Card  | Medical/Rx Card  |
| Contract Basis                                 | 24/12                              | 36/12           | 36/12            | 36/12           | 36/12            | 36/12            |
| Annual Specific Deductible                     | \$295,000                          | \$295,000       | \$295,000        | \$305,000       | \$315,000        | \$315,000        |
| Exception (Lasers)                             | N/A                                | N/A             | N/A              | N/A             | N/A              | N/A              |
| Aggregate Specific Deductible                  | \$100,000                          | \$100,000       | \$100,000        | \$100,000       | \$100,000        | \$100,000        |
| Maximum Annual Reimbursement                   | Unlimited                          | Unlimited       | Unlimited        | Unlimited       | Unlimited        | Unlimited        |
| Maximum Lifetime Reimbursement                 | Unlimited                          | Unlimited       | Unlimited        | Unlimited       | Unlimited        | Unlimited        |
| Rate per Month:                                | Lives                              |                 |                  |                 |                  |                  |
| Single   | 235                                | \$29,34         | \$33,38          | \$32,36         | \$30,74          | \$29,77          |
| Family   | 313                                | \$83,98         | \$95,06          | \$92,15         | \$88,13          | \$85,97          |
| Estimated Annual Specific Premium              |                                    | \$398,168       | \$451,177        | \$437,371       | \$441,703        | \$405,855        |
| Aggregate                                      |                                    |                 |                  |                 |                  |                  |
| Covered Benefits                               | Medical                            | Medical         | Medical          | Medical         | Medical          | Medical          |
| Contract Basis                                 | 24/12                              | 36/12           | 36/12            | 36/12           | 36/12            | 36/12            |
| Maximum Annual Reimbursement                   | \$1,000,000                        | \$1,000,000     | \$1,000,000      | \$1,000,000     | \$1,000,000      | \$1,000,000      |
| Rate per Month:                                | Lives                              |                 |                  |                 |                  |                  |
| Composite Rate                                 | 548                                | \$5,85          | \$6,08           | \$5,85          | \$5,90           | \$5,93           |
| Estimated Annual Aggregate Premium             |                                    | \$38,470        | \$39,982         | \$38,470        | \$38,798         | \$38,996         |
| Total Combined Estimated Contract Premium      |                                    | \$436,637       | \$491,159        | \$475,840       | \$485,501        | \$445,850        |
| \$ Difference to Current Premium               |                                    |                 | \$54,522         | \$39,203        | \$19,864         | \$9,213          |
| % Difference to Current Premium                |                                    |                 | 12,49%           | 8,98%           | 4,55%            | 2,11%            |
| Aggregate Monthly Factors:                     |                                    |                 |                  |                 |                  |                  |
| Rate per Month:                                | Lives                              |                 |                  |                 |                  |                  |
| Single (Medical)                               | 235                                | \$963,47        | \$1,011,26       | \$1,011,26      | \$1,015,31       | \$1,015,31       |
| Family (Medical)                               | 313                                | \$2,212,32      | \$2,427,03       | \$2,427,03      | \$2,436,74       | \$2,436,74       |
| Annual Aggregate Deductible (Attachment Point) |                                    | \$11,402,059    | \$11,967,678     | \$11,967,678    | \$12,015,570     | \$12,015,570     |
| Run-In Limitation                              |                                    | \$0             | \$0              | \$0             | \$0              | \$0              |
| \$ Difference to Current Aggregate Deductible  |                                    |                 | \$565,619        | \$565,619       | \$613,511        | \$613,511        |
| % Difference to Current Aggregate Deductible   |                                    |                 | 4,96%            | 4,96%           | 5,38%            | 5,38%            |



**Sussex County Government**  
**Stop Loss Renewal Summary 2024**  
**HM Insurance: Aggregate - Medical Only**  
**2023 Contract (Projected) vs. 2024 Revised Renewal**

| Stop Loss Benefits                             | HM Insurance<br>Aggregate: Medical; Contract: Paid |              |                      |              |
|--|--|--------------|----------------------|--------------|
|  | 2023 Contract (Projected)                          |              | 2024 Revised Renewal |              |
| <i>Specific</i>                                |  |              |                      |              |
| Covered Benefits                               | Medical/Rx Card                                    |              | Medical/Rx Card      |              |
| Contract Basis                                 | 24/12  |              | 36/12                |              |
| Annual Specific Deductible                     | \$295,000  |              | \$295,000            |              |
| Exception (Lasers)                             | N/A  |              | N/A                  |              |
| Aggregate Specific Deductible                  | \$100,000  |              | \$100,000            |              |
| Maximum Annual Reimbursement                   | Unlimited  |              | Unlimited            |              |
| Maximum Lifetime Reimbursement                 | Unlimited  |              | Unlimited            |              |
| <i>Rate per Month:</i>                         | <i>Lives*</i>                                      |              | <i>Lives*</i>        |              |
| Single   | 235  | \$29.34      | 235                  | \$32.36      |
| Family   | 317  | \$83.98      | 313                  | \$92.15      |
| Estimated Annual Specific Premium              |  | \$402,199    |                      | \$437,371    |
| <i>Aggregate</i>                               |  |              |                      |              |
| Covered Benefits                               | Medical  |              | Medical              |              |
| Contract Basis                                 | 24/12  |              | 36/12                |              |
| Maximum Annual Reimbursement                   | \$1,000,000  |              | \$1,000,000          |              |
| <i>Rate per Month:</i>                         | <i>Lives*</i>                                      |              | <i>Lives*</i>        |              |
| Composite Rate                                 | 552  | \$5.85       | 548                  | \$5.85       |
| Estimated Annual Aggregate Premium             |  | \$38,750     |                      | \$38,470     |
| Total Combined Estimated Contract Premium      |  | \$440,949    |                      | \$475,840    |
| \$ Difference to Current Premium               |  |              |                      | \$34,891     |
| % Difference to Current Premium                |  |              |                      | 7.91%        |
| <i>Aggregate Monthly Factors:</i>              |  |              |                      |              |
| <i>Rate per Month:</i>                         | <i>Lives*</i>                                      |              | <i>Lives*</i>        |              |
| Single (Medical)                               | 235  | \$963.47     | 235                  | \$1,011.26   |
| Family (Medical)                               | 317  | \$2,312.32   | 313                  | \$2,427.03   |
| Annual Aggregate Deductible (Attachment Point) |  | \$11,513,051 |                      | \$11,967,678 |
| Run-In Limitation                              |  | \$0          |                      | \$0          |
| \$ Difference to Current Aggregate Deductible  |  |              |                      | \$454,627    |
| % Difference to Current Aggregate Deductible   |  |              |                      | 3.95%        |

\*Total number of lives projected under 2023 contract is 552; total number of lives as of 2024 renewal (Feb 2024) is 548.



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TO: SUSSEX COUNTY COUNCIL

FROM: VINCE ROBERTSON, ESQ.  
ASSISTANT COUNTY ATTORNEY

RE: PERIMETER BUFFER ORDINANCE

DATED: MARCH 14, 2024

Attached is a Perimeter Buffer Ordinance for consideration and possible introduction. Since this is a topic that has been discussed at length already before County Council, I will not reiterate all that it does here. It is largely based upon the outline that was previously circulated. It is lengthy because there are references to the former “forested or landscaped buffer strip” sprinkled throughout the code that had to be addressed.

Currently, the Subdivision Code references the buffer requirements primarily in the definitions within Section 99-5. Under this ordinance, the terms (as revised) remain defined in Section 99-5, but the requirements are incorporated into a new Section 99-21A. Then, other parts of the Code refer back to 99-21A (such as the closeout procedures for subdivisions in 99-31, which now refers back to new 99-21A; and bonding in 99-32 which also refers back to 99-21A).

This proposed Ordinance also eliminates what was a separate buffer requirement for cluster subdivisions in Section 115-25 – now all subdivisions have the same perimeter buffer requirements so there is no need for any buffer standards to be separately included in Section 115-25. That section also now just refers back to 99-21A. The desire to have just one set of standards has been a goal since this discussion began.

Aside from establishing the Perimeter Buffer and Perimeter Buffer Protection Area and clear standards for both of those areas, this Ordinance also establishes clear timelines for the installation of the buffers (frontloading them in a given phase) and provides more clarity for ensuring that they are established and healthy.

I look forward to presenting this Ordinance to County Council on March 19, 2024 for possible introduction.

V.G.R.

CC: Todd Lawson, Sussex County Administrator  
J. Everett Moore, Esq., Sussex County Attorney  
Jamie Whitehouse, Director of Planning & Zoning  
Tracy Torbert, Clerk of County Council

1 **AN ORDINANCE TO AMEND CHAPTER 99, ARTICLES I, III, IV, V AND**  
2 **VI SECTIONS 99-5, 99-6, 99-23, 99-26, 99-27, 99-30, 99-31 AND 99-32 AND**  
3 **BY ADDING A NEW SECTION 99-21A , AND CHAPTER 115, ARTICLES**  
4 **IV, V, VI, VII, VIII AND XXVIII SECTIONS 115-20, 115-25, 115-29, 15-37,**  
5 **115-45, 115-53 AND 115-28 REGARDING PERIMETER BUFFERS**  
6 **AROUND RESIDENTIAL DEVELOPMENT.**

7  
8 WHEREAS, Pursuant to the provisions of Title 9, Chapters 68 and 69 of the  
9 Delaware Code, the Sussex County Government has the power and authority to  
10 regulate the use of land and to adopt a Comprehensive Land Use Plan; and

11 WHEREAS, Pursuant to Chapters 99 and 115 of the Code of Sussex County, the  
12 Sussex County Government has undertaken to regulate the use of land; and

13 WHEREAS, the existing Section 99-5 of the Code of Sussex County currently  
14 establishes certain perimeter buffer requirements within the definition of “Forested  
15 and or Landscaped Buffer Strip” and

16 WHEREAS, the perimeter buffer requirements contained in Chapter 99 are in need  
17 of improvement regarding their interpretation, application and protection of existing  
18 trees and forests within the buffer areas; and

19 WHEREAS, the 2019 Sussex County Comprehensive Plan contemplates the review  
20 and improvement of the protection of perimeter buffers and forested areas in Sussex  
21 County; and

22 WHEREAS, Goal 5.1 of the Conservation Element of the 2019 Sussex County  
23 Comprehensive Plan states that Sussex County should “Encourage development  
24 practices and regulations that support natural resource protection”, and this  
25 Ordinance carries out that Goal; and

26 WHEREAS, it has been determined that this Ordinance promotes and protects the  
27 health, safety, convenience, orderly growth and welfare of the inhabitants of Sussex  
28 County.

29  
30 **NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:**

31  
32 **Section 1. The Code of Sussex County, Chapter 99, Article I, §99-5**  
33 **“Definitions,” is hereby amended by deleting the language in brackets and**  
34 **strikethrough and inserting the italicized and underlined language**  
35 **alphabetically:**

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**§99-5 Definitions.**

CLEARING or CLEARED

Any type of clearing or cutting of woodland areas that is regulated under the Sediment and Stormwater Management rules of the Delaware Department of Natural Resources and Environmental Control.

...

~~[FORESTED AND/OR LANDSCAPED BUFFER STRIP~~

~~A strip of land, not less than 20 feet in width, exclusive of any residential lots, stormwater management areas or facilities, open space (except that the land area within the buffer strip may be included in the overall calculation of open space), recreational amenities, wastewater treatment and/or disposal facilities, water treatment facilities, streets, buildings or other surface improvements and located along the entire outer perimeter of any portion of a major subdivision of lands into four or more lots adjacent to land of other ownership. A landscape plan for the buffer shall be designed and certified to by a licensed landscape architect, licensed forester or forester designated by the Society of American Foresters as a "certified forester." The landscape plan shall be reviewed and commented on by the State Forester and shall be subject to the final review and approval of the Commission. The following conditions shall apply to the forested buffer:~~

~~A. All trees that are to be planted shall include a mix of 70% deciduous shade trees and 30% evergreen trees, a majority of which shall be suitable trees of common local species, which may include existing as well as planted trees. Every one hundred-foot length of buffer shall include a minimum total of 15 trees.~~

~~B. All deciduous trees that are planted to establish the buffer plantings shall have a minimum caliper of 1.5 inches and a minimum height of six feet above ground when planted in order to insure that the trees will be capable of obtaining a minimum height of 10 feet above ground within five years of being planted.~~

~~C. All evergreen trees that are planted to establish the buffer plantings shall have a minimum height of five feet above ground when planted in order to insure that they~~

72 are reasonably capable of attaining a minimum height of 10 feet above ground within  
73 five years of being planted.

74  
75 ~~D. The landscape plan may include suitable existing deciduous and evergreen trees~~  
76 ~~of common local species, provided they will achieve the overall goal of the plan as~~  
77 ~~described in Subsection E hereof and provided that said existing trees survive the~~  
78 ~~site work construction activity and any changes in the water table and exposure~~  
79 ~~which may result from the construction activity occurring prior to the date the buffer~~  
80 ~~plantings are required to be installed as provided in Subsection F hereof.~~

81  
82  
83 ~~E. The goal of the landscape plan for the forested buffer area shall be to include trees~~  
84 ~~of the type indicated herein that will be planted in a staggered natural manner, as~~  
85 ~~opposed to being planted in row fashion, which will filter views from and into the~~  
86 ~~subdivision in such a manner that the areas on the agricultural side of the buffer area~~  
87 ~~appear more green and less visible and the structures or uses on the subdivision side~~  
88 ~~appear less obvious and less dense than if no landscaping had been required. The~~  
89 ~~procedures and details for planting new trees shall be specified by the landscape~~  
90 ~~architect on the plan submitted to and approved by the Commission and shall include~~  
91 ~~the requirement that the buffer area shall have a final grade that contains a minimum~~  
92 ~~of four inches of topsoil and a suitable grass mix planted as sacrificial cover between~~  
93 ~~the buffer trees for soil stabilization until the newly planted trees become larger. The~~  
94 ~~plan may substitute woodchips for planted grass between the buffer trees in respect~~  
95 ~~to both newly planted and existing trees, as determined by the landscape architect.~~

96  
97 ~~F. The forested and/or landscape buffer shall be installed within 18 months from the~~  
98 ~~date site work is authorized to commence, as documented by a notice to proceed~~  
99 ~~letter from the Commission. For subdivisions that are approved to be constructed in~~  
100 ~~phases, the buffer for each phase must be completed before County approvals or~~  
101 ~~permits will be granted to construct the next phase.~~

102  
103 ~~G. The land developer shall be held responsible for the health and survival of the~~  
104 ~~trees, including regular necessary watering for a minimum of two years or until such~~  
105 ~~later date as the maintenance responsibilities are transferred to a homeowners'~~  
106 ~~association; provided, however, that the developer shall replace any trees that die~~  
107 ~~during the minimum two year developer maintenance prior to transferring~~  
108 ~~maintenance responsibilities to a homeowners' association.~~

109  
110 ~~H. The perpetual maintenance of the buffer plantings by a homeowners' association~~  
111 ~~shall be assured through the restrictive covenants and/or homeowners' association~~

112 documents. The perpetual maintenance plan shall include the requirement that any  
113 trees that die must be replanted with trees of the same type and species and in  
114 accordance with the original landscape plan approved by the County. The perpetual  
115 maintenance plan shall also include a requirement that the forested buffer area be  
116 planted and maintained according to best management practices in the forestry  
117 industry. The responsibility for the perpetual maintenance of the buffer strip and its  
118 plantings shall be assured through restrictive covenants which are obligatory upon  
119 the purchasers through assessments by the homeowners' association. The applicant  
120 and/or land developer must provide the Commission with satisfactory proof that the  
121 covenants include a perpetual maintenance plan which shall be binding upon the  
122 applicant and/or developer during the minimum two year period described in  
123 Subsection G above and thereafter by the homeowners' association. The  
124 Commission and its attorney shall review and approve the perpetual maintenance  
125 plan prior to the restrictive covenants being recorded and prior to granting final site  
126 plan approval.

127  
128 I. The twenty foot forested and/or landscape buffer strip is not required to be  
129 installed in those portions of the subdivision perimeter which represent the width of  
130 a right-of-way connector road or street that DelDOT or the Commission required the  
131 applicant to install pursuant to § 99-17D and the width of a stormwater outfall shown  
132 on the final site plan to drain surface or stormwater outside the perimeter of the  
133 subdivision.

134  
135 J. The landscape plan shall avoid placing planted trees or allowing existing trees to  
136 remain in the areas adjacent to entrances into and exits from the development in such  
137 a manner as to restrict the view of motorists entering or exiting from the development  
138 or restricting site lines for motorists in such a manner as to create a potential safety  
139 hazard.

140  
141 K. Notwithstanding any other provisions of this chapter, the Planning and Zoning  
142 Commission shall be authorized, as part of the site plan review process, to grant final  
143 approval of a plan for the roadway frontage of a major subdivision which may  
144 include landscape and design features, such as fences, walls, berms, landscape  
145 plantings of shrubs, ornamental grasses and/or trees, multimodal paths required by  
146 DelDOT, open areas, or a combination of such features which is designed and  
147 certified to by a licensed landscape architect, licensed forester or forester designated  
148 by the Society of American Foresters as a "certified forester" and reviewed and  
149 commented upon by the State Forester, for the purpose of making the subdivision  
150 more attractive, more in keeping with the surrounding area and less visible from the  
151 roadway, provided said plan will not cause the landscape features contained in the

152 ~~plan to be placed in an area adjacent to the entrance in such a manner as to restrict~~  
153 ~~the view of motorists entering or exiting from the subdivision or restricting the sight~~  
154 ~~lines of motorists in such a manner as to create a potential safety or traffic hazard.]~~  
155

156 . . .

157 FOREST ASSESSMENT

158 A method or process, to include a tree survey, for determining the area or areas  
159 within a parcel that contain high habitat value and individual trees to be preserved.

160

161 . . .

162

163 OPEN SPACE

164

165 Those land areas within all major residential subdivisions, residential planned  
166 communities or developments which have a purpose to provide active and/or passive  
167 recreational opportunities, maintain land in a predominantly undeveloped or natural  
168 state, including lands used for agricultural purposes, promote conservation, protect  
169 wildlife or serve as a buffer between residential and nonresidential areas and/or  
170 commercial and noncommercial areas.

171

172 A. The following uses are permitted and the land area devoted to said uses  
173 will be included in the calculation of open space:

174

175 (1) Recreational facilities, including swimming pools, game courts,  
176 play areas, walking paths, bike paths and multimodal paths that are not  
177 located on state road rights-of-way, provided that impervious cover  
178 does not exceed 15% of calculated open space area.

179

180 (2) Ponds which have a demonstrated recreational value.

181

182 (3) ~~[Buffers]~~ Perimeter buffers, perimeter buffer protection areas,  
183 resource buffers and forested areas.

184

185 (4) Areas protected by perpetual conservation easements.

186

187 (5) Areas providing scenic vistas, areas providing wildlife corridors.



- 188
- 189 (6) Sidewalks not located within street rights-of-way.
- 190 (7) Areas designated as "safe zones" under the Source Water Protection
- 191 Ordinance contained in Chapter 89.
- 192
- 193 (8) Spray irrigation areas, not including areas occupied by rapid
- 194 infiltration basins.
- 195
- 196 (9) Tidal and nontidal wetlands.
- 197
- 198 (10) Stormwater management facility areas.
- 199

200 B. The following uses are not permitted and the land area devoted to said uses  
201 will not be included in the calculation of open space:

- 202
- 203 (1) Land area included within designated lot lines.
- 204
- 205 (2) Building footprints.
- 206
- 207 (3) Predominantly impervious surfaces, such as street rights-of-way,
- 208 sidewalks within street rights-of-way, parking and/or loading areas.
- 209
- 210 (4) Utility facilities, including but not limited to, any building, plant,
- 211 equipment for treatment or pumping, lagoons and rapid infiltration
- 212 basins, for sewer, water, gas, and/or electric utilities.
- 213

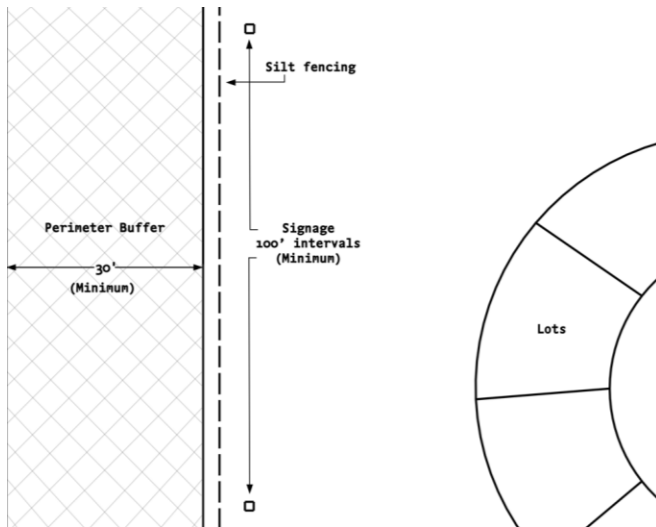
214 C. Any reference in this chapter to "open space" shall be subject to and  
215 governed by this definition.

216

217

218 **PERIMETER BUFFER**

219 *A managed area of planted or existing trees and shrubs and associated landscaping,*  
220 *not less than 30 feet in width measured from the property boundary located along*  
221 *the entire outer perimeter of any portion of a major subdivision. No lots or*  
222 *stormwater management facilities (excepting outfalls) shall exist within the*  
223 *Perimeter Buffer. See illustration below.*



224  
225

226 . . .

227

228 PERIMETER BUFFER LANDSCAPE PLAN

229 A plan prepared by a developer depicting compliance with the Perimeter Buffer and  
 230 Perimeter Buffer Protection Area, including, but not limited to, planting schedules,  
 231 types of vegetation (existing and to be planted); fencing, signage and other marking.  
 232 The Perimeter Buffer Landscape Plan shall be prepared and certified by a licensed  
 233 landscape architect, certified arborist, certified nursery professional, or licensed  
 234 forester or forester designated by the Society of American Foresters as a “certified  
 235 forester.”

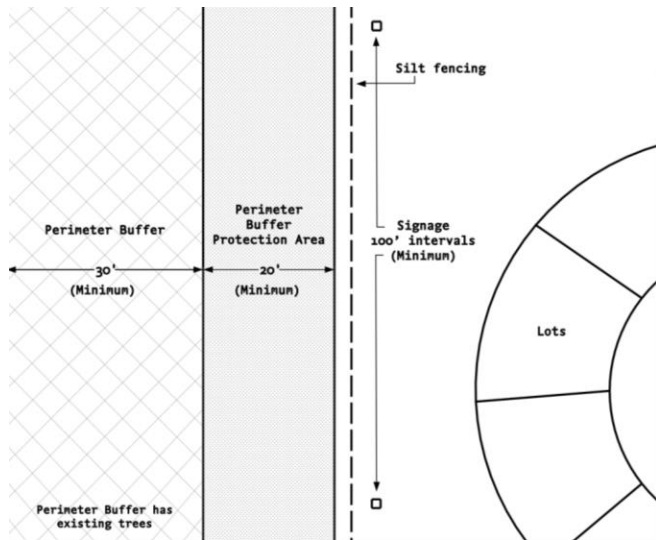
236

237 . . .

238

239 PERIMETER BUFFER PROTECTION AREA

240 An area adjacent to a Perimeter Buffer that contains Woodlands that is not less than  
 241 20 feet in width measured from the edge of the Perimeter Buffer to be retained and  
 242 protected to ensure that existing Woodlands in a Perimeter Buffer are not disturbed.  
 243 No lots or stormwater management facilities (excepting outfalls) shall be permitted  
 244 in the Perimeter Buffer Protection Area. See illustration below.



245

246 . . .

247

248 WOODLANDS

249 An area of contiguous wooded vegetation of at least 10,000 square feet in an area  
 250 where trees exist at a density of at least one tree with diameter at breast height of  
 251 six inches or greater per 400 square feet of land and where the tree branches form  
 252 a contiguous canopy. Active tree nurseries and orchards shall not be considered  
 253 Woodlands.

254

255 . . .

256 **Section 2. The Code of Sussex County, Chapter 99, Article I, §99-6 “General**  
 257 **Requirements and Restrictions” is hereby amended by deleting the language**  
 258 **in brackets and strikethrough and inserting the italicized and underlined**  
 259 **language as follows:**

260

261 **§99-6 General Requirements and Restrictions.**

262

263 . . .

264

265

266 J. [~~A forested and/or landscape buffer~~] Perimeter buffers and perimeter buffer  
 267 protection areas, as [defined in § 99-5, Subsections A through J] required by §99-  
 268 21A, must be depicted on the preliminary and final plot plans for each major

269 subdivision of lands and must be established in accordance with all the requirements  
270 of ~~[the definition of "forested and/or landscaped buffer strip,"~~  
271 ~~Subsections A through J in § 99-5]~~ §99-21A.

272  
273 **Section 3. The Code of Sussex County, Chapter 99, Article III, §99-16**  
274 **“Suitability of land; preservation of natural features” is hereby amended by**  
275 **deleting the language in brackets and strikethrough and inserting the italicized**  
276 **and underlined language as follows:**

277  
278 **§ 99-16 Suitability of land; preservation of natural features.**

279  
280 D. It is the intent of the County to stress the preservation of all agricultural lands  
281 which are feasible and worthwhile of such preservation in order to conserve such  
282 natural amenities. Where residential subdivisions are established adjacent to lands  
283 used for agricultural purposes, the subdivider shall ensure that there shall be no  
284 negative effect on the agricultural uses. ~~[The twenty foot wide forested and/or~~  
285 ~~landscaped buffer strip required by § 99-5]~~ A perimeter buffer and a perimeter buffer  
286 protection area (if applicable) shall be provided along the outer perimeter of any  
287 boundary of a residential major subdivision ~~[or development of four or more lots~~  
288 ~~that is adjacent to agricultural farmland. "Agricultural purposes" shall be defined as~~  
289 ~~those uses identified in Chapter 115, Zoning, Article IV, § 115-20,~~  
290 ~~Subsection B(1), (2), (3), (4) and (5)].~~

291  
292 **Section 4. The Code of Sussex County, Chapter 99, Article III, is hereby**  
293 **amended by inserting a new §99-21.A “Perimeter Buffers,” by inserting the**  
294 **italicized and underlined language alphabetically:**

295  
296 **§99-21.A Perimeter Buffers.**

297 **A. Perimeter Buffer General Standards**

298 **1. There shall be a Perimeter Buffer established along the boundary of every**  
299 **major subdivision or residential planned community. A Perimeter Buffer shall not**  
300 **be required along internal boundaries within a subdivision or residential planned**  
301 **community, such as internal phasing lines.**

302 **2. The Perimeter Buffer shall be planted with a variety of trees and shrubs so as**  
303 **to create a visual landscaped screening. All trees and shrubs shall be local and**

304 native species. All planting activities shall adhere to ANSI A300, Planting  
305 Standards.

