

COUNTY COUNCIL

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MATT LLOYD
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Sussex County

DELAWARE
sussexcountye.gov
(302) 855-7743

SUSSEX COUNTY COUNCIL

A G E N D A

August 19, 2025

10:00 AM

***** AMENDED on August 13, 2025 at 10:00 a.m.**

Call to Order

Approval of Agenda

Approval of Minutes - August 12, 2025

[Draft Minutes 08 12 25](#)

Reading of Correspondence

Public Comments

Todd Lawson, County Administrator

1. Recognition of Retiree – Donald J. Weber
2. Public Interview for Planning & Zoning Commission Nominee John Passwaters
3. Administrator's Report

Gina Jennings, Finance Director ***

1. **Reassessment Legislation – Discussion and Update**



COUNTY ADMINISTRATIVE OFFICES
2 THE CIRCLE | PO BOX 589
GEORGETOWN, DELAWARE 19947

Robbie Murray, Public Safety Director

1. **Milton Medic Station 111 Lease Renewal**
[EMS & Cheer Lease](#)

Andrew Harton, Economic Development Director

1. **Delaware Coastal Business Park Lease Approval**
 - A. **KTM 2 LLC doing business as Arrow Safety Device**
 - B. **Delaware Coast Line Railroad Co.**
[DE Coastal Business Park Leases KTM 2 & DE Coast Line RR](#)
2. **8 Mulberry Street Suite B, Georgetown, DE Lease Approval**
 - A. **Atlantic Contracting and Material Co., Inc.**
[Atlantic Contracting & Material Lease](#)

Mike Harmer, County Engineer

1. **Infrastructure Evaluation – Valve Exercising**
 - A. **Johnson, Mirmiran & Thompson, Inc. (JMT) – Amendment 3**
[JMT Amd 3](#)

Bob Bryant, Airport Manager

1. **Construct New Taxilanes and Tie-Downs (Design and Bidding Phase -1)**
 - A. **Emissions Inventory Study Approval**
[Emission Study Approval](#)

Hans Medlarz, Project Manager

1. **Lochwood Community Area, Sewer Expansion Project S22-17**
 - A. **Balancing Change Order and Substantial Completion**
[Lochwood CO 5](#)
2. **Update and Discussion on Sediment and Erosion Control Recommendations**
[Sediment & Erosion Control Recomm](#)

Old Business

1. [Conditional Use No. 2584 filed on behalf of Martin Pacheco & Agustin Lee Pacheco-Quillen](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN OUTDOOR ATHLETIC FIELD AND CONCESSION TRAILER/FOOD TRUCK TO BE LOCATED ON CERTAIN PARCELS OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 8.07 ACRES, MORE OR LESS” (properties are lying on the west side of Camp Road [S.C.R. 532] approximately 915 ft. north of Eskridge Road [S.C.R. 531]) (911 Address: 20924 Camp Road, Bridgeville) (Tax Map Parcels: 331-2.00-18.19 & 18.20)

[Old Business CU2584](#)

Grant Requests

1. **Western Sussex Chamber of Commerce Inc. for their Broad Creek Bash**
[Western Sussex Chamber of Commerce, Inc](#)
2. **American Cancer Society, Inc. for their Relay for Life event**
[American Cancer Society, Inc.](#)

Introduction of Proposed Zoning Ordinances

[Ord Intros CU2395 CZ2052 CZ2037 CZ2055 CU2586](#)

Council Members' Comments

Executive Session - Land Acquisition & Pending & Potential Litigation pursuant to 29 Del.C.§10004(b)

Possible action on Executive Session Items

Adjourn

***** Per 29 Del. C. §10004 (e) (5) and Attorney General Opinion No. 13-IB02, this agenda was amended to address a matter which arose after the initial posting of the agenda but before the start of the Council meeting.**

-MEETING DETAILS-

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on August 12, 2025 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://sussexcountyde.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://sussexcountyde.gov/agendas-minutes/county-council>.

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, AUGUST 12, 2025

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, August 12, 2025, at 12:30 p.m., in Council Chambers, with the following present:

Douglas B. Hudson	President
John L. Rieley	Vice President
Jane Gruenebaum	Councilwoman
Steve C. McCarron	Councilman
Todd F. Lawson	County Administrator
J. Everett Moore, Jr.	County Attorney

The Invocation and Pledge of Allegiance were led by Mr. Hudson.

**Call to
Order**

Mr. Hudson called the meeting to order.

**M 346 25
Approve
Agenda**

Mr. Lawson reported that under 1:30 p.m. Public Hearings, the first hearing, CU2395 filed on behalf of Breeze-A-Bella Land Group, LLC, needs to be removed. A Motion was made by Mr. McCarron, seconded by Ms. Gruenebaum to approve the Agenda as amended.

Motion Adopted: 4 Yeas, 1 Absent

**Vote by Roll Call: Ms. Gruenebaum, Yea; Mr. McCarron, Yea;
Mr. Lloyd, Absent; Mr. Rieley, Yea;
Mr. Hudson, Yea**

Minutes

The minutes from July 29, 2025, were approved by consensus.

**Correspon-
dence**

There was no correspondence.

Public comments were heard.

**Public
Comments**

Ms. June Rose Futchter thanked the Council for their support for her annual bike ride.

Ms. Alison White spoke about the approval process for large applications.

**Appoint-
ment/BOA**

Mr. Lawson reported that an appointment is needed for the Board of Adjustments and Appeals for District 3. Ms. Gruenebaum is recommending Mr. Phil Lertora.

**M 347 25
Approve
BOA
Appoint-
ment**

A Motion was made by Ms. Gruenebaum, seconded by Mr. McCarron, which be it moved that the Sussex County Council approves the appointment of Mr. Phil Lertora to the Sussex County Board of Adjustments and Appeals effective immediately for a term of four years.

Motion Adopted: 4 Yeas, 1 Absent

**Vote by Roll Call: Ms. Gruenebaum, Yea; Mr. McCarron, Yea;
Mr. Lloyd, Absent; Mr. Rieley, Yea;
Mr. Hudson, Yea**

**Adminis-
trator's
Report**

Mr. Lawson read the following information in his Administrator's Report:

1. FY 2026 Human Service Grant Program

Applications for the Fiscal Year 2026 Human Service Grant Program are now being accepted. The Human Service Grant Program provides grants to county-wide nonprofit agencies for the purpose of enhancing health and human services which contribute to a safe, healthy, and self-sufficient community. Funds provide grants that assist organizations with resources in support of programs or capital purchases.

To be eligible for a grant, organizations must fill out an application which is available on the County's website at www.sussexcountyde.gov.

The deadline for filing grant requests is Tuesday, September 30th.

2. John Brady

It is with great sadness that we inform you that pensioner John Brady passed away