306

307 3. The Perimeter Buffer shall include a mix of 70% deciduous shade trees and  
308 30% evergreen trees. The Perimeter Buffer shall include at least fifteen trees within  
309 every one-hundred linear feet of the Buffer. All deciduous and evergreen trees that  
310 are planted shall have a minimum height of six feet above ground when planted,  
311 obtain a minimum height of ten feet, and arranged in a staggered natural manner to  
312 effectively achieve a visual landscaped screening which will filter views from and  
313 into the subdivision. The Perimeter Buffer may include existing Woodlands and  
314 planted trees to achieve these planting standards.

315

316 4. In the event that a Resource Buffer (Section 115-193) is required in the  
317 location of a Perimeter Buffer or Perimeter Buffer Protection Area, the Resource  
318 Buffer standards shall take precedence over, and shall not be in addition to, the  
319 Perimeter Buffer and/or Perimeter Buffer Protection Area requirements for that  
320 same location.

321

322 5. The Perimeter Buffer shall be marked with permanent, in-ground signage  
323 located at 100-foot intervals along the edge of the Perimeter Buffer to confirm the  
324 existence and non-disturbance of the Perimeter Buffer. This signage shall be at least  
325 five inches by seven inches in size and shall identify the existence of the Buffer, the  
326 fact that it is a non-disturbance Area and a reference to penalties and/or remediation  
327 required if unauthorized disturbance occurs.

328 B. Perimeter Buffer Standards – Woodlands Requirements

329 Where a Perimeter Buffer contains existing Woodlands at the time of application,  
330 the following requirements shall apply:

331 1. Any major subdivision or residential planned community where Woodlands  
332 exist at the time of application shall require a Forest Assessment prepared and  
333 certified by a licensed landscape architect, certified arborist, certified nursery  
334 professional, or licensed forester or forester designated by the Society of American  
335 Foresters as a “certified forester.” The Forest Assessment must be submitted as  
336 part of the application.

337 2. The Woodlands retained within the Perimeter Buffer shall be depicted  
338 generally on the Preliminary Site Plan and with detail on the Perimeter Buffer  
339 Landscape Plan.

340 3. Unless otherwise provided for herein, the Woodlands within the Perimeter  
341 Buffer shall remain in its natural state.

342 4. The Area of the Perimeter Buffer containing Woodlands shall be bordered by  
343 a Perimeter Buffer Protection Area.

344 5. There shall be protective tree fencing, staking, or continuous ribbon installed  
345 along the entire edge of the Perimeter Buffer Protection Area adjacent to the interior  
346 of the development to protect the integrity of existing trees within the Perimeter  
347 Buffer.

348 6. Selective clearing of the Woodlands retained for the use of the Perimeter  
349 Buffer may be permitted but at no time shall trees of six-inch diameter at breast  
350 height be damaged, removed, or otherwise adversely affected. Dead, dying or  
351 unstable live trees that present an imminent danger to persons or property may be  
352 removed. Removal of any invasive species from the Woodlands is permitted.

353 7. Walking trails within the Woodlands for the purpose of providing access to  
354 the Perimeter Buffer may be permitted and shall be depicted on the Perimeter Buffer  
355 Landscape Plan.

356 8. Access points to the Woodlands for the purpose of Perimeter Buffer  
357 maintenance may be permitted and shall be depicted on the Perimeter Buffer  
358 Landscape Plan.

359 9. Any removal or damage of trees within the Woodlands, the Perimeter Buffer  
360 or the Perimeter Buffer Protection Area shall be subject to the mitigation  
361 requirements as well as the violations and penalties located in this Chapter.

362 10. At no time shall the ground within Woodlands area of a Perimeter Buffer be  
363 cleared, graded, regraded, or grubbed.

364 11. If Woodlands on the land where the Perimeter Buffer is to be located have  
365 been cleared for a timber harvest within five years prior to the date of application,  
366 the following additional planting requirements shall apply:

367 (a) The cleared area along the Perimeter Buffer shall be measured and known as  
368 the "Cleared Area".

369  
370 (b) The Perimeter Buffer shall be planted back with at least fifteen trees every  
371 fifty linear feet of the Buffer.

372  
373 (c) In addition to the Perimeter Buffer, a new Woodlands shall be planted that is  
374 2.0 times the size of the Cleared Area and a rate of at least 50 trees per acre.

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(d) The new Woodlands may border the area of the Perimeter Buffer or be in a separate area, but at no times shall the Perimeter Buffer be less than 30' in width measured from the property boundary.

(e) The planted Perimeter Buffer and new Woodlands shall meet the tree and shrub requirements of this Chapter.

(f) If the applicant chooses to provide replacement plantings on any property other than the one on which the timber harvest occurred or protect an off-site Woodlands area, the mitigation plan must be reviewed and approved by the Planning and Zoning Commission, and:

(1) The replacement plantings or off-site Woodlands area must be located within the same twelve-digit hydrologic unit code as defined by the United States Geological Survey as the proposed development.

(2) The replacement plantings or Woodlands area located off-site must be protected under a perpetual conservation easement for the benefit of a conservation organization approved by Sussex County.

(3) At no time shall the area of the replacement plantings be less than 2.0 times the area of Woodlands to be the Perimeter Buffer that was cleared and a rate of at least 50 trees per acre and shall meet the tree and shrub requirements of this Chapter.

C. Perimeter Buffer Standards – Non-Woodlands Requirements

Where a Perimeter Buffer does not contain existing Woodlands at the time of application, the following requirements shall apply:

1. Any major subdivision or residential planned community where Woodlands do not exist within the Perimeter Buffer shall comply with the planting requirements of the Perimeter Buffer Standards and Perimeter Buffer Landscape Plan.

2. There shall be protective fencing, staking, or continuous ribbon installed along the entire edge of the Perimeter Buffer adjacent to the interior of the development to protect the integrity of the Perimeter Buffer.

3. There shall be a final grade that contains a minimum of four inches of topsoil

414 and a suitable grass mix planted as sacrificial cover between the buffer trees for soil  
415 stabilization until the newly planted trees become larger. Woodchips may substitute  
416 for planted grass between the buffer trees around both newly planted and existing  
417 trees.

418  
419 4. Walking trails within Perimeter Buffer may be permitted and shall be depicted  
420 on the Perimeter Buffer Landscape Plan.

421  
422 5. Access points to the Woodlands for the purpose of Perimeter Buffer  
423 maintenance shall be depicted on the Perimeter Buffer Landscape Plan.

424  
425 6. The Perimeter Buffer shall have a two-year guarantee secured by bonding  
426 from the date that substantial completion is issued for the phase where the Perimeter  
427 Buffer is located.

428

429 D. Perimeter Buffer Landscape Plan

430 1. The Perimeter Buffer shall be depicted generally on the Preliminary Site Plan  
431 and in detail on a Perimeter Buffer Landscape Plan that is included within a Final  
432 Site Plan.

433

434 2. The Perimeter Buffer Landscape Plan shall provide sufficient information and  
435 detail to clearly demonstrate that all applicable requirements and standards for  
436 Perimeter Buffers and Perimeter Buffer Protection Areas are satisfied. The  
437 Perimeter Buffer Landscape Plan shall contain, at a minimum, the following:

438 (a) Approximate location and description of the protective tree fencing, staking,  
439 or continuous ribbon.

440 (b) The location, spacing, height, and species of existing and new trees and  
441 shrubs proposed to meet tree planting requirements.

442 (c) The design and location of the required Perimeter Buffer signage.

443 (d) Measures to be taken to avoid sedimentation intrusions and erosion in the  
444 Perimeter Buffer.

445 (e) A summary table of the number of new trees to be planted and minimum  
446 number of existing trees to be retained (if any) to meet the tree specification and  
447 density requirements with calculations confirming that these requirements have  
448 been achieved. The summary table may include example groupings of trees to be  
449 planted instead of each new tree labeled on the Perimeter Buffer Landscape Plan.



450 (f) A note confirming that the developer guarantees the full cost of replacement  
451 for any trees, shrubs or existing Woodlands.

452 (g)A planting schedule for the Perimeter Buffer. The planting schedule shall  
453 demonstrate the installation of the Perimeter Buffer prior to the issuance of the first  
454 residential building permits in the phase where it is located. The Perimeter Buffer  
455 shall be planted and inspected prior to the issuance of the first residential building  
456 permit within the phase where the Buffer is located. Each phase of the development  
457 must include the Perimeter Buffer and Perimeter Buffer Protection Area (as  
458 applicable) that is adjacent to that Phase.

459 (h)Notwithstanding any other provisions of this chapter, the Planning and  
460 Zoning Commission shall be authorized, as part of the site plan review process, to  
461 grant final approval of a Plan for the roadway frontage of a major subdivision which  
462 may include landscape and design features, such as fences, walls, berms, landscape  
463 plantings of shrubs, ornamental grasses and/or trees, multimodal paths required by  
464 DelDOT, or a combination of such features which is designed and certified to by a  
465 licensed Landscape architect, licensed Forester or Forester designated by the  
466 Society of American Foresters as a "Certified Forester", for the purpose of making  
467 the subdivision more attractive, more in keeping with the surrounding area and less  
468 visible from the roadway, provided said plan will not cause the landscape features  
469 contained in the plan to be placed in an area adjacent to the entrance in such a  
470 manner as to restrict the view of motorists entering or exiting from the subdivision  
471 or restricting the sight lines of motorists in such a manner as to create a potential  
472 safety or traffic hazard.

473 E. Timing; Bonds and Guarantees.

474  
475 1. The Perimeter Buffer Landscape Plan shall include the planting schedule for  
476 the entire Perimeter Buffer. The planting schedule shall demonstrate the installation  
477 of the Perimeter Buffer prior to the issuance of any residential building permits  
478 within the phase. The Perimeter Buffer shall be planted and inspected prior to the  
479 issuance of the first residential building permit within the phase where the Perimeter  
480 Buffer is located. Each phase of the development must include the Perimeter Buffer  
481 and Perimeter Buffer Protection Area (as applicable) that is adjacent to that phase.  
482 The Perimeter Buffer for each phase must be planted and inspected before County  
483 approvals or permits will be granted to construct the next phase.

484  
485 2. Where Woodlands exist in the Perimeter Buffer, the Perimeter Buffer and  
486 Perimeter Buffer Protection Area shall be protected and marked as provided herein  
487 for the entire development (subject to inspection and approval by Sussex County)

488 prior to the issuance of any notice to proceed for site work. For subdivisions that  
489 are to be constructed in phases, the Protection and marking of existing Woodlands  
490 shall be maintained and inspected prior to the issuance of any notice to proceed for  
491 site work or construction within a subsequent phase.

492 3. The developer shall be responsible for the removal from the site of all stakes,  
493 guy wires, protective tree fencing, staking, or continuous ribbon upon the conclusion  
494 of the two-year guaranty period.

495 4. The developer shall post a performance bond or other guaranty for the  
496 Perimeter Buffer in an amount sufficient to install the Perimeter Buffer and the  
497 Perimeter Buffer Protection Area (as applicable) in a form acceptable to the County  
498 Attorney. The amount of such bond shall be 125% of the cost of the installation the  
499 Perimeter Buffer (including all plantings) and the Perimeter Buffer Protection Area  
500 (as applicable) or \$50,000, whichever is greater. The Perimeter Buffer shown on the  
501 Perimeter Buffer Landscape Plan may be bonded as a separate phase or phases of  
502 the subdivision, provided that all Perimeter Buffers containing Woodlands must be  
503 bonded before a Notice to Proceed is issued for any phase of the development.

504  
505 5. Bonds posted to ensure the completion and non-disturbance of the Perimeter  
506 Buffers shall be posted with the Director of Planning and Zoning.

507 6. The trees and shrubs located within the Perimeter Buffer shall be in good  
508 health prior to the issuance of substantial completion in accordance with Section  
509 99-31 of the Code. The Bonds for the Perimeter Buffer shall thereafter remain in  
510 place until the latter of two years after the determination of substantial completion  
511 in accordance with Section 99-31 or two years after such date as the maintenance  
512 responsibilities are transferred to a homeowners' association.

513  
514 7. A party may not alter the Perimeter Buffer Area of the development (or any  
515 phase thereof) unless an amended Perimeter Buffer Landscaping Plan is approved  
516 by Sussex County and a new bond or other guaranty is provided for the alteration.

517  
518 F. Perimeter Buffer Maintenance

519  
520 1. The developer shall be responsible for the health and survival of the Perimeter  
521 Buffer, including regular necessary watering until the determination of substantial  
522 completion in accordance with Section 99-31. This shall include the obligation to  
523 replace any trees and shrubs within the Perimeter Buffer that do not survive during  
524 this time period.

525  
526 2. The Perimeter Buffer shall be maintained in perpetuity. The perpetual  
527 maintenance of the Perimeter Buffer by a homeowners' association shall be  
528 confirmed in the recorded declaration or restrictive covenants for the development  
529 with the requirement that any trees or shrubs that do not survive must be replanted  
530 with trees or shrubs of the same type and species in accordance with the original  
531 Landscape Plan approved by Sussex County. The Perimeter Buffer shall be  
532 maintained (and any replacement trees or shrubs planted) according to best  
533 management practices in the Forestry industry (ANSI A300). The applicant and/or  
534 developer must provide the Commission with satisfactory proof that the declaration  
535 or restrictive covenants include a perpetual maintenance plan which shall be  
536 binding upon the applicant and/or developer and thereafter by the homeowners'  
537 association. The Commission and its attorney shall review and approve the  
538 perpetual maintenance plan prior to the restrictive covenants being recorded and  
539 prior to granting final site plan approval.

540 G. Perimeter Buffer Tree Mitigation

541 1. In the event that trees, shrubs, Woodlands, or the Perimeter Buffer Protection  
542 Area are removed or damaged without authorization, tree mitigation shall be  
543 required. In addition, violations and penalties may be assessed.

544 2. If trees within a Perimeter Buffer (whether Woodlands or planted) have been  
545 damaged or removed (unless such damage or removal is the result of Act of God or  
546 natural causes and are therefore subject to the Perimeter Buffer Maintenance  
547 Requirements), tree mitigation must occur in the form of newly created Woodlands  
548 as follows:

549 (a) A mitigation plan shall be prepared by a licensed Landscape architect,  
550 certified arborist, certified nursery professional, or licensed Forester or  
551 Forester designated by the Society of American Foresters as a "Certified  
552 Forester."

553  
554 (b) New Woodlands shall be created for the area of Woodlands in the Perimeter  
555 Buffer that was illegally accessed or damaged with at least three replacement  
556 trees planted for every tree removed or damaged.

557  
558 (c) The replacement plantings shall meet the tree and shrub requirements of this  
559 Section.

560

561 (d) The developer, property owner and/or party who violates this section shall be  
562 responsible for the health and survival of the replacement in accordance with  
563 this Section.

564  
565 (e) All tree mitigation plantings must be on the same lot, parcel, or tract on which  
566 the illegal activity occurred, except as noted herein.

567 H. Violations and Penalties

568  
569 The developer, owner of the land and any person or corporation who shall violate  
570 any provisions of this Section shall be subject to the following penalties in addition  
571 to other requirements set forth in this Section. Separate violations or a series of  
572 violations may be combined to determine the total area where the violation  
573 occurred:

- 574  
575 1. A fine of \$10,000 per quarter acre, pro rata, of disturbance within the  
576 Perimeter Buffer and Perimeter Buffer Protection Area, as applicable, shall  
577 be imposed; and  
578  
579 2. A tree mitigation plan in accordance with the requirements of this Section  
580 shall be approved by the Planning and Zoning Commission.

581  
582 Where the developer is the party who has violated the provisions of this Section, no  
583 building or zoning permits shall be issued nor shall any inspections occur within the  
584 phase where the violation occurred (including, but not limited to building code and  
585 utility inspections) until the tree mitigation plan is complete and approved by the  
586 Commission.

587  
588 **Section 5. The Code of Sussex County, Chapter 99, Article IV, §99-23**  
589 **“Information To Be Shown” is hereby amended by deleting the language in**  
590 **brackets and strikethrough and inserting the italicized and underlined**  
591 **language as follows:**

592  
593 **§99-23 Information To Be Shown.**

594 The preliminary plat shall be drawn in a clear and legible manner and shall show the  
595 following information:

596 . . .

597 P. The designation of parcels to be set aside for [~~forested buffer strips~~] perimeter  
598 buffers and perimeter buffer protection areas, where required and proposed access  
599 points to the perimeter buffers and perimeter buffer protection areas for  
600 maintenance purposes.

601 . . .

602

603 **Section 6. The Code of Sussex County, Chapter 99, Article V, §99-26**  
604 **“Information To Be Shown” is hereby amended by deleting the language in**  
605 **brackets and strikethrough and inserting the italicized and underlined**  
606 **language as follows:**

607

608 **§99-26 Information To Be Shown.**

609 A. The final plat shall be legibly and accurately drawn and shall show the following  
610 information:

611

612 . . .

613

614 (16) The locations, bearings and dimensions and area of any land set aside  
615 for [~~forested buffer strips~~] perimeter buffers and perimeter buffer protection areas,  
616 if required and proposed access points to the perimeter buffers and perimeter buffer  
617 protection areas for maintenance purposes.

618

619 . . . .

620

621 **Section 7. The Code of Sussex County, Chapter 99, Article V, §99-27**  
622 **“Supporting Statements” is hereby amended by deleting the language in**  
623 **brackets and strikethrough and inserting the italicized and underlined**  
624 **language as follows:**

625

626 **§99-27 Supporting Statements.**

627

628 The following supporting statements are required:

629

630 A. A summary of deed restrictions applicable within the subdivision, including  
631 agreements for the operation and maintenance by the property owners or agency in  
632 the subdivision of street and road improvements, surface drainage facilities, erosion

633 and sedimentation control facilities, water supply facilities, sanitary sewer facilities,  
634 [~~forested buffer strips~~] perimeter buffers and perimeter buffer protection areas,  
635 resource buffers, all areas approved as open space as defined in § 99-5 and other  
636 improvements deemed necessary by the Commission.

637  
638 B. Evidence that all conditions related to the preliminary plat approval have been  
639 satisfied.

640

641 **Section 8. The Code of Sussex County, Chapter 99, Article VI, §99-30 “Plans”**  
642 **is hereby amended by deleting the language in brackets and strikethrough and**  
643 **inserting the italicized and underlined language as follows:**

644

645 **§ 99-30 Plans.**

646

647 Plans, profiles and specifications for the required improvements shall be prepared  
648 by the subdivider and submitted for approval by the appropriate public authorities  
649 prior to construction. No construction shall commence prior to the issuance of a  
650 notice to proceed by the County Engineer or his or her designee for the required  
651 improvements. All plans, profiles and specifications approved by the County  
652 Engineer or his or her designee with the issuance of a notice to proceed shall remain  
653 valid or, if substantial construction is not actively and continuously underway, they  
654 shall expire upon the expiration of the final site plan. Prior to the issuance of a notice  
655 to proceed, the County Engineer may require the owner and/or his designee to  
656 execute an agreement addressing the required improvements. The plans and profiles  
657 submitted for all new construction shall include the following:

658

659 . . .

660

661 E. Plans and specifications for any [~~forested buffer strips~~] perimeter buffers and  
662 perimeter buffer protection areas, if required.

663

664 . . . .

665

666 **Section 9. The Code of Sussex County, Chapter 99, Article VI, §99-31**  
667 **“Inspections; Closeout Procedures, Fees” is hereby amended by inserting the**  
668 **italicized and underlined language as follows:**

669

670 **§ 99-31 Inspections; Closeout Procedures, Fees.**

671

672 . . .

673

674 E. Project closeout procedures.

675

676 . . .

677

678 (10) If perimeter buffers and perimeter buffer protection areas are required, the  
679 Director shall confirm that the requirements of §99-21A have been satisfied.

680

681 . . .

682 **Section 10. The Code of Sussex County, Chapter 99, Article VI, §99-32 “Bonds**  
683 **and Guaranties” is hereby amended by deleting the language in brackets and**  
684 **strikethrough and inserting the italicized and underlined language as follows:**

685

686 **§99-32 Bonds and Guaranties.**

687 . . .

688

689 C. [~~Bonds posted to insure the completion of requirements for open space and~~  
690 ~~forested buffers~~] Bonds posted for perimeter buffers and perimeter buffer protection  
691 areas as required by §99-21A.E. and other improvements deemed necessary by the  
692 Commission shall be posted with the Director of Planning and Zoning. All other  
693 bonds and guaranties shall be posted with the County Engineer.

694

695 . . .

696

697 **Section 11. The Code of Sussex County, Chapter 115, Article IV, §115-20**  
698 **“Permitted Uses” is hereby amended by deleting the language in brackets and**  
699 **strikethrough and inserting the italicized and underlined language as follows:**

700

701 **§115-20 Permitted Uses.**

702

703 A. A building or land shall be used only for the following purposes:

704 . . .

705

706 (17) A Sussex County Rental Program, or SCRP, townhouse or multifamily  
707 development governed by, and subject to, Chapter 72, where at least 25% of  
708 all dwelling units are SCRP Units pursuant to Chapter 72. The SCRP  
709 development must satisfy the following criteria:

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(e) There shall be a one-hundred-foot-wide setback around the entire site, which shall incorporate [~~the forested and/or landscaped buffer strip identified in § 99-5~~] the perimeter buffers and perimeter buffer protection areas (if Perimeter Buffer Protection Areas are required) set forth in §99-21A. This setback may include walking and biking trails.

**Section 12. The Code of Sussex County, Chapter 115, Article IV, §115-25 “Height Area and Bulk Requirements” is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language as follows:**

**§115-25 Height Area and Bulk Requirements.**

...

- E. Design requirements for cluster development.
  - (1) All development shall be in accordance with the latest amendment to the community design standards.
  - (2) Housing types in the low-density area, as shown on the Sussex County Comprehensive Plan, are limited to single-family detached dwellings and manufactured homes where permitted by ordinance.
  - (3) [~~A forested buffer area with a minimum width of 30 feet shall be provided for lots abutting an agricultural area~~]. The perimeter buffer and perimeter buffer protection area as required by §99-21A.
  - ~~[(4) Dwellings located within 50 feet of an existing residential development shall provide adequate transition in density or shall provide a thirty-foot buffer meeting the standards below and maintained by a designated entity.~~



747 (a) ~~—A planting strip at least 30 feet wide near the property line which~~  
748 ~~shall include two canopy trees, four understory trees and 10 shrubs per~~  
749 ~~100 linear feet of buffer; or~~

750  
751 (b) ~~—A landscaped rolling berm at least four feet in height; or~~

752  
753 (c) ~~—A solid fence or wall a minimum of six feet in height designed~~  
754 ~~with durable materials, texture and colors compatible with adjacent~~  
755 ~~residential development.]~~

756  
757 [~~(5)~~](4) No lots shall have direct access to any state-maintained roads.

758  
759 [~~(6)~~](5) All lots shall be configured to be contained completely outside  
760 of all wetlands.

761  
762 [~~(7)~~](6) Any development using the option in Subsection B(2) shall have  
763 central water and wastewater systems operated and maintained by companies  
764 authorized by the State of Delaware to perform such services. Wastewater  
765 collection and treatment systems must be designed in accordance with the  
766 requirements of Sussex County ordinances and conform to the requirements  
767 for a central sewer system as defined in § 115-194A of the Sussex County  
768 Zoning Ordinance.

769  
770 . . . .

771  
772 **Section 13. The Code of Sussex County, Chapter 115, Article V, §115-29**  
773 **“Permitted Uses” is hereby amended by deleting the language in brackets and**  
774 **strikethrough and inserting the italicized and underlined language as follows:**

775  
776 **§115-29 Permitted Uses.**

777  
778 A. A building or land shall be used only for the following purposes:

779 . . .

780  
781 M. A Sussex County Rental Program, or SCRP, townhouse or multifamily  
782 development governed by, and subject to, Chapter 72, where at least 25% of all  
783 dwelling units are SCRP Units pursuant to Chapter 72. The SCRP development must  
784 satisfy the following criteria:

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...

(5) There shall be a one-hundred-foot-wide setback around the entire site, which shall incorporate [~~the forested and/or landscaped buffer strip identified in § 99-5~~] the perimeter buffers and perimeter buffer protection areas set forth in §99-21A. This setback may include walking and biking trails.

...

**Section 14. The Code of Sussex County, Chapter 115, Article VI, §115-37 “Permitted Uses” is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language as follows:**

**§115-37 Permitted Uses.**

Permitted uses area as follows:

...

C. A Sussex County Rental Program, or SCRP, townhouse or multifamily development governed by, and subject to, Chapter 72, where at least 25% of all dwelling units are SCRP Units pursuant to Chapter 72. The SCRP development must satisfy the following criteria:

...

(5) There shall be a one-hundred-foot-wide setback around the entire site, which shall incorporate [~~the forested and/or landscaped buffer strip identified in § 99-5~~] the perimeter buffers and perimeter buffer protection areas set forth in §99-21A. This setback may include walking and biking trails.

....

**Section 15. The Code of Sussex County, Chapter 115, Article VII, §115-45 “Permitted Uses” is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language as follows:**

**§115-45 Permitted Uses.**

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Permitted uses area as follows:

...

F. A Sussex County Rental Program, or SCRP, townhouse or multifamily development governed by, and subject to, Chapter 72, where at least 25% of all dwelling units are SCRP Units pursuant to Chapter 72. The SCRP development must satisfy the following criteria:

...

(5) There shall be a one-hundred-foot-wide setback around the entire site, which shall incorporate [~~the forested and/or landscaped buffer strip identified in § 99-5~~] the perimeter buffers and perimeter buffer protection areas set forth in §99-21A. This setback may include walking and biking trails.

...

**Section 16. The Code of Sussex County, Chapter 115, Article VIII, §115-53 “Permitted Uses” is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language as follows:**

**§115-53 Permitted Uses.**

A building or land shall only be used for the following purposes:

...

K. A Sussex County Rental Program, or SCRP, townhouse or multifamily development governed by, and subject to, Chapter 72, where at least 25% of all dwelling units are SCRP Units pursuant to Chapter 72. The SCRP development must satisfy the following criteria:

...

(5) There shall be a one-hundred-foot-wide setback around the entire site, which shall incorporate [~~the forested and/or landscaped buffer strip identified~~

859 ~~in § 99-5]~~ *the perimeter buffers and perimeter buffer protection areas set forth*  
860 *in §99-21A.* This setback may include walking and biking trails.

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862 . . .

863  
864 **Section 17. The Code of Sussex County, Chapter 115, Article XXVIII, §115-**  
865 **218 “Procedure for RPC District, C-4 Planned Commercial District and**  
866 **Conditional Use Site Plan Approval” is hereby amended by deleting the**  
867 **language in brackets and strikethrough and inserting the italicized and**  
868 **underlined language as follows:**

869  
870  
871 **§ 115-218 Procedure for RPC District, C-4 Planned Commercial District**  
872 **and conditional use site plan approval.**

873  
874 Where the provisions of this chapter require the submittal of site plans for RPC  
875 Districts, C-4 Planned Commercial Districts and conditional uses, the following  
876 schedule of procedure shall apply:

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878  
879 E. When approving a conditional use for attached or detached single-family or  
880 multifamily dwellings or a change of zone for a residential planned community of  
881 attached or detached single-family or multifamily dwellings, in any zoning district  
882 in which they are permitted with Council approval, Council shall have the right to  
883 impose a condition requiring the applicant to install [~~a forested and/or landscaped~~  
884 ~~buffer as defined in §§ 99-5 and 99-6D]~~ *the perimeter buffers and perimeter buffer*  
885 *protection areas set forth in §99-21A* of the Subdivision Ordinance.

886  
887  
888 **Section 18. Effective Date.**

889  
890 This Ordinance shall take effect upon six (6) months from the date of adoption by  
891 Sussex County Council. Provided however, that it shall not apply to any completed  
892 applications on file with the Sussex County Office of Planning & Zoning



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TO: SUSSEX COUNTY COUNCIL

FROM: VINCE ROBERTSON, ESQ.  
ASSISTANT COUNTY ATTORNEY

RE: ADU ORDINANCE

DATED: MARCH 14, 2024

Attached is an ordinance for consideration and possible introduction regarding Accessory Dwelling Units, or ADUs, in Sussex County.

This ordinance creates a more straightforward definition of an ADU and replaces the prior use of the term and the current definition of “Garage/Studio Apartment”. The new definition for an ADU is:

*A self-contained dwelling unit that is secondary to the principal dwelling unit on a property and includes independent living facilities, such as a separate entrance, bathroom and kitchen. The dwelling unit may be attached to, or detached from, the primary dwelling on the property. Accessory dwelling units do not include duplexes, tourist homes, servant quarters, or guest homes.*

Under this proposed Ordinance, one ADU will be a “Permitted Use” on a property in the residential zoning districts, subject to the following criteria:

1. A fee shall be paid in an amount determined by County Council.

2. The applicant shall submit a survey signed and sealed by a surveyor licensed in the State of Delaware to the Director showing the location of the accessory dwelling unit and the floor area of both the accessory dwelling unit and the single-family dwelling.
3. No accessory dwelling unit shall have a floor area that is greater than 1,000 square feet. An accessory dwelling unit shall not be larger than 50% of the floor area of the single-family dwelling located on the same lot. An accessory dwelling shall not have a lot coverage that is greater than 50%.
4. There shall be at least 1 parking space set aside for an accessory dwelling unit.
5. An accessory dwelling unit shall comply with the same setbacks as the primary single-family dwelling located on the same lot. An accessory dwelling shall be placed behind the primary single-family dwelling on the same lot and maintain one-half of the single-family dwelling's actual side and rear setbacks. [Note that this requirement came from Kent County; if the home is 30 feet from a side property line, the ADU must be behind the home and could be no closer 15 feet to the side property line, or the actual permitted setbacks, whichever is greater.]
6. No accessory dwelling unit shall be constructed or placed on a lot that is smaller than one-half acre in size. [This avoids smaller lot cluster subdivisions and smaller lots within the MR and GR zoning districts where there is not sufficient room on a lot for the ADU, the ADU parking and the primary dwelling and its parking.]

Note that this Ordinance only provides where ADUs are permitted to go under the Sussex County Zoning authority. It has no impact on private deed restrictions or HOA governing documents that prohibit accessory structures or ADUs.

Also, the ADU provisions are still subject to the standard permitting requirements of Sussex County, including building permits, sewer permits (as applicable), etc.

I look forward to presenting this to County Council on March 19, 2024.

V.G.R.

CC: Todd Lawson, Sussex County Administrator  
J. Everett Moore, Esq., Sussex County Attorney  
Jamie Whitehouse, Director of Planning & Zoning  
Tracy Torbert, Clerk of County Council

1 **AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY,**  
2 **CHAPTER 110, ARTICLE III, SECTIONS 110-9 AND CHAPTER 115,**  
3 **ARTICLES I, IV, V, VI, VII, VIII, IX, AND XXVII SECTIONS 115-4, 115-20,**  
4 **115-23, 115-29, 115-32, 115-40 115-48, 115-53, 115-56, 115-64, AND 115-210**  
5 **REGARDING ACCESSORY DWELLING UNITS.**

6  
7 WHEREAS, it is acknowledged that there is a need for affordable housing options  
8 in Sussex County, and a diversification of housing options; and

9  
10 WHEREAS, Accessory Dwelling Units, currently identified as Garage/Studio  
11 Apartments in the Code of Sussex County, can provide an alternative and affordable  
12 housing option in Sussex County; and

13  
14 WHEREAS, it is the desire of Sussex County to revise the name of these housing  
15 units from “Garage/Studio Apartment” to “Accessory Dwelling Units”, which is a  
16 more appropriate description of the types of units covered by this definition; and

17  
18 WHEREAS, these amendments promote the health, safety and welfare of Sussex  
19 County and its residents; and

20  
21 **NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDNAINS:**

22  
23 **Section 1. The Code of Sussex County, Chapter 110, Article III, § 110-109 is**  
24 **hereby amended inserting the italicized and underlined language**  
25 **alphabetically within the definitions as follows:**

26  
27 § 110-9. Separate building sewers required.

28  
29 A. A separate and independent building sewer shall be provided for every newly  
30 constructed dwelling, building or property used for human occupancy,  
31 employment, recreation or other purpose. The Engineer may allow more than  
32 one existing structure to be connected to a single building sewer in the best  
33 interest of the County.

34 B. A building sewer serving newly constructed buildings shall not service more  
35 than one of the following:

- 36 (1) Residential dwelling, either detached or one side of a double house or house  
37 in a row of houses, provided that *an accessory dwelling unit*, a garage, a



38 guesthouse and similar features incidental to the family life shall be  
39 considered as a portion of the dwelling.

40 (2) Industrial, commercial or manufacturing establishment.

41 (3) Commercial buildings separated by a partition wall or walls and  
42 comprising of stores, offices or any combination thereof.

43 (4) Detached building comprising apartments, stores, offices or any  
44 combination thereof.

45 (5) Establishment consisting of individual dwelling units under the  
46 management of a single commercial or cooperative entity.

47

48

49 **Section 2. The Code of Sussex County, Chapter 115, Article I, § 115-4 is hereby**  
50 **amended by deleting the language in brackets and strikethrough and by**  
51 **inserting the italicized and underlined language alphabetically within the**  
52 **definitions as follows:**

53

54 **§ 115-4. Definitions and Word Usage.**

55 . . .

56

57 B. General definitions. For the purpose of this chapter, certain terms and words are  
58 hereby defined as follows:

59

60 [~~GARAGE/STUDIO APARTMENT~~] ACCESSORY DWELLING UNIT

61 [~~A building or use designed and use as a single apartment unit containing not more~~  
62 ~~than 800 square feet of total floor area and accessory to the single family dwelling~~

63 ~~Garage/studio apartments do not include duplexes, tourist homes, servant quarters,~~  
64 ~~or guest homes. Prior to use, a garage/studio apartment shall obtain a special use~~

65 ~~exception under the provisions of Article XXVII, Board of Adjustment, and all~~  
66 ~~necessary state and local permits.] A self-contained dwelling unit that is secondary~~

67 to the principal dwelling unit on a property and includes independent living  
68 facilities, such as a separate entrance, bathroom and kitchen. The dwelling unit

69 may be attached to, or detached from, the primary dwelling on the property.  
70 Accessory dwelling units do not include duplexes, tourist homes, servant quarters,

71 or guest homes.

72

73

74 **Section 3. The Code of Sussex County, Chapter 115, Article IV, §115-20**  
75 **“Permitted Uses” is hereby amended by deleting the language in brackets and**  
76 **strikethrough inserting the italicized and underlined language:**

77  
78 **§ 115-20 Permitted Uses.**

79  
80 A. A building or land shall be used only for the following purposes:

81  
82 . . .

83  
84 (15) [~~Garage/studio apartment with at least one parking space~~] One accessory  
85 dwelling unit for the exclusive use of the tenant included on the premises that is  
86 administratively approved by the Director or his or her designee, and subject to the  
87 following:

88  
89 (a) There shall be a fee [~~of \$50~~] in an amount determined by County  
90 Council to request the [~~administrative~~] approval [~~which shall be credited towards a~~  
91 ~~Board of Adjustment application fee should consideration by the Board become~~  
92 ~~necessary~~] of the accessory dwelling unit.

93  
94 (b) The applicant shall submit a survey signed and sealed by a surveyor  
95 licensed in the State of Delaware to the Director showing the location of the  
96 [~~garage/studio apartment~~] accessory dwelling unit and the floor area of both the  
97 accessory dwelling unit and the single family dwelling.

98  
99 (c) [~~The Director shall give written notice to adjacent property owners of~~  
100 ~~the requested garage/studio apartment and accept written statements within 10~~  
101 ~~working days from the date of mailing. If any objection is received, the Director~~  
102 ~~shall refer the application to the Board of Adjustment for a Special Use Exception.]~~  
103 No accessory dwelling unit shall have a floor area that is greater than 1,000 square  
104 feet. An accessory dwelling unit shall not be larger than 50% of the floor area of  
105 the single family dwelling located on the same lot. An accessory dwelling shall not  
106 have a lot coverage that is greater than 50%.

107  
108 (d) [~~The Director shall consider factors including whether the~~  
109 ~~garage/studio apartment will have a substantially adverse effect on neighboring~~  
110 ~~properties.] There shall be at least 1 parking space set aside for an accessory  
111 dwelling unit.~~

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(e) [~~Within 30 working days after the request is submitted, the Director or his or her designee may approve the garage/studio apartment or advise the applicant that an application must be submitted to the Board of Adjustment for a Special Use Exception.~~] *An accessory dwelling unit shall comply with the same setbacks as the primary single family dwelling located on the same lot. An accessory dwelling shall be placed behind the primary single family dwelling on the same lot and maintain one-half of the single family dwelling's actual side and rear setbacks.*

(f) *No accessory dwelling unit shall be constructed or placed on a lot that is smaller than one-half acre in size.*

**Section 4. The Code of Sussex County, Chapter 115, Article IV, §115-23 “Special Use Exceptions” is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language:**

§ 115-23 Special use exceptions.

Special use exceptions may be permitted by the Board of Adjustment in accordance with the provisions of Article XXVII of this chapter and may include:

...

C. Other special use exceptions as follows:

...

(5) [~~Garage/studio apartments, when not approved administratively by the Director or his or her designee, provided that at least one parking space for the exclusive use of the tenant is included on the premises~~] *Reserved.*

**Section 5. The Code of Sussex County, Chapter 115, Article V, §115-29 “Permitted Uses” is hereby amended by deleting the language in brackets and strikethrough inserting the italicized and underlined language:**

§ 115-29 Permitted Uses.

149 A building or land shall be used only for the following purposes:

150

151 . . .

152

153 ~~(K) [Garage/studio apartment with at least one parking space for the exclusive use~~  
154 ~~of the tenant included on the premises that is administratively approved by the~~  
155 ~~Director or his or her designee, and] One Accessory dwelling unit subject to the~~  
156 requirements set forth in Article IV, Section 115-20A.(15).

157

158 **Section 6. The Code of Sussex County, Chapter 115, Article V, §115-32**  
159 **“Special Use Exceptions” is hereby amended by deleting the language in**  
160 **brackets and strikethrough:**

161

162 § 115-32 Special use exceptions.

163 Special use exceptions may be permitted by the Board of Adjustment in accordance  
164 with the provisions of Article XXVII of this chapter and may include:

165 . . .

166

167 C. Other special use exceptions as follows:

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169 . . .

170

171 ~~[Garage/studio apartments, when not approved administratively by the Director or~~  
172 ~~his or her designee, provided that at least one parking space for the exclusive use of~~  
173 ~~the tenant is included on the premises.]~~

174

175 **Section 7. The Code of Sussex County, Chapter 115, Article VI, §115-40**  
176 **“Special Use Exceptions” is hereby amended by deleting the language in**  
177 **brackets and strikethrough:**

178

179 § 115-40 Special use exceptions.

180 Special use exceptions may be permitted by the Board of Adjustment in accordance  
181 with the provisions of Article XXVII of this chapter and may include:

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184 C. Other special use exceptions as follows:

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...

~~[Garage/studio apartments, when not approved administratively by the Director or his or her designee, provided that at least one parking space for the exclusive use of the tenant is included on the premises.]~~

**Section 8. The Code of Sussex County, Chapter 115, Article VII, §115-48 “Special Use Exceptions” is hereby amended by deleting the language in brackets and strikethrough:**

§ 115-48 Special use exceptions.

Special use exceptions may be permitted by the Board of Adjustment in accordance with the provisions of Article XXVII of this chapter and may include:

...

C. Other special use exceptions as follows:

...

~~[Garage/studio apartments, when not approved administratively by the Director or his or her designee, provided that at least one parking space for the exclusive use of the tenant is included on the premises.]~~

**Section 9. The Code of Sussex County, Chapter 115, Article VIII, §115-53 “Permitted Uses” is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language:**

**§ 115-53 Permitted Uses.**

A. A building or land shall be used only for the following purposes:

...

(H) ~~[Garage/studio apartment with at least one parking space for the exclusive use of the tenant included on the premises that is administratively approved by the~~

222 ~~Director or his or her designee, and]~~ *One accessory dwelling unit* subject to the  
223 requirements set forth in Article IV, Section 115-20A.(15).

224

225 . . .

226

227 **Section 10. The Code of Sussex County, Chapter 115, Article VIII, §115-56**  
228 **“Special Use Exceptions” is hereby amended by deleting the language in**  
229 **brackets and strikethrough:**

230

231 § 115-56 Special use exceptions.

232 Special use exceptions may be permitted by the Board of Adjustment in accordance  
233 with the provisions of Article XXVII of this chapter and may include:

234 . . .

235

236 C. Other special use exceptions as follows:

237

238 . . .

239

240 [~~Garage/studio apartments, when not approved administratively by the Director or~~  
241 ~~his or her designee, provided that at least one parking space for the exclusive use of~~  
242 ~~the tenant is included on the premises.]~~

243

244 **Section 11. The Code of Sussex County, Chapter 115, Article IX, §115-64**  
245 **“Special Use Exceptions” is hereby amended by deleting the language in**  
246 **brackets and strikethrough:**

247

248 § 115-64 Special use exceptions.

249 Special use exceptions may be permitted by the Board of Adjustment in accordance  
250 with the provisions of Article XXVII of this chapter and may include:

251 . . .

252

253 C. Other special use exceptions as follows:

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255 . . .

256

257 [~~Garage/studio apartments, when not approved administratively by the Director or~~

258 ~~his or her designee, provided that at least one parking space for the exclusive use of~~  
259 ~~the tenant is included on the premises.]~~

260

261 **Section 12. The Code of Sussex County, Chapter 115, Article XXVII, §115-210**  
262 **“Special Exceptions” is hereby amended by deleting the language in brackets**  
263 **and strikethrough:**

264

265 § 115-210 Special exceptions.

266 In order to provide for adjustments in the relative location of uses and buildings, to  
267 promote the usefulness of these regulations and to supply the necessary elasticity to  
268 their efficient operation, special use exceptions, limited as to locations described in  
269 this Article, and special yard and height, exceptions are permitted by the terms of  
270 these regulations. The following buildings and uses are permitted as special  
271 exceptions if the Board finds that, in its opinion, as a matter of fact, such exceptions  
272 will not substantially affect adversely the uses of adjacent and neighboring property:

273

274 . . .

275

276 (3) Other special use exceptions as follows, which are specified in each district:

277

278 . . .

279

280 [~~(p) Garage/studio apartments, when not approved administratively by the~~  
281 ~~Director or his or her designee, provided that at least one parking space for the~~  
282 ~~exclusive use of the tenant is included on the premises.]~~

283

284 **Section 13. Effective Date.**

285

286 This Ordinance shall take effect immediately upon adoption by Sussex County  
287 Council.

## ENGINEERING DEPARTMENT

MIKE HARMER, P.E.  
SUSSEX COUNTY ENGINEER

(302) 855-7370 T

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# Sussex County

DELAWARE  
sussexcountype.gov

## MEMORANDUM

**TO:** Sussex County Council  
The Honorable Michael H. Vincent, President  
The Honorable John L. Rieley, Vice President  
The Honorable Douglas B. Hudson  
The Honorable Cynthia Green  
The Honorable Mark Schaeffer

**FROM:** Mike Harmer, P.E., County Engineer

**RE:** *Piney Neck Regional Wastewater Facility (Project S20-31) Diversion Transmission System – Request to Approve Progressive Design-Build Approach*

**DATE:** March 13, 2024

In 2019 County Council approved moving forward with the Piney Neck Regional Wastewater Facility Diversion Transmission System Project to eliminate or repurpose the Piney Neck Regional Wastewater Facility by diverting all flow to the South Coastal Regional Wastewater Facility (SCRWF). On March 17, 2020, County Council approved engaging an engineering consultant to assist the Engineering Department in the 3 phases of the project which included preliminary design (easement/acquisition alignment), final design, and bidding. The scope was divided into the 3 phases allowing review and reaffirming of the path forward at each phase. At this point, we have concluded the acquisition of easements and have completed a preliminary alignment for the diversion pipe.

Due to complexities on our numerous DelDOT road crossings and delicate issues associated with our easement acquisitions connected to commitments required during the easement process, the Engineering Department in collaboration with Ms. Gina Jennings (COO) concluded that our Project goals are best accomplished by using a 2-step Design-Build Quality Based Selection procurement process. Request for Qualifications represents the first step of the Design-Build procurement process and establishes the process for soliciting and evaluating Statements of Qualifications from entities interested in serving as the Design-Builder for this project. The Statement of Qualifications will be reviewed and evaluated by County staff in accordance with a Request for Qualifications and will result in the development of a shortlist of two or more Proposers (Shortlisted Proposers). The Proposers will then be invited to participate in a procurement process which entails responding to a Request for Proposals. This is the 2<sup>nd</sup> step in the Design-Build process.

The Request for Proposals will solicit detailed proposals from the shortlisted proposers about, among other things, their ability and approach to meeting the Project's goals, including but not limited to design concepts and technical approach. The Request for Proposals will also contain specific information on how the Proposals will be evaluated and award made to the Design-Builder.





Once a selection is made for the successful Shortlisted Proposer, we will enter negotiations for award of the Design-Build Contract. The Contract will specifically define the Design-Builder's scope of work for the Project, with such scope being generally identified in our Request for Qualifications and further refined in the Request for Proposals. The Design-Builder will provide this work in two distinct phases:

- **Phase One Services** generally consist of design development, permitting, and preconstruction services; with the design being developed to the County's required level of completion. Phase One Services will also include the preparation, submission and negotiation of a commercial proposal for Phase Two Services, including a Guaranteed Maximum Price/Lump Sum Price for the Phase Two Services. Compensation to Design-Builder for Phase One Services will be negotiated and agreed upon prior to the execution of the Contract.
- **Phase Two Services** generally encompass completing the Project's design as needed, construction, commissioning, and turnover to the County. If the parties are unable to reach agreement on the commercial terms of Design-Builder's performance of Phase Two Services, the Contract will contain an "off-ramp" provision that will allow the County among other things, to terminate Design-Builder's further involvement on the Project.

The Request for Proposals will contain a draft Contract, with provisions that will address how Shortlisted Proposers will be enabled to provide comments and feedback on such draft Contract.

One of the other reasons that the County is using a Quality Based Selection procurement process for Design-Builder selection and the 2-phase contracting approach is that this enables the County to actively participate during the Phase One Services in the selection of the construction techniques, certain Project subcontractors, suppliers, and vendors, as well as methods to implement the work.

Many utilities of all sizes are moving to the Design-Build process to facilitate a smoother more collaborative project delivery process. We reiterate our recommendation is to proceed in this direction and seek your approval to proceed.

**South Greenwood Area**  
**Fact Sheet**

- Permission to Prepare and Post granted December 5, 2023.
  - Public Hearing on the Boundary January 23, 2024.
  - County Council approved the Boundary on February 20, 2024.
  - Absentee Ballot deadline February 29, 2024, at noon Referendum was based solely on the absentee ballots based on the size of the boundary (2 parcels) both properties returned ballots and the vote was unanimous (2) property owners in favor and none opposed.
-

RESOLUTION NO. R \_\_\_\_\_

SOUTH GREENWOOD AREA OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT DECLARED UNDER THE PROVISIONS OF TITLE 9, CHAPTER 65 OF THE DELAWARE CODE

WHEREAS, the eligible voters of the proposed South Greenwood Area approved the creation of the sewer area by a vote of **2** to **0** in an election held on March 1, 2024; and

WHEREAS, Title 9, Delaware Code, Section 6507 requires the County Council to issue a determination of the sewer district within thirty days of its approval by the eligible voters.

NOW, THEREFORE,

BE IT RESOLVED that the County Council of Sussex County, Delaware hereby determines that the eligible voters of the South Greenwood Area of the Sussex County Unified Sanitary Sewer District have approved the creation of said area, that the description of the South Greenwood Area is described in Exhibit "A"; and that the said district is hereby declared to be validly constituted under the provisions of Title 9, Chapter 65 of the Delaware Code.

Exhibit "A"

Description of the South Greenwood Area of the Sussex County Unified Sanitary Sewer District

**BEGINNING** at a point, said point being the south easterly property corner of lands Now or Formerly (N/F) of Delaware Electric Cooperative Inc., said point also being on the westerly Right-of-Way (ROW) of Sussex Highway (Rt. 13) and the northerly ROW of Adams Road (SCR 583); thence proceeding by and with said Adams Road and Cooperative lands in a westerly direction a distance of 680'± to a point, said point being on the easterly ROW of Cart Branch Road (SCR 583A); thence crossing Cart Branch Road in a westerly direction a distance of 50' to a point, said point being on the westerly ROW of Cart Branch Road (SCR 583A), said point also being on the southeastern most property corner of other lands of Delaware Electric Cooperative; thence leaving said ROW of Cart Branch Road and continuing with said Cooperative lands in a westerly, northwesterly, northeasterly and southeasterly direction respectively a total distance of 1881'± to a point, said point being on the westerly ROW of Cart Branch Road; thence crossing Cart Branch Road in an easterly direction a distance of 50'± to a point, said point being on the easterly ROW of Cart Branch Road, said point also being on the westerly property line of the original Cooperative lands; thence proceeding by and with said Cooperative lands a northerly and easterly direction respectively a total distance of 1,746'± to a point, said point being the centerline of Cart Branch Creek; thence following Cart Branch Creek in a generally southerly direction a total distance of 576'± to a point, said point being on the westerly ROW of Sussex Highway; thence continuing with said ROW in a southwesterly direction a distance of 1,733'± to a point, said point being that of the **BEGINNING**.

NOTE: The above description has been prepared using Sussex County Tax Map No. **530-14.0**.

The South Greenwood Area of the Sussex County Unified Sanitary Sewer District is within these boundaries. A map drawn to scale indicating the boundaries of the area is attached.

BE IT FURTHER RESOLVED that the Sussex County Council directs the County Engineer and the Attorney for the County Council to procure the necessary lands and rights-of-way by purchase, agreement, or condemnation in accordance with the existing

statutes.

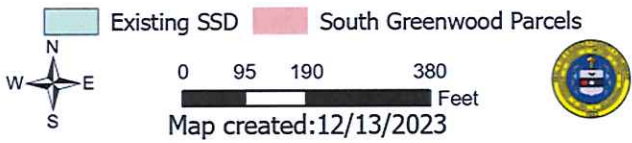
BE IT FURTHER RESOLVED that the Sussex County Council directs the County Finance Director and County Engineer to apply for, accept, and receive grants, loans, and other funding necessary to provide adequate financing for the planning, design, construction, and all other phases of the sanitary sewer district.

BE IT FURTHER RESOLVED that the County Engineer is hereby directed to prepare maps, plans, specifications and estimates, let contracts for and supervise the construction and maintenance of, or enlarging and remodeling of, any structures required to provide for the safe disposal of sewage in the sanitary sewer district.

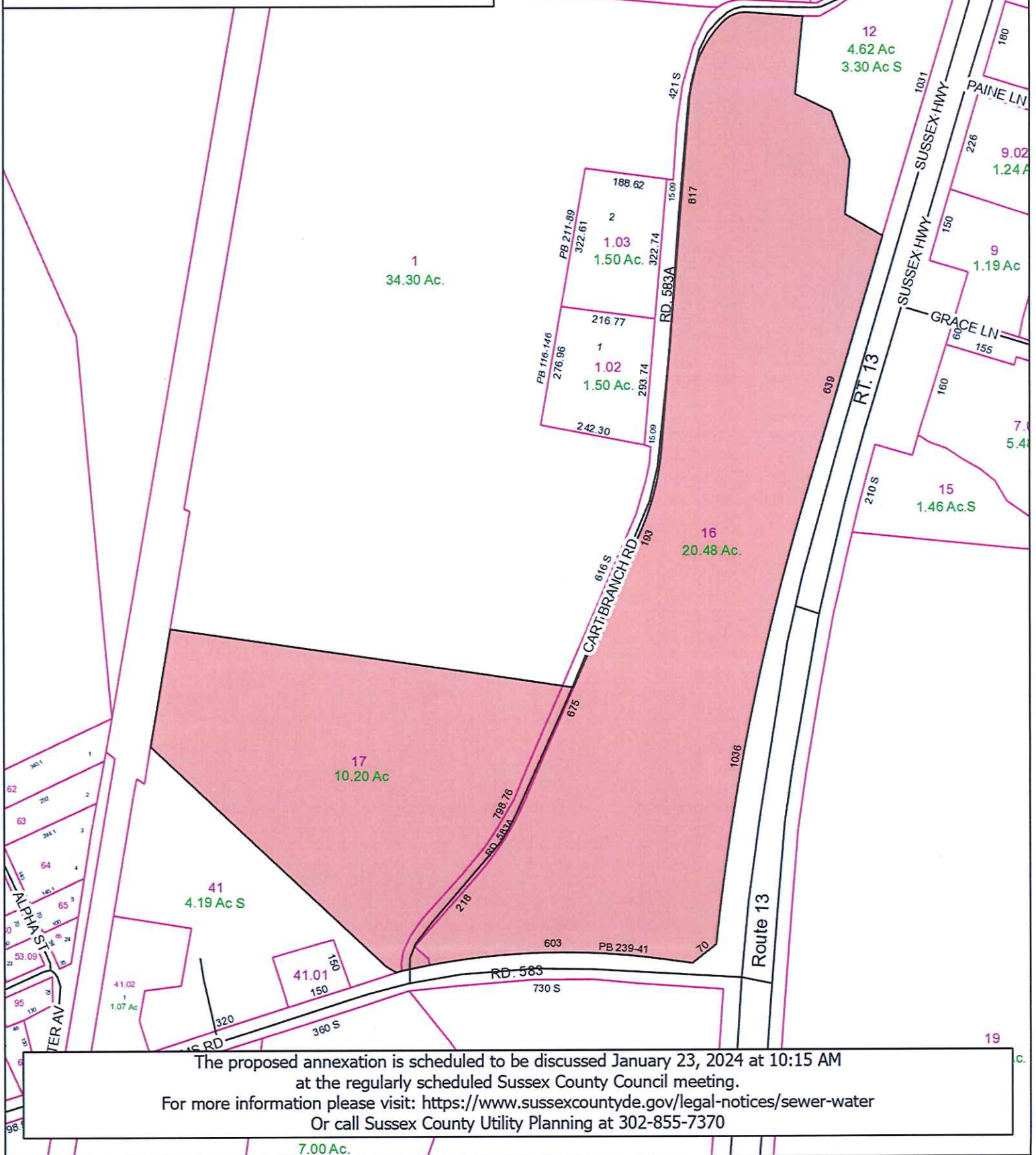
**BE IT FURTHER RESOLVED** that this Resolution shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.

# Permission to Prepare and Post Notices South Greenwood Area

Existing SSD    South Greenwood Parcels



0 95 190 380 Feet  
Map created: 12/13/2023



The proposed annexation is scheduled to be discussed January 23, 2024 at 10:15 AM  
at the regularly scheduled Sussex County Council meeting.  
For more information please visit: <https://www.sussexcountyde.gov/legal-notices/sewer-water>  
Or call Sussex County Utility Planning at 302-855-7370

## ENGINEERING DEPARTMENT

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# Sussex County

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## Memorandum

TO: Sussex County Council  
The Honorable Michael H. Vincent, President  
The Honorable John L. Rieley, Vice President  
The Honorable Cynthia C. Green  
The Honorable Douglas B. Hudson  
The Honorable Mark G. Schaeffer

FROM: Hans Medlarz, P.E., County Engineer, ret.

RE: ***Wolfe Neck Regional Wastewater Facility***  
***A. Approval of Lagoon Solar Lease Agreement***

DATE: March 19, 2024

County Council in cooperation with the Lewes Board of Public Works retained the professional engineering firm GHD to conduct a facility upgrade study for the Wolfe Neck WRF. Any treatment expansion at the facility can only occur in the location of the primary treatment lagoon requiring removal of the accumulated biosolids. As a precursor of the removal, all incoming flows must be transferred to treatment lagoons 2 & 3. For the support of the biosolids removal and dewatering equipment, a new electrical service and power distribution center is needed.

On August 15, 2023, Council awarded GHD's Amendment 22 – Advanced Electrical Design in the not to exceed amount of \$427,000. The electrical design will accommodate both the immediate power needs associated with the biosolids project as well as the future plant expansion load. Under any discharge scenario, the treated effluent must be stored prior to final discharge. The compliance points any future discharge permit will be at the effluent pump station. In order to maintain compliance, the algae growth in the storage lagoon must be controlled by limiting the incoming light. A costly liner is one option, but research revealed a similar outcome can be achieved with floating solar panels.

The incoming DP&L service currently does not support the simultaneous facility load in addition to the expected biosolids project load. A solar power contribution can reduce or possibly eliminate any required electric utility upgrades. Furthermore, a solar power contribution can be integrated in the advanced electrical facility switchgear design.

A floating lagoon solar facility would be completely hidden from view below the embankment but give the facility upgrade a “green” component in addition to a lease payment to the County. In March of 2022 the Delaware Public Service Commission approved Order No. 9965



regulating community energy facilities. The County required that the respondents develop a solar system under the Commission's Community Energy Facility Program.

In summary the project provides the following benefits:

- Reduced algae growth by shading +/- 90% of light
- Reduction or elimination of Wolfe Neck Road DP&L distribution line upgrades
- Lease payment of \$2,343,770 over 20-years initial service life of system
- Established sinking fund for the equipment removal
- "Green" project component addressing citizen comments.
- Project integration into new electrical building project

Council approved the Engineering Department to request proposals from qualified solar developers to lease the effluent lagoon surface at the Wolfe Neck RWF on October 23, 2023. On October 26, 2023, an RFP including a draft lease agreement was advertised in the newspaper, as well as available on the County website. In addition, the RFP was directly forwarded to utility companies specializing in solar assets. On December 6, 2023, four (4) fully compliant submittals were received.

The RFP review committee ranked the proposals in accordance with the attached summary spreadsheet based on lease payment, schedule to deliver the system, as well as local experience. The recommendation was presented to County Council on February 27, 2024, when the Engineering Department received authorization to finalize the lease terms with Noria-Chaberton JV LLC. Since then all special arrangements such as the decommissioning, insurance coverage and minimum lease area have been incorporated. Therefore, the Engineering Department is requesting final approval of the Solar Energy Lease and Easement Agreement with Addendum, the Memorandum of Solar Energy Lease and Easement Agreement (to be recorded) as well as the Decommissioning Funding Agreement with Noria-Chaberton JV LLC as presented.

**SOLAR ENERGY LEASE AND EASEMENT AGREEMENT  
(Delaware)**

THIS SOLAR ENERGY LEASE AND EASEMENT AGREEMENT (“**Lease**” or “**Agreement**”) is made and entered into on \_\_\_\_\_ (the “**Effective Date**”), by and between **Sussex County, Delaware**, a county and political subdivision of the State of Delaware, having an office at P.O. Box 589, Georgetown, Delaware 19947, United States, as “**Lessor**”, (whether one or more), and **Noria Chaberton JV LLC**, a Delaware limited liability company, having an office at 1700 Rockville Pike, Suite 305, Rockville, MD 20852, United States, as “**Lessee**”. Lessor and Lessee are sometimes individually referred to as a “**Party**” and collectively as the “**Parties**”.

**RECITALS**

(a) Lessor is the owner of approximately 100 acres of real property located in Wolfe Neck Road, Rehoboth Beach, the County of Sussex, State of Delaware, as more particularly described in the vesting deed which is attached hereto as **Exhibit A** (the “**Property**”);

(b) Lessor is the owner of the effluent spray lagoon at the Wolfe Neck Treatment Facility, located on the Property, which lagoon is known as and identified as Lagoon 4 – NorthEastern Lagoon in the description attached hereto as Exhibit A-1 (the “**Lagoon**”);

(c) Lessor and Lessee desire that Lessee should lease the exclusive rights to use the surface of the Lagoon, lying within approximately up to 20 acres of the Property as preliminarily depicted on **Exhibit B**, together with all solar and air rights, improvements, fixtures, personal property and trade fixtures, appurtenances, tenements, hereditaments, ingress and egress rights, and other Easements (as defined in Section 14) pertaining to the Property (collectively, the “**Premises**”); and

(d) Lessee desires to obtain from Lessor, and Lessor desires to grant to Lessee, an exclusive option to lease the Premises while Lessee undertakes due diligence and development activities, and upon the successful conclusion of such activities, Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor the Premises for the construction and operation of a solar photovoltaic and/or energy storage project on the Premises, including all necessary equipment to deliver solar or stored energy from the Premises to the distribution grid (the “**Project**”).

**AGREEMENT**

**NOW, THEREFORE**, IN CONSIDERATION OF THE FOREGOING RECITALS AND THE AGREEMENTS, COVENANTS AND PROMISES set forth in this Lease and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged and agreed by the Parties, Lessor and Lessee, intending to be legally bound hereby, agree as follows:

**1. Option to Lease; Lease and Grant of Easements.** Lessor grants to Lessee, at any time during the Option Period (as defined in Section 4.1), an exclusive, irrevocable, and continuing right and option (the “**Option**”) to lease the Premises and obtain the Easements (as defined in Section 14) upon the terms and conditions set forth herein. Subject to Section 3, during the Option Period (as defined below in Section 4.1), Lessor shall grant no license, easement, option, leasehold, or other right in or affecting the Premises or any right related thereto, nor permit any third party to undertake any activities on the Premises without Lessee’s written consent. Effective as of the Construction Commencement Date (as defined in Section 4.1), Lessor hereby leases to Lessee the Premises, and grants to Lessee the Easements, upon and subject to the terms and conditions in this Lease. Lessee shall have the quiet use and enjoyment of the Premises in accordance with and subject to the terms of



this Lease, without any manner of hindrance, interference, or molestation of any kind by Lessor or any person claiming through or under Lessor.

## **2. Purpose and Scope of Lease.**

2.1 This Lease is for the uses set forth in this Agreement and Lessee will have the exclusive right to use the Premises for any and all uses related to the Project Activities (as defined in Section 2.2); provided that (a) during the Option Period, Lessee will have the right of access to and from the Premises from a public road through any easements, rights of way, or other access rights held by Lessor for the benefit of the Premises, and the rights to use the Premises on a non-exclusive basis for the purpose of carrying out due diligence and development activities consistent with the Project Activities, including the activities set forth in Section 2.2.2; and (b) during the Restoration Period (as defined in Section 4.3), Lessee shall have the exclusive right to access and use the Premises for the purpose of completing the Restoration Requirements set forth in Section 13.3. The rights hereby granted to Lessee in this Lease include, without limitation, the Easements and related rights more fully described in Section 14.

2.2 **“Project Activities”** means any and all activities related to developing, installing, constructing, interconnecting, owning, maintaining, and operating one or more solar photovoltaic electric generation systems and/or Energy Storage Technology (as such term is defined under Section 48(c)(6) of the Internal Revenue Code of 1986 and the Inflation Reduction Act of 2022), converting solar or stored energy into electrical energy, and collecting and transmitting the electrical energy so converted, together with any and all activities related to such uses, including:

2.2.1 constructing, installing, using, replacing, relocating, repowering and removing from time to time, and maintaining and operating the following facilities (collectively, **“Project Facilities”**): (a) solar-powered electric generating facilities, including but not limited to modules, inverters, cables, foundations, panels, mounting units and all necessary ancillary improvements and equipment providing support or otherwise associated therewith; (b) photovoltaic solar power generating equipment or such other solar-powered generating equipment as determined in Lessee’s commercially reasonable judgment to be used to capture and convert solar radiation to produce electricity; (c) fences, gates and other safety and protection facilities; (d) utility installations; (e) Energy Storage Technology; (f) private stormwater management systems; and (g) overhead, submerged under water, and underground electrical transmission, collection and communications lines and cables, electric transformers, switching stations, substations, telecommunications equipment, concrete batch plants, power generation facilities to be operated in conjunction with solar array installations, roads, control buildings, operation and maintenance buildings and yards, construction laydown and staging areas, security fencing and related facilities and equipment necessary or convenient for the construction, operation and maintenance of the Project;

2.2.2 any and all activities to determine the feasibility of the Premises for the Project including conducting surveys, soil or water sampling, studies of environmental, biological, cultural, and geotechnical conditions of the Premises, and other tests; and

2.2.3 all other activities on the Premises whether accomplished by Lessee or a third-party authorized by Lessee, that Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing.

**3. Uses Reserved by Lessor.** During the Option Period, Lessor shall have the right to undertake agricultural activities on the Premises provided that any such activities shall be performed in such a manner so as not to adversely affect Lessee’s ability to utilize the Premises for Lessee’s intended purpose of constructing the Project Facilities from the Construction Commencement Date. The cost of any such activities undertaken by Lessor during the Option Period shall be the sole responsibility of Lessor, and the proceeds from the sale of any materials resulting from any such activities performed by Lessor prior to the Construction Commencement Date shall be for the sole benefit of Lessor. Effective as of the Construction Commencement Date (as defined in

Section 4.1), Lessor acknowledges that neither Lessor nor Lessor's lessees or grantees (other than Lessee) shall have any right to occupy or use the Premises until this Lease terminates or expires. Lessor and any of its other lessees or grantees shall immediately cease all activity and presence on the Premises as of the Construction Commencement Date and clear any equipment, facilities or anything else from the Premises that would otherwise potentially interfere with the Project.

**4. Option Period; Term of Lease.** Subject to the other provisions contained herein, the term of this Lease and the Easements contained in this Lease shall be as follows:

4.1 Option Period. The "**Option Period**" of this Lease shall be in force for a period of one year, commencing on the Effective Date and expiring at 11:59 PM EST on the one-year anniversary of the Effective Date, unless otherwise extended pursuant to the provision in the immediately following sentence. At Lessee's option, upon notice to Lessor provided no later than the date that is one month prior to the end of the then-current Option Period or Option Period Extension (each such notice, a "**Option Period Extension Notice**"), and subject to other provisions contained herein, Lessee may extend the Option Period for up to two additional one-year periods (each additional one-year period, a "**Option Period Extension**"), up to a maximum Option Period of three years. Notwithstanding the provision in the preceding sentence, and subject to Section 4.2, if this Lease has not been terminated in accordance with the terms hereof and, by the date set forth in the preceding sentence, Lessee fails to (i) deliver the Option Period Extension Notice, or (ii) otherwise notify Lessor that Lessee will not be exercising its option to extend the Option Period, Lessee shall be deemed to have exercised its option to extend the Option Period to the next allowable Option Period Extension up to the expiration date of the second Option Period Extension. If during the Option Period, Lessee secures all approvals and permits necessary to initiate the Project Activities, and, at its sole discretion, finds the Property suitable for development of the Project Facilities, Lessee shall notify Lessor of its intent to commence construction of the Project Facilities (such notice, the "**Construction Notice**"). The Construction Notice shall: (a) set forth the date on which Lessee shall commence construction of the Project Facilities (the "**Construction Commencement Date**"); and (b) contain an ALTA-compliant and certified survey ("**Survey**") of the Premises and the Easement Areas (as defined in Section 14.1). Lessee shall deliver the Construction Notice no later than two weeks in advance of the Construction Commencement Date. The Survey shall show (i) a calculation of the actual number of acres contained within the Premises (each being a "**Premises Acre**"); and (ii) the final routing and delineation of the Access and Transmission Easements (as defined in Section 14.1), if any. Upon Lessee's delivery of the Construction Notice to Lessor, (A) Lessee shall be deemed to have exercised the Option; (B) **Exhibit B** and **Exhibit C** shall each be deemed revised (without the need for any additional documentation) to reflect the Premises and Easement Areas as set forth in the Survey, *provided that* upon Lessee's request, Lessor and Lessee shall execute an amended memorandum of lease to give recordable notice of the revised Premises and Easement Areas and Lessee shall record said amended memorandum within the land records of Sussex County; and (C) such revised **Exhibit B** shall definitively establish the surveyed acreage of the Premises for purposes of calculating the Annual Rent (as defined in Section 5.2.1).

4.2 Lease Term. If this Lease has not been terminated in accordance with the terms hereof before the end of the Option Period (or any extension thereof), the "**Lease Term**" shall commence on the Construction Commencement Date and shall terminate on the 25<sup>th</sup> anniversary of the Operations Date (as defined in the provision in the immediately following sentence), unless otherwise extended pursuant to the provisions of this Section 4.2. The "**Operations Date**" means the date that is the earlier of (a) the date on which the Project has been completely constructed, has physically completed all performance tests, and has received the permission to operate from the local electric utility; and (b) two years after the Construction Commencement Date. At Lessee's option, upon notice to Lessor (each such notice, a "**Lease Term Extension Notice**") provided no later than six months prior to the end of the then-current Lease Term or Lease Term Extension, Lessee may extend the Lease Term for up to three additional five-year periods (each additional five-year extension period, a "**Lease Term Extension**"). Lessee shall pay to Lessor, the Annual Rent for the first year of such Lease Term Extension

calculated in the manner, and by the date, set forth in Section 5.2.1. For the avoidance of doubt, the expression “**Lease Term**” means the Lease Term together with any Lease Term Extensions.

4.3 Restoration Period. “**Restoration Period**” means the period from the earlier termination or expiration date of the Lease until the last date of Lessee’s completion of the Restoration Requirements under Section 13.3.

5. **Fees and Rent**. Lessee will pay Lessor the following amounts:

5.1 Option Period Fee. Within 30 calendar days of the date hereof, Lessee will tender a one-time nonrefundable payment to Lessor in the amount of \$10,000.00 (the “**Option Period Fee**”). In the event Lessee extends the then-current Option Period or Option Period Extension, Lessee shall pay to Lessor an additional payment in the amount of \$15,000.00 (the “**Option Period Extension Fee**”) for each new Option Period Extension, payable no later than five days after the commencement of such Option Period Extension.

5.2 Rent.

5.2.1 During the Lease Term, and any extension thereof, Lessee shall pay to Lessor the Annual Rent (as defined in the immediately following sentence). The “**Annual Rent**” shall be in the amount of \$6,500.00 per surveyed Premises Acre, payable within 45 days of the Construction Commencement Date and on each anniversary of the Construction Commencement Date. During the first anniversary of the Construction Commencement Date and each subsequent anniversary during the Lease Term, the Annual Rent shall increase by **2.5%** over the Annual Rent paid in the previous year.

5.2.2 “**Rent**” means, collectively, the Option Period Fee, Option Period Extension Fee, and the Annual Rent. Subject to Section 13.3, Lessee shall have no obligation to make any additional payments of Rent following the termination or expiration of this Lease.

5.3 Interest on Past Due Payments. All Rent and other fees not paid or tendered when due under this Lease shall bear simple interest at an annual rate equal to the lesser of (a) the Federal Reserve Bank Loan Prime Rate or (b) the maximum rate allowed by Applicable Law (as defined in Section 9.1).

5.4 Payment Adjustments; Partial Ownership; Change in Property Ownership.

5.4.1 Lessor shall provide Lessee with its certified taxpayer identification numbers simultaneously with the execution and delivery of this Lease via an Internal Revenue Service (IRS) Form W-9 (or its equivalent). No payments under this Lease shall be paid, but shall continue to accrue, until Lessee has received such taxpayer identification information. Upon receipt of such taxpayer identification information, all accrued, but unpaid Rent shall be immediately due and payable by Lessee to Lessor. In the event of an assignment of this Lease or sale, assignment or transfer of Lessor’s interest in the Premises, or any part thereof, to a third party, Rent shall be adjusted proportionately with respect to the fee interest in the Premises held by Lessor and said third party beginning with the first payment of Rent due subsequent to said sale, assignment, or transfer. No payments under this Lease shall be paid to said third-party, but shall continue to accrue, until Lessee has received certified taxpayer identification numbers from the third-party via an IRS Form W-9 (or its equivalent). Any Rent paid to Lessor for the year in which a sale, assignment, or transfer has occurred shall be allocated between Lessor and the third-party as determined between Lessor and the third-party but in no event shall Lessee be required to make any additional Rent payments or to otherwise compensate the third-party for its proportionate share of Rent for the year of sale, assignment, or transfer.

5.4.2 Notwithstanding anything to the contrary in this Lease or elsewhere, any obligation under this Lease for Lessee or any Assignee (as defined in Section 11.1) to pay Lessor any amount will be completely and unconditionally satisfied by payment of such amount by Lessee or Assignee, as applicable, to Lessor at the address for Lessor given in this Lease or such other single address designated by not less than 30 days’ prior notice to Lessee and each such Assignee signed by Lessor. At Lessee’s election, such payment may be by joint check or checks payable to any assignee(s) of Lessor under Section 11.5. Lessor shall be solely

responsible to notify Lessee and each Assignee in writing of any change in ownership of the Property or any portion thereof.

**6. Ownership of Project Facilities.** Lessor shall have no ownership or other interest in any Project Facilities and Lessee may remove any or all Project Facilities at any time. No part of the Project Facilities or other equipment installed by Lessee on the Premises shall be considered part of the Property, or fixtures, or an improvement to real property. The Project Facilities shall at all times be considered tangible personal property owned exclusively by Lessee. Notwithstanding any provision herein to the contrary, Lessor acknowledges that Lessee shall have no obligation to construct any Project Facilities on the Premises.

**7. Taxes and Assessments.**

**7.1 Responsibility of the Parties.**

7.1.1 With the exception of the taxes and assessments set forth in Section 7.1.2, Lessor shall pay all taxes of every kind and nature (including real and personal property, income, gross receipts, franchise, profits, sales and withholding taxes), all general and special assessments, water and sewer rents and charges, and all levies, permits, inspection and license fees and other public charges now or hereafter levied or assessed against the Property as liens or assessments as the same shall become due and payable from time to time and before interest or penalties accrue thereon. Lessor shall under no circumstances permit the Property to be sold or advertised for sale for nonpayment of any tax. Lessor shall deliver to Lessee receipts evidencing the payment of such tax within 30 days after Lessee's demand therefor.

7.1.2 During the Lease Term, Lessee shall pay all taxes and assessments levied or assessed against its personal property located on the Leased Premises, including the Project Facilities and all other taxes (including property tax increases specifically triggered by development and build out of the Project Facilities, or applicable "roll back" taxes), assessments or other public charges assessed or imposed by reason of the Project Activities or the conduct of Lessee's business, including, but not limited to, sales and income taxes. Lessee shall have the right to enter into a payment in lieu of tax ("**PILOT**") agreement with the municipality or county in which the Premises are located for the taxation of Lessee's personal property located on the Premises. If requested by Lessee, Lessor shall, at the sole expense of Lessee, reasonably cooperate with Lessee in connection with a PILOT agreement.

7.1.3 Lessee may, in its sole discretion, but shall not be obligated to, pay directly to the relevant taxing authority, any taxes with respect to the Property which under this Lease are the responsibility of the Lessor, in order to remove any tax lien or other restriction placed on the Property due to non-payment; in which case Lessee shall receive a credit on its Rent, of any amounts so paid plus an amount equivalent to interest at the rate provided for in Section 5.3 on the amount so paid from the date of payment to the time the Rent being credited is due. Furthermore, any such payment of taxes by Lessee which are the responsibility of Lessor under this Lease shall not obligate Lessee to make any further payments of such taxes.

7.2 Reimbursement. If any taxes payable by Lessee under this Lease are levied or assessed in the name of Lessor as part of the real property taxes payable by Lessor, then, promptly after Lessor timely submits the real property tax bill to Lessee, Lessee shall reimburse Lessor for all such taxes payable by Lessee under this Lease in the amount due without interest or penalties; provided, however, that if penalties and interest are incurred as a result of any failure or omission on Lessee's part, then Lessee shall be responsible for the same. It is a condition to Lessor's right to payment or reimbursement of any penalties or interest relating to taxes under this Lease that Lessor submit the real property tax bill (and any other communication from any government authority regarding the same) to Lessee at least 45 days before the tax bill is due.

7.3 Right to Contest. Lessee's obligations under this Lease are subject to Lessee's right to contest the same as hereinafter provided. Lessee shall have the right, in its sole discretion and at its sole expense, to contest by appropriate legal proceedings (which may be brought in the name(s) of Lessor or Lessee where

appropriate or required), the validity or amount of any assessments or taxes for which Lessee is responsible under this Lease. Lessor shall in all respects cooperate with Lessee in any such contest.

## **8. Indemnities, Insurance, Safety Measures, and Environmental Matters.**

### **8.1 Indemnity.**

8.1.1 To the fullest extent permitted by law, Lessee shall defend, indemnify and hold harmless Lessor, and the elected and appointed officials, officers, directors, partners, employees, agents of each and any of them (each, a "**Lessor Party**", and collectively, the "**Lessor Parties**") from all claims, costs, losses, or damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, collectively, "**Losses**") arising out of or relating to the Project Activities, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom but only to the extent caused in whole or in part by any negligent act or omission of Lessee, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them (each, a "**Lessee Party**", and collectively, the "**Lessee Parties**") to perform any of the Project Activities or anyone for whose acts any of them may be liable. Lessee shall be liable, regardless of whether or not such claims, damages, losses, injuries, or expenses are caused in part by a party indemnified hereunder.

8.1.2 In any and all claims against Lessor or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Lessee, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such subcontractor, supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

8.1.3 Lessee agrees to expressly waive its immunity, if any, as a complying employer under the Workers' Compensation law or statute, but only to the extent that such immunity would bar or affect recovery under or enforcement of any indemnification obligation contained herein. This waiver applies to Title 19, Chapter 23 of the Delaware Code, including amendments, or any other applicable state Workers' Compensation law or statute.

8.2 Limitation of Liability. **LESSEE SHALL IN NO CASE BE LIABLE FOR LOST BUSINESS OPPORTUNITIES, LOST PROFITS, OR ANY OTHER SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES THAT MAY RESULT FROM THE CONDUCT OF LESSEE'S PROJECT ACTIVITIES OR OTHERWISE AS A RESULT OF ANY EXERCISE BY LESSEE OF ITS RIGHTS UNDER THIS LEASE; PROVIDED, HOWEVER, THAT SUCH LIMITATION OF LIABILITY SHALL NOT APPLY TO: (A) THE FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LESSEE; OR (B) THE INDEMNIFICATION OBLIGATIONS OF LESSEE UNDER SECTION 8.1.**

8.3 Insurance. Lessee shall, at its expense, obtain and maintain throughout the Lease Term, (i) a broad form comprehensive coverage policy of public liability insurance insuring Lessee and Lessor against loss or liability caused by Lessee's activities on the Premises under this Lease, in an amount not less than \$2,000,000.00 of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible; (ii) commercial auto liability insurance with a combined single limit of not less than \$1,000,000.00, and (iii) umbrella liability insurance with a combined single limit of not less than \$5,000,000.00. Certificates of insurance identifying the required insurance must be provided to the Lessor and kept current. All required insurance policies shall be endorsed to provide that the policy is not subject to cancellation until thirty (30) days prior written notice has been given to Lessor (not less than ten (10) days' notice is required for non-payment of premium). If Lessor is damaged by the failure or neglect of Lessee to

purchase and maintain required insurance, then Lessee shall bear all reasonable costs properly attributable thereto.

8.4 Safety Measures and Recognition of Dangers.

8.4.1 Lessor authorizes Lessee to take reasonable safety measures to reduce the risk of theft of or damage to the Project Facilities or the risk that the Project Facilities will cause damage, injury or death to people, livestock, other animals, and property. Lessee may construct fencing around the entire Premises and take other security precautions if Lessee determines, in its sole discretion, that such fencing or security measures will reduce such risks of theft, damage, death or injury. The expense for any and all fencing constructed by Lessee, or other security measures taken by Lessee, shall be borne solely by Lessee.

8.4.2 **LESSOR RECOGNIZES THE NEED TO EXERCISE EXTREME CAUTION WHEN IN CLOSE PROXIMITY TO ANY OF THE PROJECT FACILITIES. LESSOR AGREES TO EXERCISE CAUTION AT ALL TIMES AND TO ADVISE THE LESSOR PARTIES TO DO THE SAME. LESSOR SHALL TAKE REASONABLE MEASURES TO AVOID ALL RISKS ASSOCIATED WITH ELECTROMAGNETIC FIELDS RESULTING FROM THE PRODUCTION AND TRANSMISSION OF ELECTRICITY AND LESSOR WAIVES ANY AND ALL CLAIMS AND CAUSES OF ACTION WHATSOEVER (WHETHER CURRENTLY EXISTING OR THAT MAY OTHERWISE ARISE OR ACCRUE AT ANY TIME IN THE FUTURE) THAT LESSOR POSSESSES OR OTHERWISE MAY POSSESS AGAINST LESSEE PARTIES ARISING FROM OR RELATING TO SUCH RISKS; PROVIDED, HOWEVER, SUCH WAIVER SHALL NOT BE EFFECTIVE TO THE EXTENT LESSEE OR ANY LESSEE PARTY ENGAGES IN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

8.5 Environmental Matters; Hazardous Materials.

8.5.1 Lessee shall not violate, and shall indemnify Lessor Parties against any Losses arising from violation by Lessee or any Lessee Party of, any Environmental Law (as defined in Section 8.5.3) in connection with or related to Lessee's use of the Premises. Lessee's violation of the prohibition in the preceding sentence shall constitute a material breach and default under this Lease. In conformance with the requirements of applicable law, Lessee shall clean up, remove, remedy, repair, and shall have the right to register any soil or ground water contamination and damage caused by the release or disposal of any Hazardous Materials (as defined in Section 8.5.4) by Lessee or any Lessee Parties in, on or under the Premises.

8.5.2 Lessor shall not violate, and shall indemnify Lessee Parties against any Losses arising from violation by Lessor or any Lessor Party of, any Environmental Law in connection with or related to Lessor's ownership or use of the Property, including without limitation any such violation which may have occurred by Lessor, Lessor Parties or any other person prior to the Effective Date. Lessor's violation of the prohibition in the preceding sentence shall constitute a material breach and default under this Lease. In conformance with the requirements of applicable law, Lessor shall clean up, remove, remedy, and repair any soil or ground water contamination and damage caused by the release or disposal of any Hazardous Materials by Lessor or any Lessor Party in, on, under, or about the Premises or within 200 feet of the Premises.

8.5.3 **"Environmental Laws"** means any and all federal, state, local laws, ordinances, codes, and regulations relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence of any Hazardous Materials, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**CERCLA**") and all laws referred to under the definition of "hazardous substance" in CERCLA.

8.5.4 **"Hazardous Materials"** means any hazardous or toxic material, substance or waste, pollutant, or contaminant as defined or regulated under Environmental Laws, including "hazardous substance" and "pollutant or contaminant" (as such terms are defined or used in CERCLA), petroleum, petroleum products, asbestos, polychlorinated biphenyls, and radioactive materials.

8.6 Brokerage Commissions. Lessee and Lessor agree to indemnify and defend the other Party against and hold the other party harmless from any and all claims with respect to any commission or equivalent

compensation alleged to be owing on account of the indemnifying Party's dealings with any broker or agent. The terms of this Section 8 shall survive the expiration or earlier termination of the Term of this Lease.

**9. Lessee's Representations, Warranties, and Covenants.** Lessee represents, warrants, and covenants to Lessor that:

9.1 Requirements of Governmental Agencies. Lessee, at its expense, shall comply in all material respects with valid laws, ordinances, statutes, orders, rules and regulations of any governmental agency applicable to the Project Facilities (collectively, "**Applicable Law**"). Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings, brought in the name of Lessee or in the names of both Lessee and Lessor, the validity or applicability to the Premises or Project Facilities of any Applicable Law. Lessor shall fully cooperate in such contest, so long as it is reimbursed for its out-of-pocket expenses incurred in such contest and cooperation. Any such contest or proceeding, including any maintained in the name of Lessor, shall be controlled and directed by Lessee, but Lessee shall protect Lessor from Lessee's failure to observe or comply during the contest with the contested Applicable Law.

9.2 Liens. Lessee shall keep the Premises free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies or equipment furnished to the Premises for Lessee's use or benefit; provided, however, that if such a lien does arise, Lessee has a right to contest such lien and Lessee, within 60 days after it receives notice of the filing of such lien, either bonds around such lien or establishes appropriate reserves therefore, or, otherwise, removes such lien from the Premises pursuant to Applicable Law, in which case Lessee shall not be deemed to have breached this Section 9.2. Nothing in this Section 9.2 or this Lease shall be construed to prohibit Lessee from granting one or more liens on all or any portion of Lessee's right, title or interest under this Lease as security for the repayment of any indebtedness or the performance of any obligation relating in whole or in part to any of the Project Activities.

**10. Lessor's Representations, Warranties and Covenants.** Lessor represents, warrants and covenants as follows:

10.1 Lessor's Authority. Lessor is the sole owner of the Property and has the unrestricted right and authority to execute this Lease and to grant to Lessee the rights granted under this Lease. Each person signing this Lease on behalf of Lessor is authorized to do so, and all persons having any ownership interest in the Property are signing this Lease as Lessor. When signed by Lessor, this Lease constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms.

10.2 No Interference. Lessor's activities and any grant of rights Lessor makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or prospectively, interfere with the construction, installation, maintenance or operation of the Project, Project Facilities, whether located on the Property or elsewhere; access over the Property to the Project Facilities or the Project; any Project Activities; or the undertaking of any other activities permitted under this Lease.

10.3 Treatment of Liens; Third-Party Rights. If at any time during the Lease Term, any lien or any third-party right is found, exists or is claimed to exist against the Property or any portion thereof, that creates rights superior to those of Lessee, and Lessee determines that the existence, use, operation, implementation or exercise of such lien or such third-party right could reasonably be inconsistent with or delay, interfere with, impair or prevent the exercise of any of Lessee's rights under this Lease or the financing of the Project, Lessee shall be entitled to obtain a recordable subordination and non-disturbance agreement (in form and substance reasonably acceptable to Lessee and any Financing Party (as defined in Section 12.1) from the holder of such lien or such third-party right, and Lessor shall use best efforts and diligence in helping Lessee obtain the same at no out of pocket expense to Lessor. Lessor agrees that any right, title, or interest created by Lessor from and after the Effective Date in favor of or granted to any third-party shall be subject to (a) this Lease and all of Lessee's rights, title and interests created in this Lease, and (b) any and all documents executed or to be executed by and between Lessee and Lessor in connection with this Lease.

10.4 Hazardous Materials. To the best of Lessor's knowledge, as of the Effective Date, there are no Hazardous Materials or Hazardous Substance located on the Premises or on the Property within 200 feet of the Premises, the Premises or the Property within 200 feet of the Premises has not been used for the generation, treatment, storage or disposal of Hazardous Materials or Hazardous Substance, no underground storage tanks have ever been located on the Property and there are no underground storage tanks presently located on the Premises or on the Property within 200 feet of the Premises. Lessor's breach of the foregoing representation shall constitute a material breach and default under this Lease.

10.5 Endangered Species. To the best of Lessor's knowledge, as of the Effective Date, there are no vertebrate, invertebrate or plant species located within the Premises that are in a protected category under federal or state law or would otherwise result in a mitigation obligation in connection with the development of the Project Facilities.

10.6 Access. The Premises are accessible by public roadways or through an Easement granted by Lessor to a public roadway. Lessor shall not interfere with and shall not allow any other party to interfere with, Lessee's use of the Easements for the purposes described in this Agreement, or Lessee's rights under this Agreement. Lessor shall not erect, install or maintain any barriers, fences, walls, ditches, barricades, docks or other structures or obstacles on or anywhere within the Easement Areas which would burden or interfere with, impede, slow, divert or in any way prevent pedestrian, vehicular or watercraft traffic from fully passing within, through or across the Easement Areas.

10.7 No Litigation and Liens.

10.7.1 Lessor is not a party to any, and to Lessor's actual knowledge, there are no pending or threatened, legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations of any kind or nature whatsoever against Lessor (i) challenging the validity or propriety of this Lease, or transactions contemplated in this Lease or (ii) which could reasonably be expected to have a material adverse effect on the ownership or operation of the Property or any part thereof or interest therein. If Lessor learns that any such litigation, claim, action or investigation is threatened or has been initiated, Lessor shall promptly deliver notice thereof to Lessee. Lessor is not subject of any bankruptcy, insolvency or probate proceeding.

10.7.2 To Lessor's knowledge, there are no liens, covenants, restrictions, rights of way, easements or other encumbrances affecting the Premises, which will prevent or limit Lessee's use of the Premises for the purposes permitted under this Agreement, or that are otherwise contrary to the terms of this Agreement.

10.8 Consents and Estoppel Certificates. Lessor shall cooperate with Lessee in the execution and delivery of such consents, estoppel certificates and other documents as a Financing Party, hedge provider, power purchaser, tax equity investor, title insurance company or any other party (collectively, "**Requestor**") may request, including, without limitation, any instruments required to evidence such Requestor's rights under this Lease. Within 15 days of actual receipt of a request to do so from Lessee or from any existing or proposed Requestor, Lessor shall execute an estoppel certificate (a) certifying that this Lease is in full force and effect and has not been modified (or, if the same is not true, stating the current status of this Lease), (b) certifying that to the best of Lessor's knowledge there are no uncured events of default under this Lease (or, if any uncured events of default exist, stating with particularity the nature thereof) and (c) containing any other certifications as may reasonably be requested. Any such statements may be conclusively relied upon by Lessee or any Requestor. The failure of Lessor to deliver such statement within such time shall be conclusive evidence upon Lessor that this Lease is in full force and effect and has not been modified, and there are no uncured events of default by Lessee under this Lease.

10.9 Requirements of Governmental Agencies and Utilities. Lessor shall assist and fully and promptly cooperate with Lessee, so long as Lessor is reimbursed for its out-of-pocket expenses, in complying with or



obtaining any land or water use permits and approvals, building permits, development permits, construction permits, interconnection applications and requirements of any utility or the owner of any transmission facilities, environmental impact reviews or any other approvals required for the financing, construction, installation, replacement, relocation, maintenance, operation or removal of the Project (collectively the “Permits”), including execution of applications for such approvals. Lessor consents to and authorizes Lessee, as Lessor’s attorney-in-fact, with full authority in the place and stead of Lessor, to sign and file Permits on Lessor’s behalf so long as Lessor is given a copy of the Permits at least 10 days prior to such execution and Lessor does not give notice within those 10 days that Lessor believes a portion of such Permit is inaccurate.

10.10 Confidentiality. Lessor shall maintain in the strictest confidence, for the benefit of Lessee, all solar data, all information pertaining to the financial terms of or payments under this Lease, and any and all terms and conditions of this Lease, Lessee’s site or product design, methods of operation, methods of construction, power production or availability of the Project Facilities, and the like, whether disclosed by Lessee, or discovered by Lessor, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Lessor or any Lessor Party, or (ii) was already known to Lessor at the time of disclosure and which Lessor is free to use or disclose without breach of any obligation to any person or entity. Lessor shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee. Notwithstanding the foregoing, Lessor may disclose such information to Lessor’s lenders, attorneys, accountants, and other personal advisors; any prospective purchaser of the Property; or pursuant to lawful process, subpoena, or court order; provided Lessor in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the agreement of said party not to disclose the information.

10.11 Waivers. To the extent that any Applicable Law establishes land or water use or zoning conditions, restrictions or requirements, including setbacks from the exterior boundaries of the Property for Project Facilities thereon, Lessor, to the extent permissible, waives any and all such conditions or requirements for the benefit of Lessee. Further, if so requested by Lessee, Lessor shall promptly, without demanding additional consideration therefore, execute, and if appropriate cause to be acknowledged and recorded, any waiver or other document or instrument required by any governmental authority. Lessor acknowledges that certain aspects inherent to the operation of the solar energy facilities may result in some nuisance, such as visual impacts, possible increased noise levels, possible glare, and other possible effects of electrical generation and transmission including without limitation potential interference with radio, television, telephone, mobile telephone, or other electronic devices, within 200 feet of the Premises. Without limiting the grant of Easements made in Section 2 and Section 14, Lessor understands and has been informed by Lessee that the Project Facilities may result in some nuisance, and hereby accepts such nuisance, and Lessor waives its right to object to such nuisance.

10.12 No CRP. Lessor is not a party to a Conservation Reserve Program contract with the U.S. Department of Agriculture pursuant to 7 C.F.R. Part 1410 or any state-based conservation easement or reserve program regarding the Property.

10.13 Title Review. Lessor shall, within 10 days after receipt of Lessee’s request to do so, deliver all documents related to the Property in Lessor’s possession or control to Lessee for Lessee’s review, including, without limitation, copies of the following: reports, site plans, surveys, soil studies, phase one, two, three or four environmental reports, other inspection reports, architectural drawings, plans and specifications, studies, and investigations, government notices or agreements, title policies, commitments and reports, abstracts, rent rolls, insurance policies, water rights and well agreements, instruments and agreements relating to oil, gas or mineral rights, mineral exceptions or reservations or conveyances, and mineral leases, agreements regarding third party rights and leases, surveys, loan agreements, lien documents, site assessments, ad valorem property tax applications, agreements, notices, invoices and receipts, appraisals, and any and all notices or correspondence from any governmental authority which indicates that the Property is not in compliance with

any applicable ordinance. In addition, Lessee shall have the right to obtain, at Lessee's expense, a current title report relating to the Property to determine the condition of Lessor's title and all the recorded rights of way and easements benefiting or encumbering the Property, as well as all mineral rights encumbering the Property.

10.14 Ownership and Mineral Estate. Lessor represents that Lessor owns all of the fee simple interest in the Property. Except as set forth in any instrument with respect to the Property recorded among the land records of the county in which the Property is located, Lessor owns all of the rights and title to the oil, gas and other minerals in, on, under or that may be produced from the Property howsoever drilled, mined or produced (such right, collectively, "**Mineral Estate**"). If Lessee determines that any part of the Mineral Estate is not owned, leased or controlled by Lessor, then Lessor shall use its best efforts to obtain non-interference and waiver of surface rights agreements from all persons and entities that have any ownership, royalty or leasehold interest in the Mineral Estate. Notwithstanding anything to the contrary in this Lease, after the Effective Date, Lessor shall not utilize the surface of the Premises to explore for, develop, or produce oil, gas or other minerals from the Mineral Estate underlying the Premises nor enter into any agreement permitting a third party to utilize the surface of the Premises to explore for, develop, or produce oil, gas or other minerals from the Mineral Estate underlying the Premises.

**11. Assignment; Right to Encumber; Division of Lease.**

11.1 Assignment by Lessee. Lessor hereby consents and grants to Lessee the right to grant, sell, lease, convey or assign all or a portion of Lessee's interest in the Lease or the Project Facilities or to grant co-leases (including, without limitation, co-tenancy interests), separate leases, subleases, easements, sub-easements, licenses or similar rights to Lessee's interest in the Lease or the Project Facilities (collectively "**Assignment**") to one or more persons or entities (collectively "**Assignee**"). No Lessor consent shall be required for any change in ownership of Lessee. Lessor further hereby consents and grants to Lessee the right to encumber, hypothecate, mortgage or pledge (including by mortgage, or personal property security instrument) all or any portion of Lessee's right, title, or interest under this Lease or in any Project Facilities to any Financing Party as security for the repayment of any indebtedness or the performance of any Mortgage (as defined in Section 12.1). If any additional consent is needed, Lessor shall not unreasonably withhold, condition, or delay its consent to any assignment that is not allowed by the preceding sentences of this Section 11.1. All Assignees will be subject to all of the obligations, covenants and conditions applicable to the Lessee under this Lease. Upon Lessee's assignment of its entire interest under this Lease as to all or any portion of the Premises, or as may otherwise be provided in the applicable grant, sale, lease, conveyance or assignment document, Lessor shall recognize the Assignee as Lessee's proper successor, the Assignee shall have all of the assigned rights, benefits and obligations of Lessee under and pursuant to this Lease, and Lessee shall be relieved of all of its obligations relating to the assigned interests under this Lease that relate to acts or omissions which occur or accrue following the effective date of such grant, sale, lease, conveyance or assignment. As clarification, and without prejudice to Lessee's right to encumber its interest in the Lease and the Project Facilities, as permitted herein, Lessee shall have no right to mortgage or encumber the underlying Property.

11.2 Notice to Lessor. Following an Assignment or the granting of a Mortgage as contemplated by Section 11.1, Lessee or the Financing Party will give actual notice of the same (including the address of the Financing Party for notice purposes) to Lessor; provided, however, that the failure to give such notice shall not constitute a default but rather shall, solely with respect to the Mortgage, only have the effect of not binding Lessor hereunder with respect to such Financing Party until such notice is given.

11.3 Cure. Each Assignee that holds a full or partial interest in, or a sublease under this Lease, shall have the same amount of time following delivery of notice of a default, to cure said default as is given to Lessee pursuant to this Lease. If Lessee or an Assignee holds an interest in less than all of this Lease, the Premises or the Project Facilities, any default under this Lease shall be deemed remedied, as to Lessee's or such Assignee's partial interest only (and Lessor shall not disturb such partial interest), if Lessee or Assignee, as the case may

be, shall have cured its pro rata portion of the default by paying the fees attributable to the Lease, the Premises or Project Facilities in which Lessee or the Assignee, as the case may be, holds an interest.

11.4 Division into Separate Leases. Lessee may divide the Premises into two or more separate solar energy projects or phases of development if such division becomes necessary to further the development of the Project Facilities. If Lessee elects to divide the Premises into two or more solar energy projects or phases of development, then Lessor shall, within 20 days after written request from Lessee, and without demanding any additional consideration, bifurcate this Lease by entering into and delivering to Lessee two stand-alone new leases (which shall supersede and replace this Lease) that provide Lessee with separate leasehold estates in different portions of the Premises, as designated by Lessee. Each of such new leases shall: (i) specify the portion(s) of the Premises to be covered thereby (and the term "Premises", as used therein, shall refer only to such portion(s)), (ii) contain the same terms and conditions as this Lease (except for any requirements that have been fulfilled by Lessee, any Assignee, or any other person or entity prior to the execution of such new leases, and except for any modifications that may be required to ensure that Lessee's and Lessor's respective combined obligations under such new leases do not exceed their respective obligations under this Lease) and be in a form reasonably acceptable to Lessee and Lessor; (iii) be for a term equal to the then-remaining term of this Lease; (iv) contain a grant of access, transmission, communications, utility and other easements for the benefit of the bifurcated leasehold estates, covering such portion or portions of the Premises as Lessee may designate (but only to the extent permitted in this Lease); (v) require payment to Lessor of only per acre amounts to be paid under this Lease for the acres lease under such new lease; and (vi) to the extent permitted by law, enjoy the same priority as this Lease over any lien, encumbrance or other interest against the Premises.

11.5 Assignments by Lessor. The burdens of this Lease, Easements and other rights contained in this Lease shall run with and against the Property and shall be a charge and burden thereon for the duration of the Lease Term and shall be binding upon and against Lessor and its successors and assigns. Lessor shall notify Lessee in writing of any sale, assignment or transfer of any of Lessor's interest in the Property, or any part thereof. Until such notice is received, along with proof of the successor Lessor's ownership interest, a completed IRS Form W-9, and a revised payment instructions, Lessee shall have no duty to any successor owner, and Lessee shall not be in default under this Lease if it continues to make all payments to the original Lessor before notice of sale, assignment or transfer is received. Lessor agrees it will not assign the rights to payments due to Lessor under this Agreement except to a successor owner of the Premises and, in no case, shall Lessor sever or attempt to sever the solar energy rights or interests from the fee title of the Premises or otherwise convey, assign or transfer or attempt to convey, assign or transfer this Agreement or any interest herein, except to a successor owner of the Premises. Under no circumstances shall a transfer by Lessor include the Project or the Project Facilities.

## **12. Financing Party Protection.**

12.1 Financing Parties. Lessor acknowledges that in order to finance the Project, Lessee may partner with various Financing Parties (as defined below). Without limiting the generality of the foregoing, Lessee may, at any time and from time to time, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its estate, right, title or interest in or under this Agreement or Lessee's interest in the Premises. Any party who is the mortgagee, beneficiary, or holder of any such security instrument or interest (a "**Secured Lender**") shall, for so long as its security instrument or interest is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Section 12. Lessee or any Secured Lender shall send written notice to Lessor of the name and address of any such Secured Lender. As used in this Lease, (a) the term "**Financing Party**" means any financial institution or other person or entity that from time to time (i) provides financing for some or all of the Project Facilities, any phase or constituent project thereof, or any operations of the foregoing, or otherwise holds a lien or security interest in this Agreement or any interest or estate hereunder, the Project Facilities or any phase or constituent project thereof, any components thereof, or any direct or indirect equity interest in Lessee or any holder of an interest in this Agreement or any

interest or estate hereunder, by mortgage, deed of trust or other real or personal property security instrument (including any sale-leaseback arrangement entered into for financing purposes); (ii) provides tax credit financing with respect to some or all of the Project Facilities or any phase or constituent project thereof or any components thereof, including any party acquiring a direct or indirect interest in Lessee or any holder of an interest in this Agreement or any interest or estate hereunder or in any of their respective interest in or estate under this Agreement as a tax credit investor, including, in each case, any agent, security agent, collateral agent, indenture trustee, loan trustee, loan participant or participating or syndicated lenders or investors involved in whole or in part in such financing, secured obligations or tax equity investment, and their respective representatives, successors and assigns; or (iii) any Secured Lender, (b) the term “**Mortgage**” refers to the mortgage, deed of trust or other security interest in this Lease or the Project Facilities given to a Secured Lender in connection with such financing, and (c) the term “**Mortgaged Interest**” refers to the interest in this Lease or the Project Facilities, that is held by the Secured Lender.

12.2 Protections. Any Financing Party, including each Secured Lender, and its respective successors and assigns, are hereby expressly made third party beneficiaries of this Agreement to the extent of their respective rights hereunder and shall be entitled to compel the performance of the obligations of Lessor under this Lease. Lessor and Lessee agree with respect to Financing Parties whose names and addresses have been provided to Lessor in writing that such Financing Parties shall be entitled to the protections in this Section 12.

12.3 Right to Possession, Right to Acquire and Right to Assign. A Financing Party shall have the absolute right (but not the obligation): (a) to assign its security interest; (b) to enforce its lien and acquire title to the leasehold estate by any lawful means; (c) to take possession of and operate the Premises or any portion thereof and to perform all obligations to be performed by Lessee or Assignee under this Lease, or to cause a receiver to be appointed to do so; and (d) to acquire the leasehold estate by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer the leasehold estate to a third party. Lessor’s consent shall not be required for (a) the pledge, mortgage or hypothecation of Lessee’s rights in the Lease, the Project Facilities, or Lessee or (b) the acquisition of Lessee’s or Assignee’s leasehold estate by a third party who acquires the same by foreclosure or assignment in lieu of foreclosure. Lessor agrees to cooperate with Lessee and any of its Financing Parties. Lessor, at no cost thereto, shall execute and deliver all documents reasonably requested by a Financing Party in a form reasonably satisfactory to Lessor, Lessee and any Financing Party.

12.4 Notice of Default; Opportunity to Cure. As a precondition to exercising any rights or remedies as a result of any alleged default by Lessee or Assignee, Lessor shall give notice of the default to each Financing Party concurrently with delivery of such notice to Lessee or Assignee. Lessor shall not be entitled to exercise any remedy for a default unless Lessor has given a written notice of such default to Lessee and to each Financing Party, specifying the nature of the default and the method of cure, and the expiration of the applicable grace periods provided in this Agreement (and such other applicable cure periods provided in this Agreement). In the event the Lessor gives such a notice of default, the following provisions shall apply:

12.4.1 A “**Monetary Default**” means failure to pay when due any rent or other monetary obligation of Lessee or Assignee to Lessor under this Lease, and such failure continues beyond the expiration of any applicable cure period provided hereunder; any other event of default is a “**Non-Monetary Default**.”

12.4.2 The Financing Party shall have the same period after receipt of notice of default to remedy the default, or cause the same to be remedied, as is given to Lessee or Assignee, plus, in each instance, the following additional time periods: (a) 60 days after receipt of the notice of default in the event of any Monetary Default; and (b) 90 days after receipt of the notice of default in the event of any Non-Monetary Default, provided that such period shall be extended for the time reasonably required to complete such cure, including the time required for any Secured Lender to perfect its right to cure such Non-Monetary Default by obtaining possession of the Premises (including possession by a receiver) or by instituting foreclosure proceedings, provided the Secured Lender acts with reasonable and continuous diligence. The Financing Party shall have the absolute right (but not the obligation) to substitute itself for Lessee or any Assignee and perform

the duties of Lessee or any Assignee under this Lease for purposes of curing such defaults. Lessor expressly consents to such substitution, agrees to accept such performance, and authorizes the Financing Party (or its employees, agents, representatives, or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the Lessee or any Assignee. Lessor shall not terminate this Lease prior to expiration of the cure periods available to a Financing Party as set forth herein.

12.4.3 During any period of possession of the Mortgaged Interest by a Financing Party (or a receiver requested by such Financing Party) or during the pendency of any foreclosure proceedings instituted by a Financing Party, the Financing Party shall pay or cause to be paid the Rent and all other monetary charges payable by Lessee or any Assignee under this Lease which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Lessee's or any Assignee's Mortgaged Interest by the Financing Party or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Lease shall continue in full force and effect and the Financing Party or party acquiring title to the Mortgaged Interest shall, as promptly as reasonably possible, commence the cure of all defaults outstanding under this Lease and thereafter diligently process such cure to completion, whereupon Lessor's right to terminate this Lease based upon such defaults shall be deemed waived; provided, however, that the Financing Party or party acquiring title to the Mortgaged Interest shall not be required to cure those non-monetary defaults which are not capable of being cured or performed by such party ("**Non-Curable Defaults**"). Non-Curable Defaults shall be deemed waived by Lessor upon completion of foreclosure proceedings or acquisition of interest in this Lease by such party.

12.4.4 Any Financing Party or other party who acquires the Mortgaged Interest pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Lessee or an Assignee by this Lease incurred or accruing after such party no longer has ownership of the leasehold estate or possession of the Premises.

12.4.5 Neither the bankruptcy nor the insolvency of Lessee or any Assignee shall be grounds for terminating this Lease as long as the Rent and all other monetary charges payable by Lessee or Assignee under this Lease are paid by the Financing Party in accordance with the terms of this Lease.

12.4.6 Nothing in this Lease shall be construed to extend this Lease beyond the Lease Term or to require a Financing Party to continue foreclosure proceedings after the default has been cured. If the default is cured and the Financing Party discontinues foreclosure proceedings, this Lease shall continue in full force and effect.

12.5 New Lease to Financing Party. If this Lease terminates because of Lessee's or Assignee's default or if the Mortgaged Interest is foreclosed, or if this Lease is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, then Lessor shall, give prompt notice to each Financing Party, and Lessor shall, promptly upon written request from any Financing Party if made within ninety (90) days after such termination, rejection or disaffirmance, without demanding additional consideration, enter into a new lease of the Premises in favor of such Financing Party, on the following terms and conditions:

12.5.1 The terms of the new lease shall commence on the date of termination, foreclosure, or rejection or disaffirmance and shall continue for the remainder of the Lease Term of this Lease, at the same Rent and subject to the same terms and conditions set forth in this Lease.

12.5.2 The new lease shall be executed within 30 days after receipt by Lessor of notice of the Financing Party's election to enter a new lease, provided said Financing Party: (a) pays to Lessor all Rent and other monetary charges payable by Lessee or Assignee, as applicable, under the terms of this Lease up to the date of execution of the new lease, as if this Lease had not been terminated, foreclosed, rejected or disaffirmed, less the Rent and other income actually collected by Lessor; and (b) performs all other obligations of Lessee or Assignee under the terms of this Lease, to the extent performance is then due and susceptible of being cured

and performed by the Financing Party; (c) agrees in writing to timely perform, or cause to be performed, all non-monetary obligations which have not been performed by Lessee or any Assignee and would have accrued under this Lease up to the date of commencement of the new lease, except those obligations which constitute Non-Curable Defaults; and (d) reimburses Lessor for Lessor's reasonable attorney fees incurred in reviewing the same. Any new lease granted the Financing Party shall enjoy the same priority as this Lease over any lien, encumbrance or other interest created by Lessor.

12.5.3 At the option of the Financing Party, the new lease may be executed by a designee of such Financing Party without the Financing Party assuming the burdens and obligations of the Assignee thereunder.

12.5.4 If more than one Financing Party makes a written request for a new lease pursuant hereto, then the new lease delivered to each will have priority consistent with those effective prior to the applicable termination, rejection or disaffirmance, such that, without limitation, the lease delivered to any Secured Lender whose security interest was senior shall retain senior priority. Lessor shall be reimbursed all reasonable expenses incurred in determining whose secured interest has senior priority.

12.5.5 Lessor hereby irrevocably agrees and consents to refrain from taking any action to bar, restrain or otherwise prevent a Financing Party from the Premises for the purpose of inspecting the Project.

12.6 Financing Party's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of this Lease to the contrary, the Parties agree that this Lease shall not be modified or amended and Lessor shall not accept a surrender of the Premises or any part thereof or a cancellation or release of this Lease from Lessee or Assignee prior to expiration of the Lease Term without the prior written consent of each Financing Party. This provision is for the express benefit of and shall be enforceable by such Financing Party. In addition, and notwithstanding anything in this Agreement to the contrary, in the event that Lessee should fail to exercise its right to extend the Lease Term for a Lease Term Extension by the applicable date required in Section 4.2 above, Lessee's right to so extend the Lease Term shall nonetheless continue for an additional 30 days following Lessor's delivery of written notice of the failure of Lessee to timely exercise such right to Lessee and each Financing Party. If either Lessee or any Financing Party provides written notice to Lessor, within such 30 days, of its intent that such right to extend be exercised, then timely notice of the exercise of the right to extend the Lease Term for the applicable Lease Term Extension shall be deemed to have been given.

12.7 No Waiver. No payment made to Lessor by a Financing Party shall constitute an agreement that such payment was, in fact, due under the terms of this Lease; and a Financing Party having made any payment to Lessor pursuant to Lessor's wrongful, improper, or mistaken notice or demand shall be entitled to the return of any such payment.

12.8 Further Amendments. Provided that no material default in the performance of Lessee's obligations under this Lease shall have occurred and remain uncured after the expiration of all applicable notice and cure periods, at Lessee's request, Lessor shall (a) amend this Lease to include any provision that may reasonably be requested by an existing or proposed Financing Party, or by any entity that is proposing to directly or indirectly acquire the Project, and (b) shall execute such additional documents as may reasonably be required to evidence such Financing Party's or other entity's rights hereunder; provided, however, that such amendment shall not materially impair the rights of Lessor under this Lease, or extend the Lease Term of this Lease beyond the period of time stated in Section 4. Further, Lessor shall, within 10 days after notice from Lessee or any existing or proposed Financing Party, execute and deliver thereto a certificate to the effect that Lessor (i) recognizes a particular entity as a Financing Party under this Lease and (ii) will accord to such entity all the rights and privileges of a Financing Party hereunder.

### **13. Termination and Remedies.**

13.1 Lessee's Rights. Lessee may, for any reason, by 30 days' notice to Lessor, terminate this Lease or a part hereof and surrender its interest in all or a portion of the Premises to the benefit of the Lessor, and

upon delivery of such notice, all obligations of the Parties hereunder shall cease on the termination date specified in such notice to the extent of such termination; provided, however, that upon each surrender as to any part of the Lease, Lessee shall maintain such easements rights to the surrendered portion as may be appropriate to its enjoyment of the portion not surrendered. Lessee shall pay Lessor all amounts accrued under this Lease through the date of such termination and completion of any restoration pursuant to Section 13.3. Upon such termination, Lessee shall promptly record an appropriate instrument with the office of the County Recorder evidencing the termination of this Lease or a portion hereof. In no event shall Lessor have a right to seek damages against Lessee with respect to this Lease solely by reason of its termination excepting only the amounts accrued through the date of such termination. To compel compliance with this Lease, in the event of a default of any provision of this Lease by Lessor, Lessee shall be entitled to seek all remedies available at law and in equity, including specific performance. In the event Lessee terminates this Lease, neither Lessor nor Lessee shall have any further rights, liabilities, or obligations under this Lease except for any of same that expressly survives such termination.

13.2 Lessor's Rights. Notwithstanding anything to the contrary in the Lease, if Lessee is in default and fails to cure the default after all applicable notice and cure periods (including those contained in Sections 13.2.1 and 13.2.2), Lessor shall have the right and option to do any or all of the following:

13.2.1 If a Monetary Default occurs Lessor may terminate this Lease or pursue an action for damages (or in equity, as the case may be) under this Lease while such Monetary Default is continuing, if all of the following occur:

- (a) Lessor simultaneously notifies Lessee and all Financing Parties in writing of such Monetary Default, which notice sets forth in detail the facts pertaining to the default;
- (b) Lessee fails to cure such Monetary Default within 60 days after Lessee receives the notice from Lessor of such Monetary Default, or if such cure cannot, with the exercise of commercially reasonable diligence, be completed within such period, Lessee has not begun to diligently undertake the cure within the period provided herein or to thereafter prosecute such cure to completion; and
- (c) all Financing Parties fail to cure such Monetary Default within the additional period permitted them under Section **Error! Reference source not found.** of this Lease.

13.2.2 If a Non-Monetary Default occurs, subject to the provision in Section 13.2.3, Lessor may pursue an action for monetary damages (or in equity, as the case may be) under this Lease while such Non-Monetary Default is still continuing if all of the following occur:

- (a) Lessor simultaneously notifies Lessee and all Financing Parties in writing of such Non-Monetary Default, which notice sets forth in detail the facts pertaining to the default;
- (b) Lessee fails to cure such Non-Monetary Default within 60 days after Lessee receives the notice from Lessor of such Non-Monetary Default, or if such cure cannot, with the exercise of commercially reasonable diligence, be completed within such period, Lessee has not begun to diligently undertake the cure within the period provided herein or to thereafter prosecute such cure to completion; and
- (c) all Financing Parties fail to cure such Non-Monetary Default within the additional period permitted them under Section 12 of this Lease.

13.2.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS LEASE OR ANY RIGHTS OR REMEDIES WHICH LESSOR MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY, WITH RESPECT TO ANY LESSEE NON-MONETARY DEFAULT THAT IS NOT CURED WITHIN THE TIME PERIOD CONTEMPLATED IN SECTION 13.2.2 ABOVE, LESSOR SHALL NOT (AND HEREBY WAIVES THE RIGHT TO) COMMENCE ANY ACTION OR PROCEEDING IN WHICH TERMINATION, CANCELLATION, RESCISSION OR REFORMATION OF THIS LEASE IS SOUGHT AS A REMEDY, AND LESSOR SHALL BE LIMITED TO SEEKING MONETARY DAMAGES FOR SUCH NON-MONETARY DEFAULT.

13.3 Restoration. Upon any surrender, termination or expiration of this Lease, Lessee shall, within twenty-four (24) months thereof, substantially complete the Restoration Requirements (as defined below). During the Restoration Period, Lessee shall continue to pay the applicable Rent paid immediately prior to the commencement of such Restoration Period, which shall be calculated on a monthly basis (i.e., such Rent divided by 12 months), and payable monthly in advance for each month during the Restoration Period. “**Restoration Requirements**” means (a) the decommissioning of the Project Facilities and restoration of the surface of the Premises to a condition and contour reasonably similar to that existing on the Property as of the Effective Date, wear and tear excepted, (b) removal of all of its above-grade and below-grade Project Facilities and other equipment located on the Premises, except those located 36 inches or more below-grade, (c) burying of all foundations below-grade with topsoil, (d) removal of all concrete, (e) reseeding areas where the pads were located with grasses or natural vegetation, and (f) any other requirements that may be imposed in connection with any land or water use permits issued in connection with the Project Facilities. Any access roads constructed by Lessee may remain on the Premises at Lessee’s option unless Lessor specifically requests their removal in writing. It is understood that it would not be reasonable to expect that any trees removed in conjunction with the Project be replaced.

13.4 Release of Lease. Upon termination, expiration or surrender of this Lease, in whole or in part, and upon written request by Lessor, Lessee shall provide Lessor with a copy of an appropriate release of Lease.

13.5 Termination of Option. Lessee may, for any reason, by 30 days’ notice to Lessor, terminate the Option granted in Section 1, and upon the effective date of such termination, neither Lessee, nor Lessor, shall have any further obligation to the other under this Lease except for Sections 8.1 and 10.10.

13.6 Injunctive Relief. Notwithstanding any provision to the contrary in this Agreement, in the event of any breach or threatened breach, either party shall have the right to apply for the entry of an immediate order to restrain or enjoin the breach and otherwise specifically to enforce the provisions of this Agreement.

**14. Easements.** Lessor hereby irrevocably grants and conveys to Lessee the following easements across the Property and any adjacent parcel of land outside the Property owned or controlled by Lessor (“**Adjacent Property**”), appurtenant to Lessee’s leasehold estate in the Premises (such easements set forth in Sections 14.1 to 14.3, collectively, “**Easements**”), which Easements shall run with the land and be binding upon Lessor’s successors and assigns:

14.1 Access and Transmission Easements. Lessor hereby grants to Lessee the following Easements across the Easement Areas (as defined below): (a) an exclusive easement for electrical interconnection purposes; (b) a non-exclusive easement for vehicular and pedestrian access, ingress or egress and access to and from the Premises and Easement Areas and to, across and through any portion of the Property outside the Premises and the Adjacent Property, by means of (i) the now existing or hereafter constructed roads, waterways, lanes and rights-of-way on the Property and the Adjacent Property, and (ii) such additional roads, waterways, culverts, and bridges as Lessee or anyone else may construct (including rights to maintain, improve, rebuild or relocate such roads, culverts and bridges) from time to time; (c) an exclusive easement to install, maintain, repair, replace and operate on the Property and the Adjacent Property multiple (i) transmission, distribution and collection cables (including fiber optic cables), conduits, wire and/or lines which carry communications of any nature to and from the Project, and (ii) communication cables (including fiber optic cables), conduits, wire and/or lines which carry communications of any nature to and from the Project, and (iii) other improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the foregoing, together with such rights of way as may be reasonably necessary to install, maintain, repair and operate any of the foregoing (the facilities in clauses (i) – (iii), collectively, the “**Interconnection Facilities**”); (d) a temporary easement on, over, across and under the Property or any Adjacent Property, to be used as necessary for access and staging in connection with the construction, operation and maintenance of the Project Facilities (provided that Lessee shall restore any Adjacent Property to the same extent as Lessee shall restore the Property under Section 13.3); and (e) the right to remove fences, gates, cattle guards and any



other improvements or structures on the Premises and Easement Areas which interfere with Lessee's operations. The Easements granted in the immediately preceding clauses (a) to (e), are collectively referred to as the "**Access and Transmission Easements**". Lessor shall execute and deliver to Lessee any documents or instruments reasonably requested by Lessee in recordable form to evidence the Access and Transmission Easements, including the applicability of such Access and Transmission Easements to any Adjacent Property, containing all the rights and privileges set forth herein, within 15 days following written request from Lessee. "**Easement Areas**" means those areas of any Adjacent Property or of the Property outside the Premises, which areas are preliminarily depicted in **Exhibit C**, including the Landscape Buffer Area and SWM Area (all as defined in Section 14.3) and the FC Area (as defined in Section 14.4).

14.2 Lessor Easements. To the extent that Lessor holds or has the right to use any access, utility, transmission, water or other easements, rights of way or licenses over lands in the general vicinity of the Property or the Adjacent Property (the "**Lessor Easements**") on or after the date of this Lease, and such Lessor Easements are or could be used for the benefit of the Property, then the same are hereby included in this Lease, and Lessee shall be entitled to use such Lessor Easements, if such use is permitted under the Lessor Easements and provided that such use does not interfere with Lessor's use of same. Upon the written request of Lessee, Lessor shall, within 15 days following such request, grant (in recordable form and containing such terms and provisions as may be reasonably requested by Lessee or any Financing Party), for no additional consideration, one or more sub-easements of Lessor Easements to run concurrently with the Lease Term (or for such shorter period as provided in the Lessor Easement).

14.3 Solar Easements. Lessor hereby grants to Lessee the following Easements across the Property and any Adjacent Property (such Easements, collectively, the "**Solar Easements**"): (a) direct access to sunlight and an exclusive easement and right to capture, use and convert the unobstructed solar resources over and across the Premises; (b) an easement for any audio, visual, view, light, shadow, noise, vibration, electromagnetic or other effect of any kind or nature whatsoever resulting, directly or indirectly, from the Project Activities, including but not limited to rights to cast shadows and reflect glare onto all of the Property or any Adjacent Property, from the Project Facilities or any and all other related facilities, wherever located; (c) the right to clear the Premises of trees and other vegetation as required for Lessee to fully utilize its Solar Easements, and to retain the value of any timber removed; (d) the right, but not the obligation to cut and maintain trees and other landscaping features on the Property within 100 feet of the Premises in order to optimize the utilization of the Premises for Project Activities, provided that Lessor shall have the right to use or sell any timber cut or trimmed by Lessee on the Property outside of the Premises; and, if applicable, (e) the right, for no additional consideration, to plant, install, construct, or otherwise create and maintain landscaping features or other visual buffers on certain areas of the Property preliminarily depicted in Exhibit C as the "**Landscape Buffer Area**" when and only to the extent required by Lessee to comply with any conditions or requirements imposed by law or any other person, authority, or entity holding jurisdiction ("**AHJ**"), and, if so required, Lessor shall grant Lessee or the AHJ, within 15 days of Lessee's request, a stand-alone, recordable, and assignable easement or other similar agreement describing such landscaping features or visual buffers in the Landscape Buffer Area; and (f) the right to construct private stormwater management systems on certain areas of the Property as shown on Exhibit C (the "**SWM Area**").

14.4 Grant to Utility and AHJ. Lessee, in its sole discretion and without further act of Lessor, shall have the right to grant to the transmitting utility the right to construct, operate and maintain on the Premises or within the Easement Areas Interconnection Facilities, pursuant to any lease, easement or other agreement used or proposed by the utility. If requested by such utility or Lessee, Lessor shall, for no additional consideration other than the Rent and within 15 days after such request, grant such easement or enter into such other agreement, directly to or with such utility. If and only to the extent required by Lessee to comply with any conditions or requirements imposed by law or any AHJ, Lessor shall, upon payment by Lessee of a reasonable consideration to be agreed upon by the Parties, grant the AHJ, within 15 days of Lessee's request, a stand-alone, recordable, and assignable easement or other similar agreement related to certain areas of the

Property or Adjacent Property (“**FC Area**”) required by such AHJ for forest conservation purposes.

### **15. Miscellaneous Provisions.**

15.1 Notice of Lease. Lessor and Lessee shall execute, in conjunction with this Lease, a recordable notice of the Lease and the Easements granted herein, in the form of a memorandum of lease attached hereto as Exhibit D. Lessee shall then record said memorandum within the land records of the applicable county or counties in which the Property is located. Lessor also consents to the recordation of the interest of an Assignee in the Premises.

15.2 Notices. All notices, requests, demands, waivers and other communications required or permitted to be given under this Leases shall be in writing and may be given by any of the following methods: (a) personal delivery, (b) a writing in portable document format (“**PDF**”) attached to an email transmission, but only to the extent such transmission is promptly followed by overnight or certified mail, postage prepaid, return receipt requested, (c) overnight or certified mail, postage prepaid, return receipt requested, or (d) next day air courier service. Notices shall be sent to the appropriate party at its address or email address given below:

|                      |  |                      |   |
|----------------------|--|----------------------|---|
| <b>If to Lessor:</b> | Sussex County, Delaware  | <b>If to Lessee:</b> | Noria Chaberton JV LLC  |
| Name:                | Mike Harmer  | Attention:           | Land Department   |
| Address:             | P.O. Box 589, Georgetown , Delaware<br>19947, United States                              | Address:             | 1700 Rockville Pike, Suite 305,<br>Rockville, MD 20852, United States |
| Email:               | <a href="mailto:michael.harmer@sussexcountyde.gov">michael.harmer@sussexcountyde.gov</a> | Email:               | <a href="mailto:land@chaberton.com">land@chaberton.com</a>            |
| Phone No.:           | +1-3028557370  |                      |   |

Any Party may change its address for purposes of this Section 15.2 by giving notice of such change to the other Party.

15.3 Entire Agreement; Amendments. This Lease, including the exhibits, schedules, and any addendum attached hereto, constitutes the entire agreement between Lessor and Lessee respecting its subject matter. In the event of conflict between this Lease and any addendum attached hereto, the express provisions of such addendum will prevail. Any other agreement, understanding or representation respecting the Premises, or any other matter not expressly set forth in this Lease or a subsequent writing signed by both Parties is null and void. Except as provided in Section 4.1, this Lease shall not be modified or amended except in a writing signed by both Parties, and no purported modifications or amendments, including any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either Party.

15.4 Legal Matters. This Lease shall be governed by and interpreted in accordance with the laws of the State of Delaware. Venue shall be in the county where the Property is located, or if in Federal Court as required by subject matter or personal jurisdiction, in the U.S. District Court for the District where the Property is located. The Parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either Party shall not be employed in the interpretation of this Lease and is waived. The prevailing Party in any action or proceeding for the enforcement, protection, or establishment of any right or remedy under this Lease or for the interpretation of this Lease shall be entitled to recover its reasonable attorneys’ fees and costs in connection with such action or proceeding from the non-prevailing Party.

15.5 Severability. Should any provision of this Lease be held, in a final and un-appealable decision by a court of competent jurisdiction, to be either invalid, void, or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding. Notwithstanding any other provision of this Lease, the Parties agree that in no event shall the Lease Term or any Easement term be longer than, respectively, the longest period permitted by Applicable Law.

15.6 Tax Credits. If under applicable law the holder of any interest under this Lease becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Lessee's option, Lessor and Lessee shall amend this Lease or replace it with a different instrument so as to convert Lessee's interest in the Premises to a substantially similar interest that makes Lessee eligible for such tax credit, benefit or incentive; provided, however, that nothing in this Lease shall entitle Lessee to a fee interest in the Property, diminish Lessee's payment obligations under this Lease or extend the Lease Term of this Lease.

15.7 Counterparts. This Lease may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument. This Lease may be executed and transmitted via facsimile, PDF, or other similar electronic means complying with the U.S. federal E-SIGN Act of 2000 (e.g. [www.docusign.com](http://www.docusign.com)) and a manual or electronic signature of the undersigned transmitted via such means shall have the same force and effect as a manually signed original.

15.8 Cooperation. Lessor shall cooperate with Lessee, and its permitted successor, assign or Affiliate, in the conduct of their operations consisting of the Project Facilities, Easements, or Transmission Facilities, and in otherwise giving effect to the purpose and intent of this Lease, including, without limitation, in Lessee's or any permitted successor, assign or Affiliate's efforts to obtain from any Governmental Authority or any other person or entity any environmental impact review, permit, entitlement, approval, authorization or other rights necessary or convenient in connection with Lessee's Project Facilities, Access Rights, or Transmission Facilities; and Lessor shall promptly upon request, without demanding additional consideration therefore, execute, and, if appropriate, cause to be acknowledged and recorded, any map, application, document or instrument that is reasonably requested by Lessee, its permitted successor, assign or Affiliate in connection therewith. Without limiting the generality of the foregoing, Lessor agrees (a) if requested by Lessee or its permitted successor, assign or Affiliate to support such application by filing a letter with the appropriate Governmental Authority in a form reasonably satisfactory to Lessee or its permitted successor, assign or Affiliate, and (b) not to oppose, in any way, whether directly or indirectly, any such valid, accurate application or approval at any administrative, judicial or legislative level.

15.9 Relationship. Neither this Lease nor any other agreements or transactions contemplated in this Lease shall in any respect be interpreted, deemed or construed as constituting Lessor and Lessee as partners or joint venturers, or as creating any partnership, joint venture, association or other relationship other than of landlord and tenant; and Lessor and Lessee agree not to make any contrary assertion, contention, claim or counterclaim in any action, suit or other proceeding involving either Lessor or Lessee or the subject matter of this Lease.

15.10 Condemnation. If all or part of the Premises is proposed to be taken as a result of any action or proceeding in eminent domain, or is proposed to be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain (collectively, a "**Taking**"), Lessor shall provide Lessee with reasonable advance notice of any impending proceeding or meeting related to such Taking and shall not in the absence of Lessee's consent thereto settle with the Taking authority or agree on compensation for such Taking. This Lease shall terminate as to any portion of the Premises so condemned or taken (except in the case of a temporary Taking after the duration of which Lessee desires to continue this Lease, and the Lease Term shall be extended, in such event, by the duration of such temporary Taking). Subject to any applicable law or regulation, if any, any award or other compensation ("**Award**") payable as a consequence of such Taking shall be paid as follows: (a) Lessor shall first be entitled to receive out of the Award the value of Lessor's fee interest in the Property, valued as if no Project Facilities were on the Property; (b) Lessee shall next be entitled to receive out of the Award (i) the value of the Project Facilities, (ii) any other compensation or benefits payable by law as a consequence of the loss or interruption of Lessee's business and the other costs and expenses incurred by Lessee as consequence of the Taking, and (iii) the remaining present value of Lessee's interest in

the Property (determined at the time of the Taking), including the value of Lessee's interests under this Lease; (c) Lessor shall then be entitled to receive out of the Award, taking into account the leasehold and easement estates created by this Lease, the estimated amounts that would have been paid to date of condemnation by Lessee hereunder; and (d) Lessor shall be entitled to any remainder of the Award.

15.11 Joint and Several Liability. If applicable, the obligations under this Lease imposed upon Lessor shall be joint and several obligations of the individuals or entities comprising Lessor.

15.12 Force Majeure. If performance of this Lease or of any obligation under this Lease is prevented, restricted or interfered with by reason of an event of "**Force Majeure**" (as defined in the immediately following sentence), the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference and the Lease Term shall be extended for the duration of the Force Majeure event; provided, however, that nothing in this Section 15.12 shall relieve Lessee of its obligations to pay Rent or other monetary obligation payable to Lessor pursuant to this Lease. The affected Party shall use its reasonable efforts to avoid or remove such causes of non-performance and shall continue performance under this Lease whenever such causes are removed. "**Force Majeure**" means flood, drought, earthquake, storm, fire, tornado, lightning, windstorm, unusually inclement weather or other natural catastrophe; acts of God, casualty or accident; war, sabotage, vandalism, civil strife, civil unrest or other violence; strikes or labor disputes; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility; a Regulatory Suspension (as defined in the immediately following sentence); litigation challenging the validity or content of any permit or approval necessary for the construction or operation of the Project; litigation by Lessor, nearby landowners or third party interest groups challenging the validity or content of this Lease or any aspect of the Project; or any other act or condition beyond the reasonable control of a party hereto. A "**Regulatory Suspension**" shall mean the application of any local, state or federal law, order, rule or regulation which results in the delay, interruption, or suspension of the: (i) construction of the Project; or (ii) transmission, production or sale of electricity from the Project.

15.13 Certain Matters of Construction. The terms "herein", "hereof", and "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. The section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. References in this Agreement to "Sections", "Schedules" or "Exhibits" shall be to Sections, Schedules or Exhibits of or to this Agreement unless otherwise specifically provided. All references in this Agreement to statutes shall include all amendments of same and implementing regulations and any successor statutes and regulations; to any instrument or agreement (including this Agreement) shall include any and all addendums, modifications and supplements thereto and any and all restatements, extensions or renewals thereof to the extent such modifications, supplements, restatements, extensions or renewals of any such documents are permitted by the terms thereof; to any person shall mean and include the successors, affiliates and permitted assigns of such person; to "including" shall be understood to mean "including, without limitation"; or to the time of day shall mean the time of day on the day in question in the State of Delaware, unless otherwise provided in this Agreement. Unless the context of this Agreement clearly requires otherwise, the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or".

**\*\*\*SEE ADDENDUM ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF\*\*\***

(Signature Page follows)

**IN WITNESS WHEREOF**, the Parties have executed this Lease as of the Effective Date.

**LESSOR(S): Sussex County, Delaware**

By:

Name:

Title: President of County Council

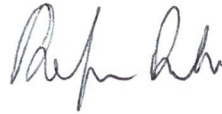
**Attest: (SEAL)**

---

Clerk of Council

**LESSEE: Noria Chaberton JV LLC**

By:



Name: Stefano Ratti

Title: Manager

## ADDENDUM

Attached to and made a part of that certain Solar Energy Lease and Easement Agreement (the "Lease"),  
dated \_\_\_\_\_,  
by and between **Sussex County, Delaware**  
and  
**Noria Chaberton JV LLC**

In addition to the provisions previously set forth in the Lease and effective as of the date first written above, it is hereby agreed that:

1. **Conflict of Terms.** Capitalized terms not otherwise defined in this Addendum have the meanings ascribed to them in the Lease. In the event of a conflict or inconsistency between the printed terms of the Lease and this Addendum, the printed terms of this Addendum shall control and be deemed to supersede the printed terms of the Lease.
2. **County Decommissioning Requirements.** Notwithstanding anything to the contrary contained in the Lease, particularly in Section 13.3 thereof, Lessee shall comply with the requirements of the Zoning Ordinance for Sussex County, Delaware (the "**Ordinance**"), with respect to decommissioning of the Project, and the Restoration Requirements shall be as set forth in the decommissioning plan agreed to by the Parties prior to the Construction Commencement Date (the "**Decommissioning Plan**"). After Lessee's delivery of the Construction Notice, but prior to the Construction Commencement Date, the Parties shall execute a Decommissioning Funding Agreement, in substantially the form attached to the Lease as Exhibit E, which shall become effective as of the Construction Commencement Date, and pursuant to which the Parties shall establish and maintain a sinking fund account with a financial institution, counterparty to the DFA, as security to cover the costs of completing the Restoration Requirements under the Decommissioning Plan.
3. **Lessor Option to Purchase.**
  - (a) Upon expiration of the Lease Term or earlier termination of the Lease under Section 13.1 of the Lease, notwithstanding anything to the contrary contained in the Lease, particularly in Section 13.3 thereof, Lessor may elect to purchase the Project Facilities by notice to Lessee delivered by Lessor not later than 30 days after the expiration or earlier termination of this Lease. The Parties agree that Lessee shall not be obligated to commence decommissioning of the Project under Section 13.3 of the Lease and Paragraph 2 of this Addendum unless such 30-day period has elapsed and Lessor either fails to deliver the notice in the immediately preceding sentence or notifies Lessee in writing of Lessor's election not to purchase the Project Facilities. If Lessor elects to purchase the Project Facilities in accordance with the provision in this Paragraph 3(a), the purchase price for the Project Facilities (the "**Purchase Price**") shall be the fair market value of the Project Facilities at the time of purchase (the "**FMV**"), which value shall be determined in accordance with the valuation procedures set forth in Paragraph 3(b) below.
  - (b) Upon Lessor's exercise of the option to purchase the Project Facilities as set forth in Paragraph 3(a) of this Addendum, the Parties shall within 30 days of such Lessor election negotiate in good faith and agree upon the selection of a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the FMV. If the Parties cannot reach an agreement on an appraiser, each Party shall select one appraiser, and the two appraiser shall select a third appraiser to determine the FMV. The appraiser agreed to by the Parties, or otherwise selected by the other two appraisers, shall act reasonably and in good faith to determine the FMV and shall set forth such determination in a written opinion delivered to

the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be shared by the Parties equally. Upon determination of the FMV, the Parties shall use good faith efforts to negotiate and execute a definitive agreement, pursuant to which Lessee shall sell to Lessor, and Lessor shall purchase from Lessee the Project Facilities in accordance with the terms and conditions set forth in such definitive agreement and at the Purchase Price in an amount equal to the FMV.

4. **Minimum Premises Acres**. In the event the total Premises Acres set forth in the Survey attached to the Construction Notice amount to an acreage equal to or less than 11 acres (the "**Minimum Acreage**"), then solely for the purposes of calculating the Annual Rent, the acreage of the Premises shall be deemed to be equal to the Minimum Acreage.

This Addendum shall not affect the terms and conditions set forth in the Lease in any manner except as set forth herein.

(Signature Page Follows)

**IN WITNESS WHEREOF**, the Lessor and Lessee have hereunto set their hands and official seals the date first written above.

**LESSOR: Sussex County, Delaware**

By:

Name:

Title: President of County Council

Attest: (SEAL)

---

Clerk of Council

**LESSEE: Noria Chaberton JV LLC**

By:



Name: Stefano Ratti

Title: Manager



Exhibit A  
LEGAL DESCRIPTION OF PROPERTY

Parcel ID Number: 334-7.00-30.01

That certain real property in the County of Sussex, State of Delaware, described as follows:

15674

01987 2008

This Deed was prepared by WILSON, HALSBROOK & BAYARD, P.A.  
Georgetown, Delaware

DEED

THIS DEED made this 21<sup>st</sup> day of June, A.D. 1994,

BETWEEN,

J.G. TOWNSEND, JR. & CO. of P.O. Box 430, Georgetown, Delaware 19947, hereinafter referred to as "Grantor",

-AND-

SUSSEX COUNTY, a political subdivision of the State of Delaware, of P.O. Box 589, Georgetown, Delaware 19947, party of the second part, hereinafter referred to as the "Grantee".

WITNESSETH:

That the said parties of the first part, for and in consideration of the sum of ONE DOLLAR (\$1.00), Current Lawful Money of the United States of America and other good and valuable considerations, the receipt whereof is hereby acknowledged, hereby grant and convey unto the said party of the second part, its successors and assigns forever,

ALL that certain piece or parcel of land situate in Lewes and Rehoboth Hundred, Sussex County and State of Delaware, being more particularly described as follows to wit:

BEGINNING at a set concrete monument in the northwesterly right-of-way line of Sussex County Road 270 at its intersection with the former center line of the Penn Central Railroad; thence by and with the aforesaid former center line of the Penn Central Railroad North 32 degrees 02 minutes 59 seconds West 1032.463 feet to a set concrete monument; thence turning and running North 58 degrees 00 minutes 00 seconds East 1488.382 feet to a set concrete monument; thence turning and running North 32 degrees 00 minutes 00 seconds West 404.998 feet to a set concrete monument; thence turning and running North 57 degrees 59 minutes 58 seconds East 1044.130 feet to a set concrete monument; thence turning and running South 32 degrees 00 minutes 00 seconds East 944.668 feet to a set concrete monument; thence turning and running South 58 degrees 00 minutes 00 seconds West 269.690 feet to a set concrete monument; thence South 32 degrees 00 minutes 00 seconds East 1210.420 to a set concrete monument; thence turning and running South 58 degrees 00 minutes 00 seconds West 2021.920 feet to a set concrete monument; thence turning and running North 31 degrees 58 minutes 26 seconds West 709.956 feet to a set concrete monument thence turning and running South 59 degrees 49 minutes 34 seconds West 240.449 feet to the place of beginning said to contain 100.00 acres, more or less and as more particularly shown on the survey thereof and defined as lands to be conveyed to: SUSSEX COUNTY COUNCIL and Lands of J.G. TOWNSEND, JR. & CO. Prepared by Charles D. Murphy Associates, Inc., Land Surveyors, dated May 17, 1994, revised May 31, 1994, revised on June 2, 1994, and revised on June 16, 1994 said plot being of record in the Office of the Recorder of Deeds in and for Sussex County in Plot Book 52, page 328.

BEING a portion of those lands conveyed unto this Grantor by deed of Sally W. Thompson, et al., dated August \_\_\_\_\_, 1946 and of record in the Office of the Recorder of Deeds in and for

0713 333 6/22/94 TX-EX ST .00

3436 111 6/22/94 CTX-EX SU .00

DLM

Sussex County in Deed Book 361, page 409.

AND FURTHER being a portion of those lands conveyed unto this Grantor by deed of Jacob M. Moore, et al., dated July 9, 1946 and of record in the Office of the Recorder of Deeds in and for Sussex County in Deed Book 366, page 26.

AND FURTHER being a portion of those lands conveyed unto this Grantor by deed of Frank Martin, et al., dated March 24, 1951 and of record in the Office of the Recorder of Deeds in and for Sussex County in Deed Book 398, page 147.

THIS conveyance is subject to the following covenants which are incorporated herein and made a part hereof:

By accepting title to the above-described premises, Sussex County hereby covenants on behalf of itself, its heirs, successors and assigns to State of Delaware, Division of Historical and Cultural Affairs, State Historic Preservation Office (DE SHPO) or its successor agency, to maintain and preserve that archaeological site data which qualified 78-D-65 and 78-D-60 for inclusion in the National Register of Historic Places as follows:

1. The County shall preserve and maintain the real property containing geological sites 78-D-65 and 78-D-60. Said sites are as shown and designated on the plot of lands referred to herein.
2. No construction or disturbance of the ground surface may take place without the express prior written permission of the DE SHPO signed by a fully authorized representative thereof. If the County proposes to undertake ground disturbing activities on the property, it may be necessary for the County to undertake data recovery in accordance with 36 CFR 800 prior to initiating the proposed activity. Maintenance activities such as grass mowing shall not be subject to this clause.
3. The DE SHPO shall be permitted at all reasonable times to inspect the aforementioned sites on land owned by the County to ascertain if the above conditions are being observed.
4. In the event of a violation of this covenant and in addition to any remedy now or hereafter provided by law, the DE SHPO may, following reasonable notice to the County, institute to enjoin said violation or require mitigation for said violation. The successful party shall be entitled to recover all costs or expenses incurred with such a suit, including all court costs and attorney's fees.
5. The County agrees that the DE SHPO may, at its discretion without prior notice to the County, convey and assign all or part of its rights and responsibilities to any successor agency.
6. This covenant is binding on the County, its heirs, successors, and assigns in perpetuity. Restrictions, stipulations and covenants contained herein shall be inserted by the County verbatim or by express reference in any deed or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate in the property as described in the above sites and bounds.
7. The failure of the DE SHPO to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

201987 2010

8. The DE SHPO may, for good cause, modify or cancel any or all of the foregoing conditions or restrictions upon application of the County, its heirs, successors or assigns. The DE SHPO may also make application to the County to modify or cancel this covenant.

9. This covenant shall be a binding servitude upon the County and shall be deemed to run with the land. Acceptance of this Deed and its recordation shall constitute conclusive evidence that the County agrees to be bound to the foregoing conditions and restrictions and to conform to obligations herein set forth.

IN WITNESS WHEREOF, the said J.G. TOWNSEND, JR. & CO. has caused its name to be hereunto set by its President and the common and corporate seal of this said corporation shall be hereunto affixed, duly attested to by its Secretary, the day and year first above written.



J.G. TOWNSEND, JR. & CO

BY: [Signature]  
President

ATTEST: [Signature]  
Secretary

STATE OF Delaware  
COUNTY OF Sussex

BE IT REMEMBERED that on this 21st day of

June, A.D. 1984, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, Paul G. Townsend, President of J.G. TOWNSEND, JR. & CO., a corporation of the State of Delaware, party to this indenture, known to me personally to be such, and acknowledged this indenture to be his act and deed, and the act and the deed of the said corporation; that the signature of the President is in his own proper handwriting; that the seal affixed is the common and corporate seal of the said corporation duly affixed by its authority; and that the act of signing, sealing, acknowledging and delivering the said indenture was first duly authorized by resolution of the Board of Directors of the said corporation.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

[Signature]  
Notary Public

DALLAS D. GREEN

My commission expires: 04 JUN 22 PM 2:09

RECORDED OF DEEDS  
SUSSEX COUNTY

FRANK J. STRAUBE  
NOTARIAL OFFICER ALTERNATE TO  
BY DEL. CODE SECT. 432  
ATTORNEY AT LAW  
DELAWARE

PURCHASERS REPORT  
MADE THIS DATE

JUN 23 1984

ASSESSMENT DIVISION  
OF SUSSEX CTY.

Sussex County Engineering 7/17/94

EXHIBIT A-1

THE NORTHEASTERN LAGOON





**Exhibit B  
PREMISES**

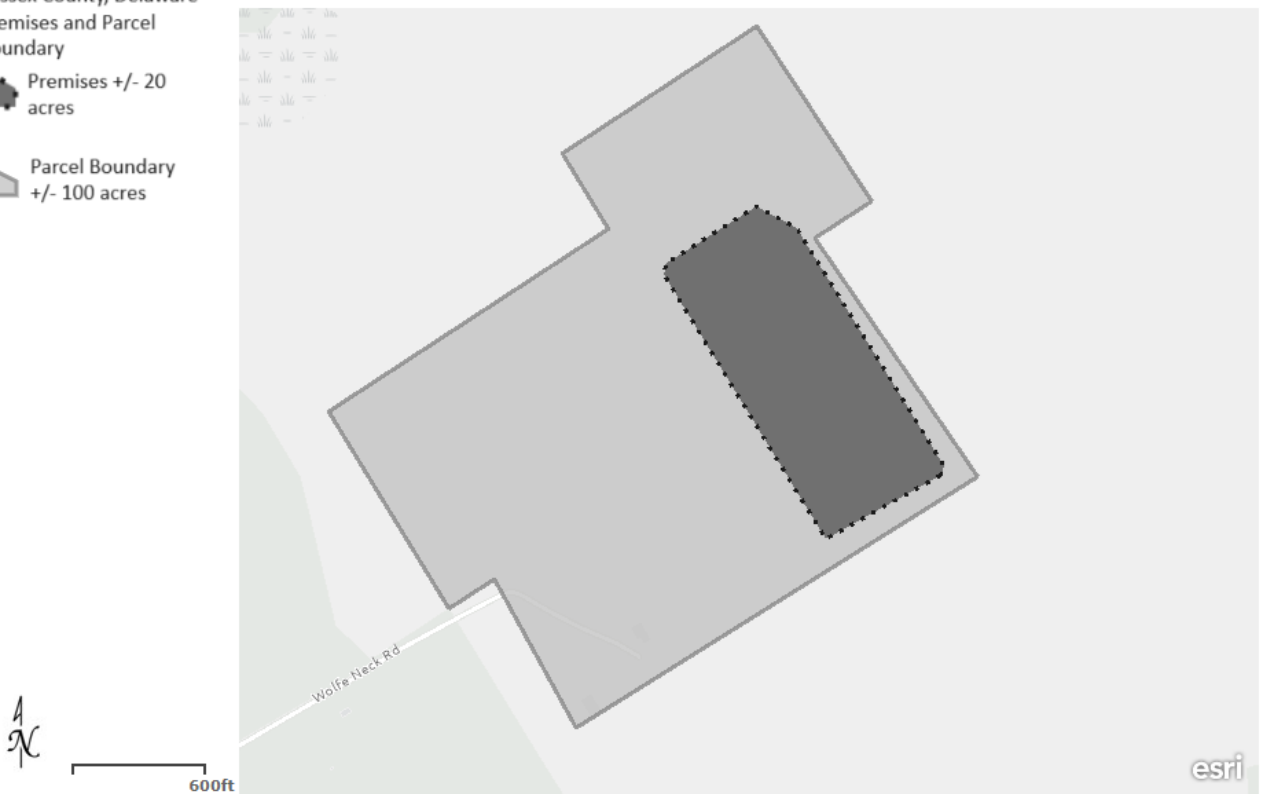
Attached to and made a part of that certain Solar Energy Lease and Easement Agreement (the "Lease") and Memorandum of Lease Agreement (the "Memorandum"),

dated \_\_\_\_\_,  
by and between **Sussex County, Delaware**  
and  
**Noria Chaberton JV LLC**

Wolfe Neck Wastewater -  
Sussex County, Delaware  
Premises and Parcel  
Boundary

 Premises +/- 20  
acres

 Parcel Boundary  
+/- 100 acres



THE DEPICTION CONTAINED IN THIS EXHIBIT IS INTENDED TO BE FOR ILLUSTRATIVE PURPOSES ONLY AND DOES NOT CONSTITUTE A SURVEYED REPRESENTATION OF THE BOUNDARIES DEPICTED THEREIN. PRIOR TO THE COMMENCEMENT OF THE LEASE TERM, LESSEE WILL PROVIDE LESSOR WITH A SURVEY OF THE PREMISES DEPICTING BOTH ITS SIZE AND LOCATION. THE FINAL SIZE AND LOCATION OF THE PREMISES IS AT THE SOLE DISCRETION OF LESSEE BUT WILL REMAIN WITHIN THE AREA DEPICTED HEREIN.

**Exhibit C**  
**EASEMENT AREAS**

Attached to and made a part of that certain Solar Energy Lease and Easement Agreement (the "Lease")  
and Memorandum of Lease Agreement (the "Memorandum"),

dated \_\_\_\_\_,

by and between **Sussex County**,

and

**Noria Chaberton JV LLC**

PRIOR TO THE COMMENCEMENT OF THE LEASE TERM, LESSEE WILL PROVIDE LESSOR WITH A SURVEY OF THE EASEMENT AREAS DEPICTING BOTH ITS SIZE AND LOCATION. THE FINAL SIZE AND LOCATION OF THE EASEMENT AREAS IS AT THE SOLE DISCRETION OF LESSEE.

**Exhibit D**  
**MEMORANDUM OF LEASE**  
**(Attached)**

MEMORANDUM OF LEASE  
Parcel ID No.: 334-7.00-30.0

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:  
Noria Chaberton JV LLC  
Attn: Land Department  
1700 Rockville Pike, Suite 305  
Rockville, MD 20852

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(SPACE ABOVE FOR RECORDER'S USE ONLY)

### MEMORANDUM OF SOLAR ENERGY LEASE AND EASEMENT AGREEMENT

THIS MEMORANDUM OF SOLAR ENERGY LEASE AND EASEMENT AGREEMENT ("Memorandum") has been made to indicate the existence of a Solar Energy Lease and Easement Agreement ("Lease") dated \_\_\_\_\_, by and between Sussex County, a county and political subdivision of the State of Delaware of/having an office at P.O. Box 589, Georgetown, Delaware 19947, United States as "**Lessor**", (whether one or more), and **Noria Chaberton JV LLC**, a Delaware limited liability company, having an office at 1700 Rockville Pike, Suite 305, Rockville, MD 20852, United States, as "**Lessee**".

Lessor did grant demise, lease, and let the Premises (as defined below) exclusively unto Lessee, its successors and assigns, the right to develop a solar photovoltaic project or projects and grants certain easements associated therewith, on the lands described below and subject to the provisions contained in the Lease including the following:

1. The Option Period of the Lease is for a period of one year, commencing on the date immediately set forth above and may be incrementally extended, provided certain conditions are met, for up to a maximum of three (3) years in total thereby, continuing the term of the Lease to the end of the "extended" Option Period.
2. The Lease Term of the Lease comprises (a) a construction period of up to two years commencing on the Construction Commencement Date, and (b) an operations period of 25 years, commencing on the Operations Date, as defined in the Lease, and may be incrementally extended, provided certain conditions are met, for up to three additional five-year periods up to a maximum of 15 additional years, thereby continuing the term of the Lease to the end of the "extended" Lease Term.
3. The Property is described in the vesting deed attached hereto as **Exhibit "A"** and includes effluent spray lagoons constituting the Wolfe Neck Treatment Facility located at Wolfe Neck Road, Rehoboth Beach, the County of Sussex, State of Delaware.
4. The Premises containing up to 20 acres, more or less, is defined as being that portion of the Property comprising of an effluent spray lagoon surface at the Wolfe Neck Treatment Facility located on the Property, which lagoon is known as and identified as Lagoon 4 – NorthEastern Lagoon in the description attached hereto as **Exhibit "A-1"**, and which Premises is more fully described on **Exhibit "B"**, attached hereto and made a part hereof.
5. The Easement Area is defined as being that portion of the Property outside of the Premises which is more fully described on **Exhibit "C"**, attached hereto and made a part hereof, and the term of any such Easements is coterminous with the term of the Lease.



This Memorandum has been executed for the purpose of providing notice of the existence of the Lease and shall not be considered in any way a modification or alteration of the Lease. All terms and conditions of the Lease are hereby incorporated herein by reference as if fully set forth herein. This Memorandum has been entered into for the sole purpose of placing the Lease of record and shall not be deemed to amend, modify, supplement, or change any of the terms and conditions of the Lease in any respect whatsoever. To the extent of any conflict between this Memorandum and the Lease, the terms of the Lease shall govern and control.

(SIGNATURE PAGE(S) TO FOLLOW)

**IN WITNESS WHEREOF**, the Lessor and Lessee have hereunto set their hands and official seals the date first written above.

**LESSOR(S): Sussex County, Delaware**

By:

Name:

Title: President of County Council

Attest: (SEAL)

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Corporate Acknowledgement

STATE OF \_\_\_\_\_)

)§:

COUNTY OF \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_ before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, who holds the capacity of \_\_\_\_\_, for \_\_\_\_\_, a \_\_\_\_\_, and that he/she/they in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself/themselves in such capacity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

LESSEE: Noria Chaberton JV LLC

By: *Stefano Ratti*

Name: Stefano Ratti

Title: Manager

Corporate Acknowledgement

COMMONWEALTH/STATE OF Maryland )  
 )§:  
COUNTY/PARISH OF Montgomery )

On the 14th day of March in the year 2024 before me, the undersigned, a notary public in and for said state/commonwealth, personally appeared Stefano Ratti, who holds the capacity of Manager, for Noria Chaberton JV LLC, a **Delaware limited liability company**, and that he/she/they in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself/themselves in such capacity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

*Albert Yeh*  
\_\_\_\_\_  
Notary Public

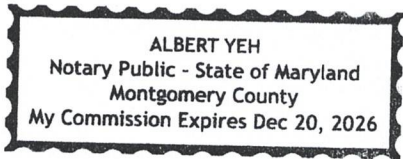


Exhibit A to Memorandum  
LEGAL DESCRIPTION OF PROPERTY

Parcel ID Number: 334-7.00-30.01

That certain real property in the County of Sussex, State of Delaware, described as follows:

15674

101987 2008

This Deed was prepared by WILSON, HALSBROOK & BAYARD, P.A.  
Georgetown, Delaware

DEED

THIS DEED made this 21<sup>st</sup> day of June, 1994, A.D.

BETWEEN,

J.G. TOWNSEND, JR. & CO. of P.O. Box 430, Georgetown,  
Delaware 19947, hereinafter referred to as "Grantor",

-AND-

SUSSEX COUNTY, a political subdivision of the State of  
Delaware, of P.O. Box 589, Georgetown, Delaware 19947, party of  
the second part, hereinafter referred to as the "Grantee".

WITNESSETH:

That the said parties of the first part, for and in  
consideration of the sum of ONE DOLLAR (\$1.00), Current Lawful  
Money of the United States of America and other good and valuable  
considerations, the receipt whereof is hereby acknowledged,  
hereby grant and convey unto the said party of the second part,  
its successors and assigns forever,

ALL that certain piece or parcel of land situate in Lewes  
and Rehoboth Hundred, Sussex County and State of Delaware, being  
more particularly described as follows to wit:

BEGINNING at a set concrete monument in the northwesterly  
right-of-way line of Sussex County Road 270 at its intersection  
with the former center line of the Penn Central Railroad; thence  
by and with the aforesaid former center line of the Penn Central  
Railroad North 32 degrees 02 minutes 59 seconds West 1032.463  
feet to a set concrete monument; thence turning and running North  
58 degrees 00 minutes 00 seconds East 1488.382 feet to a set  
concrete monument; thence turning and running North 32 degrees 00  
minutes 00 seconds West 404.998 feet to a set concrete monument;  
thence turning and running North 57 degrees 59 minutes 58 seconds  
East 1044.130 feet to a set concrete monument; thence turning and  
running South 32 degrees 00 minutes 00 seconds East 944.668 feet  
to a set concrete monument; thence turning and running South 58  
degrees 00 minutes 00 seconds West 269.690 feet to a set concrete  
monument; thence South 32 degrees 00 minutes 00 seconds East  
1210.420 to a set concrete monument; thence turning and running  
South 58 degrees 00 minutes 00 seconds West 2021.920 feet to a  
set concrete monument; thence turning and running North 31  
degrees 58 minutes 26 seconds West 709.956 feet to a set concrete  
monument thence turning and running South 59 degrees 49 minutes  
34 seconds West 240.449 feet to the place of beginning said to  
contain 100.00 acres, more or less and as more particularly shown  
on the survey thereof and defined as lands to be conveyed to:  
SUSSEX COUNTY COUNCIL and Lands of J.G. TOWNSEND, JR. & CO.  
Prepared by Charles D. Murphy Associates, Inc., Land Surveyors,  
dated May 17, 1994, revised May 31, 1994, revised on June 2,  
1994, and revised on June 16, 1994 said plot being of record in  
the Office of the Recorder of Deeds in and for Sussex County in  
Plot Book 52, page 328.

BEING a portion of those lands conveyed unto this Grantor by  
deed of Sally W. Thompson, et al., dated August \_\_\_\_\_, 1946 and  
of record in the Office of the Recorder of Deeds in and for

07:13 333 6/22/94 TX-EX ST .00

3436 111 6/22/94 CTX-EX SU .00

DLM

Sussex County in Deed Book 361, page 409.

AND FURTHER being a portion of those lands conveyed unto this Grantor by deed of Jacob M. Moore, et al., dated July 9, 1946 and of record in the Office of the Recorder of Deeds in and for Sussex County in Deed Book 366, page 26.

AND FURTHER being a portion of those lands conveyed unto this Grantor by deed of Frank Martin, et al., dated March 24, 1951 and of record in the Office of the Recorder of Deeds in and for Sussex County in Deed Book 398, page 147.

THIS conveyance is subject to the following covenants which are incorporated herein and made a part hereof:

By accepting title to the above-described premises, Sussex County hereby covenants on behalf of itself, its heirs, successors and assigns to State of Delaware, Division of Historical and Cultural Affairs, State Historic Preservation Office (DE SHPO) or its successor agency, to maintain and preserve that archaeological site data which qualified 78-D-65 and 78-D-60 for inclusion in the National Register of Historic Places as follows:

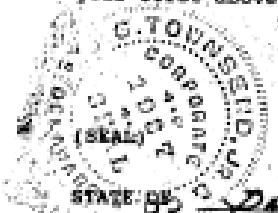
1. The County shall preserve and maintain the real property containing geological sites 78-D-65 and 78-D-60. Said sites are as shown and designated on the plot of lands referred to herein.
2. No construction or disturbance of the ground surface may take place without the express prior written permission of the DE SHPO signed by a fully authorized representative thereof. If the County proposes to undertake ground disturbing activities on the property, it may be necessary for the County to undertake data recovery in accordance with 36 CFR 800 prior to initiating the proposed activity. Maintenance activities such as grass mowing shall not be subject to this clause.
3. The DE SHPO shall be permitted at all reasonable times to inspect the aforementioned sites on land owned by the County to ascertain if the above conditions are being observed.
4. In the event of a violation of this covenant and in addition to any remedy now or hereafter provided by law, the DE SHPO may, following reasonable notice to the County, institute to enjoin said violation or require mitigation for said violation. The successful party shall be entitled to recover all costs or expenses incurred with such a suit, including all court costs and attorney's fees.
5. The County agrees that the DE SHPO may, at its discretion without prior notice to the County, convey and assign all or part of its rights and responsibilities to any successor agency.
6. This covenant is binding on the County, its heirs, successors, and assigns in perpetuity. Restrictions, stipulations and covenants contained herein shall be inserted by the County verbatim or by express reference in any deed or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate in the property as described in the above sites and bounds.
7. The failure of the DE SHPO to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

#01987 2010

8. The DE SHPO may, for good cause, modify or cancel any or all of the foregoing conditions or restrictions upon application of the County, its heirs, successors or assigns. The DE SHPO may also make application to the County to modify or cancel this covenant.

9. This covenant shall be a binding servitude upon the County and shall be deemed to run with the land. Acceptance of this Deed and its recordation shall constitute conclusive evidence that the County agrees to be bound to the foregoing conditions and restrictions and to conform to obligations herein set forth.

IN WITNESS WHEREOF, the said J.G. TOWNSEND, JR. & CO. has caused its name to be hereunto set by its President and the common and corporate seal of the said corporation shall be hereunto affixed, duly attested to by its Secretary, the day and year first above written.



J.G. TOWNSEND, JR. & CO.

BY: [Signature]  
President

ATTEST: [Signature]  
Secretary

STATE OF Delaware  
COUNTY OF Sussex

BE IT REMEMBERED that on this 21st day of

June, A.D. 1984, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, Paul G. Townsend, President of J.G. TOWNSEND, JR. & CO., a corporation of the State of Delaware, party to this indenture, known to me personally to be such, and acknowledged this indenture to be his act and deed, and the act and the deed of the said corporation; that the signature of the President is in his own proper handwriting; that the seal affixed is the common and corporate seal of the said corporation duly affixed by its authority; and that the act of signing, sealing, acknowledging and delivering the said indenture was first duly authorized by resolution of the Board of Directors of the said corporation.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

[Signature]  
Notary Public

DALLAS D. GREEN  
My commission expires:

04 JUN 22 PM 2:09

RECORDED OF DEEDS  
SUSSEX COUNTY

FRANK J. STRAUBE  
NOTARIAL OFFICER, ALTERNATE TO  
BY DEL. CODE SECT. 422  
ATTORNEY AT LAW  
DELAWARE

PURCHASERS REPORT  
MADE THIS DATE

JUN 23 1984

ASSESSMENT DIVISION  
OF SUSSEX CTY.

Sussex County Engineering 7/17/94

**EXHIBIT A-1 to Memorandum**  
**THE NORTHEASTERN LAGOON**





**Exhibit B to Memorandum  
PREMISES**

Attached to and made a part of that certain Solar Energy Lease and Easement Agreement (the "Lease")  
and Memorandum of Lease Agreement (the "Memorandum"),

dated \_\_\_\_\_,  
by and between **Sussex County, Delaware**  
and  
**Noria Chaberton JV LLC**

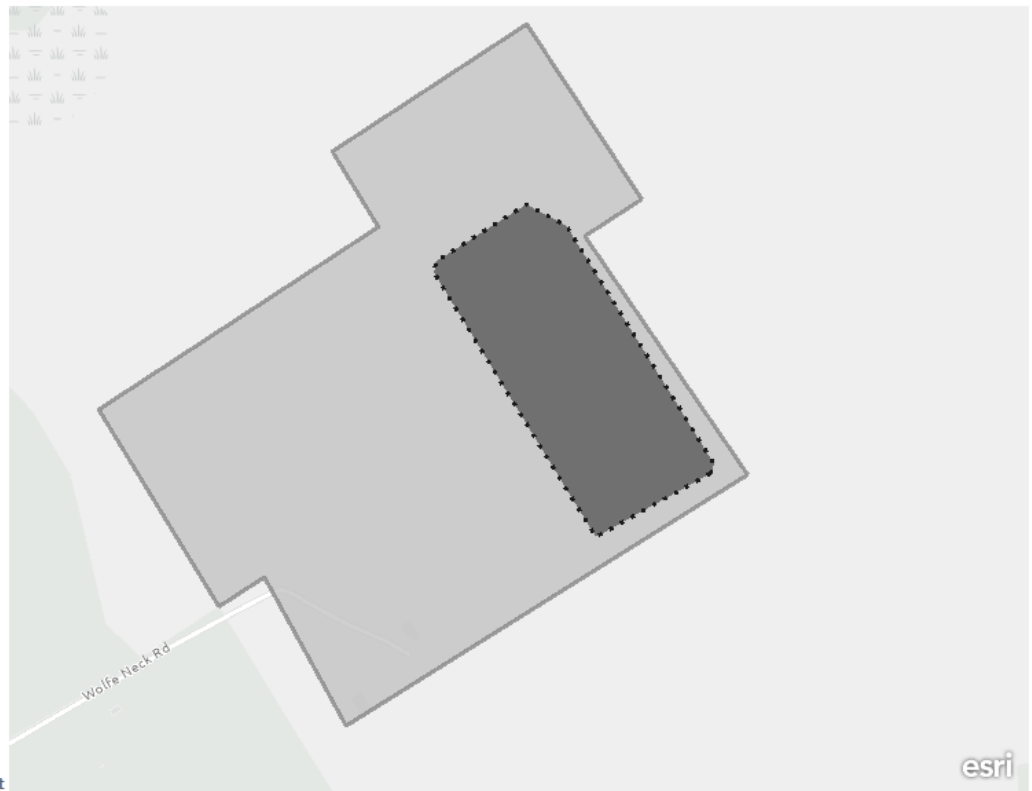
Wolfe Neck Wastewater -  
Sussex County, Delaware  
Premises and Parcel  
Boundary

 Premises +/- 20  
acres

 Parcel Boundary  
+/- 100 acres



 600ft



THE DEPICTION CONTAINED IN THIS EXHIBIT IS INTENDED TO BE FOR ILLUSTRATIVE PURPOSES ONLY AND DOES NOT CONSTITUTE A SURVEYED REPRESENTATION OF THE BOUNDARIES DEPICTED THEREIN. PRIOR TO THE COMMENCEMENT OF THE LEASE TERM, LESSEE WILL PROVIDE LESSOR WITH A SURVEY OF THE PREMISES DEPICTING BOTH ITS SIZE AND LOCATION. THE FINAL SIZE AND LOCATION OF THE PREMISES IS AT THE SOLE DISCRETION OF LESSEE BUT WILL REMAIN WITHIN THE AREA DEPICTED HEREIN.



**Exhibit C to Memorandum  
EASEMENT AREAS**

Attached to and made a part of that certain Solar Energy Lease and Easement Agreement (the "Lease")  
and Memorandum of Lease Agreement (the "Memorandum"),

dated \_\_\_\_\_,  
by and between **Sussex County, Delaware**  
and  
**Noria Chaberton JV LLC**

PRIOR TO THE COMMENCEMENT OF THE LEASE TERM, LESSEE WILL PROVIDE LESSOR WITH A SURVEY OF  
THE EASEMENT AREAS DEPICTING BOTH ITS SIZE AND LOCATION. THE FINAL SIZE AND LOCATION OF THE  
EASEMENT AREAS IS AT THE SOLE DISCRETION OF LESSEE.

**EXHIBIT E to LEASE**  
**DECOMMISSIONING FUNDING AGREEMENT**  
**(Attached)**

## DECOMMISSIONING FUNDING AGREEMENT

**THIS DECOMMISSIONING FUNDING AGREEMENT** (this “**DFA**”) dated as of \_\_\_\_\_ and to be effective as of the Construction Commencement Date (as defined in the Lease (defined below)) is made by and among **Sussex County, Delaware**, a county and political subdivision of the State of Delaware, having an office at P.O. Box 589, Georgetown, Delaware 19947, United States, as “**Lessor**”, (whether one or more), **Noria Chaberton JV LLC**, a Delaware limited liability company, having an office at 1700 Rockville Pike, Suite 305, Rockville, MD 20852, United States, as “**Lessee**”, and M&T Bank, having an office at 2205 DuPont Blvd., Georgetown, DE 19947, as “**Bank**”. Lessor and Lessee are sometimes individually referred to as a “**Party**” and collectively as the “**Parties**”.

### RECITALS

(a) Lessor is the owner of approximately 100 acres of real property located in Wolfe Neck Road, Rehoboth Beach, the County of Sussex, State of Delaware, as more particularly described in the vesting deed which is attached hereto as **Exhibit A** (the “**Property**”);

(b) Lessor is the owner of the effluent spray lagoon at the Wolfe Neck Treatment Facility, located on the Property, which lagoon is known as and identified as Lagoon 4 – NorthEastern Lagoon in the description attached hereto as Exhibit A-1 (the “**Lagoon**”);

(c) Lessor and Lessee have entered into that certain Solar Energy Lease and Easement Agreement of even date herewith, as modified by that certain Addendum to Solar Energy Lease and Easement Agreement of even date herewith (the “**Addendum**”) (and as further amended, restated, modified, and supplemented from time to time, the “**Lease**”);

(d) Pursuant to the Lease, as of the Effective Date (as defined below) of this DFA, Lessee has leased from Lessor and Lessor has leased to Lessee the Premises for the construction and operation of a solar photovoltaic and/or energy storage project on the Premises, including all necessary equipment to deliver solar or stored energy from the Premises to the distribution grid (the “**Project**”);

(e) Lessor and Lessee desire to open and maintain that an interest bearing certificate of deposit account with Bank to be known as the Sinking Fund Account, for depositing of sums to cover the costs of decommissioning the Project, and the Parties desire to enter this Agreement to set forth their agreements related to operation and maintenance of the Sinking Fund Account.

### AGREEMENT

**NOW, THEREFORE**, IN CONSIDERATION OF THE FOREGOING RECITALS AND THE AGREEMENTS, COVENANTS AND PROMISES set forth in this DFA and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged and agreed by the Parties, Lessor and Lessee, intending to be legally bound hereby, agree as follows:

1. **Definitions.** Capitalized terms in this DFA which are defined in the Lease but not otherwise defined in this DFA have the same meanings herein as in the Lease.
2. **Effective Date.** This DFA shall become effective as of the Construction Commencement Date (the “**Effective Date**”).
3. **Sinking Fund.**
  - (a) Within five (5) days after the Effective Date, Lessor and Lessee shall establish a special purpose interest-bearing certificate of deposit account with Bank (the “**Sinking Fund Account**”), and upon

such establishment, Lessee shall deposit the sum of \$145,625 into the Sinking Fund Account. The initial deposit into the Sinking Fund Account, together with additional sums deposited therein in accordance with the provision in the immediately following sentence are hereinafter collectively referred to as the "**Sinking Fund**". At the end of each calendar year after the Effective Date, Bank shall distribute to Lessee in accordance with Lessee's written directions any amount in the Sinking Fund Account consisting solely of interest, dividends, income, capital gains and other amounts earned on or derived from the sums deposited by Lessee into the Sinking Fund Account under this DFA.

- (b) Commencing on the first anniversary of the Operations Date and on each subsequent anniversary of the Operations Date during the Lease Term, Lessee shall deposit into the Sinking Fund Account an additional sum equal to 2% of the then existing amount in the Sinking Fund, as described in greater detail on Schedule I attached hereto. The Parties agree that the Sinking Fund shall be used solely to pay for any costs of decommissioning the Project under the Lease. Provided Lessee complies with its obligations to deposit funds into the Sinking Fund Account in accordance with this DFA, Lessee shall have no further payment obligation in connection with funding the DFA during the Lease Term; *provided, however*, that in the event the actual costs of decommissioning the Project exceed the amount of the Sinking Fund, Lessee shall be responsible for any such excess costs, provided such excess costs are not as a result of Lessor using any portion of the Sinking Fund for any reason other than to pay for decommissioning costs of the Project in accordance with this DFA.
- (c) In the event Lessor uses any amount in the Sinking Fund for any reason other than to pay for decommissioning costs in accordance with this DFA, Lessor shall be responsible to pay for such amount used and shall indemnify and hold harmless Lessee from any claim, loss, damage, liability or costs (including any reasonable attorney costs) arising from such use of funds for reasons other than to pay for decommissioning costs in accordance with this DFA.
- (d) Until Bank is notified in accordance with the provision in Section 4, and except to the extent permitted by the provision in Section 3(a), neither Lessor nor Lessee may withdraw any amount from the Sinking Fund Account.

#### **4. Decommissioning Process.**

- (a) Upon expiration or earlier termination of the Lease in accordance with Section 13.1 of the Lease, Lessee shall give notice to Bank of such expiration or earlier termination, which notice shall set forth: (a) the expiration date or termination date of the Lease, and (b) that Lessor has 30 days from such expiration date or termination date (the "**Purchase Option Exercise Period**") to exercise its option to purchase the Project Facilities as set forth in the Lease (the "**Lessor Purchase Option**").
- (b) If Lessor exercises its Purchase Option, Lessor shall deliver a notice to Lessee and Bank of such exercise. Pursuant to such exercise, on the date Lessee and Lessor consummate the purchase and sale of the Project Facilities from Lessee to Lessor (such consummation, the "**Closing**"), the Parties shall jointly notify Bank in writing of the Closing, and Bank shall, within five days thereof, distribute all amounts in the Sinking Fund Account to Lessee.
- (c) In the event Lessor does not deliver the notice exercising its Purchase Option during the Purchase Option Exercise Period or notifies Lessee and Bank in writing of Lessor's election not to purchase the Project Facilities, Lessee shall immediately commence the decommissioning of the Project Facilities in accordance with the Lease. Upon Lessee's completion of the Restoration Requirements in accordance with the Decommissioning Plan, Lessee and Lessor shall jointly notify

Bank in writing of such completion of the Restoration Requirements, and Bank shall, within five days of receipt of such notice, distribute all amounts in the Sinking Fund Account to Lessee.

- (d) If (i) Lessee fails to complete the Restoration Requirements within eight months after the expiration date of the Purchase Option Exercise Period, or (ii) the Project ceases to produce electrical energy for a period of 12 consecutive months, Lessor shall give Lessee and Bank notice of its intent to commence decommissioning of the Project (the “**Lessor Decommissioning Notice**”). In the event Lessee fails to respond to Lessor with a reasonable explanation for the delay in the restoration or cessation of operation of the Project within 30 days after delivery of the Lessor Decommissioning Notice, Lessor may commence the decommissioning of the Project. Upon request by Lessor to Bank at any time after expiration of the 30-day period after delivery of the Lessor Decommissioning Notice, Bank shall distribute 100% of the Sinking Fund to Lessor or its designee in accordance with Lessor’s written instructions.

**5. Miscellaneous.**

- (a) Lessor and Lessee agree to indemnify and hold harmless Bank, its officers, directors, employees and agents, against claims, liabilities or expenses (including reasonable attorney’s fees) arising out of Bank’s compliance with any requirements of this DFA with respect to the Sinking Fund Account, except if such claims, liabilities or expenses are caused by Bank’s negligence or willful misconduct.
- (b) This DFA shall not create any obligation or duty of Bank except as expressly set forth herein.
- (c) As to the matters specifically subject of the DFA, in the event of any conflict between this DFA and the Lease or any other agreement among the parties or between any of them, the terms of the DFA shall control.
- (d) All notices, requests, demands, waivers and other communications required or permitted to be given under this Leases shall be in writing and may be given by any of the following methods: (a) personal delivery, (b) a writing in portable document format (“**PDF**”) attached to an email transmission, but only to the extent such transmission is promptly followed by overnight or certified mail, postage prepaid, return receipt requested, (c) overnight or certified mail, postage prepaid, return receipt requested, or (d) next day air courier service. Notices shall be sent to the appropriate party at its address or email address given below, provided that any Party may change its address for purposes of this Section (d) by giving notice of such change to the other Parties:

**If to Lessor:** Sussex County, Delaware  
Name: Mike Harmer  
Address: P.O. Box 589, Georgetown , Delaware  
19947, United States  
Email: [mike.harmer@sussexcountyde.gov](mailto:mike.harmer@sussexcountyde.gov)  
Phone No.: +1-3028557370

**If to Lessee:** Noria Chaberton JV LLC  
Attention: Land Department  
Address: 1700 Rockville Pike, Suite 305,  
Rockville, MD 20852, United States  
Email: [land@chaberton.com](mailto:land@chaberton.com)

**If to Bank:** M&T Bank  
**Attention:**  
**Address:** 22205 DuPont Blvd  
Georgetown, DE 19947  
**Email:**

- (e) This DFA shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the Parties. This DFA may not be amended or modified except by written instrument signed and delivered by the Parties. Lessee may assign this DFA to any subsidiary, or purchaser or transferee of the Project. The Parties agree to execute and deliver any additional document or take any further action as reasonably requested by the other party to effectuate the purpose of this DFA.
- (f) This DFA shall be construed and enforced in accordance with the laws of the State of Delaware.
- (g) This DFA shall terminate upon distribution of 100% of the Sinking Fund to Lessee or Lessor in accordance with the provisions of this DFA, whereupon the Sinking Fund Account shall also be terminated and closed.
- (h) This DFA may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument. This DFA may be executed and transmitted via facsimile, PDF, or other similar electronic means complying with the U.S. federal ESIGN Act of 2000 (e.g. [www.docusign.com](http://www.docusign.com)) and a manual or electronic signature of the undersigned transmitted via such means shall have the same force and effect as a manually signed original.

**[Signature Page Follows]**

**IN WITNESS WHEREOF**, the Parties have executed this Decommissioning Funding Agreement as of the date set forth above.

**LESSOR: Sussex County, Delaware**

By:

Name:

Title: President of County Council

**Attest: (SEAL)**

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Clerk of Council

**LESSEE: Noria Chaberton JV LLC**

By:

Name: Stefano Ratti

Title: Manager

**BANK: M&T Bank**

By:

Name:

Title:

**SCHEDULE I**  
**SINKING FUND DEPOSIT SCHEDULE**

| <b>Sinking Fund (Deposits)</b> |             |              |
|--------------------------------|-------------|--------------|
| Timeframe                      | Amount (\$) | Cumulative   |
| Construction Commencement Date | 145,625     | 145,625      |
| Yr 1 of Operations Date        | \$3,640.61  | \$149,265.61 |
| Yr 2                           | \$3,731.62  | \$152,997.23 |
| Yr 3                           | \$3,824.91  | \$156,822.15 |
| Yr 4                           | \$3,920.54  | \$160,742.68 |
| Yr 5                           | \$4,018.55  | \$164,761.23 |
| Yr 6                           | \$4,119.01  | \$168,880.24 |
| Yr 7                           | \$4,221.99  | \$173,102.23 |
| Yr 8                           | \$4,327.54  | \$177,429.77 |
| Yr 9                           | \$4,435.72  | \$181,865.49 |
| Yr 10                          | \$4,546.62  | \$186,412.11 |
| Yr 11                          | \$4,660.28  | \$191,072.39 |
| Yr 12                          | \$4,776.79  | \$195,849.18 |
| Yr 13                          | \$4,896.21  | \$200,745.39 |
| Yr 14                          | \$5,018.61  | \$205,764.00 |
| Yr 15                          | \$5,144.08  | \$210,908.08 |
| Yr 16                          | \$5,272.68  | \$216,180.75 |
| Yr 17                          | \$5,404.49  | \$221,585.25 |
| Yr 18                          | \$5,539.61  | \$227,124.86 |
| Yr 19                          | \$5,678.10  | \$232,802.95 |
| Yr 20                          | \$5,820.05  | \$238,623.00 |
| Yr 21                          | \$5,965.55  | \$244,588.55 |
| Yr 22                          | \$6,114.69  | \$250,703.23 |
| Yr 23                          | \$6,267.55  | \$256,970.79 |
| Yr 24                          | \$6,424.24  | \$263,395.03 |
| Yr 25                          | \$6,584.85  | \$269,979.88 |



To Be Introduced: 3/19/24

Council District 4: Mr. Hudson  
Tax I.D. No.: 233-16.00-26.00  
911 Address: 32602 DuPont Boulevard, Dagsboro

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A C-1 GENERAL COMMERCIAL DISTRICT, A CR-1 COMMERCIAL RESIDENTIAL DISTRICT, AND AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-1 GENERAL COMMERCIAL DISTRICT, A CR-1 COMMERCIAL RESIDENTIAL DISTRICT, AND A C-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 21.11 ACRES, MORE OR LESS**

WHEREAS, on the 8<sup>th</sup> day of December 2022, a zoning application, denominated Change of Zone No. 2002 was filed on behalf of Sadie Properties, LLC; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2024, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 2002 be \_\_\_\_\_; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2024, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,

**NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:**

**Section 1.** That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of [AR-1 Agricultural Residential] and adding in lieu thereof the designation and C-3 Heavy Commercial District as it applies to the properties hereinafter described.

**Section 2.** The subject property is described as follows:

ALL that certain tract, piece or parcels of land, lying and being situate in Dagsboro Hundred, Sussex County, Delaware, and lying on west side of DuPont Boulevard (Rt. 113) approximately 0.40 mile south of Nine Foot Road (Rt. 26) and being more particularly described in the attached deed prepared by Gordon, Foumaris & Mammarella, P.A said parcels containing 21.11 acres, more or less.

This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.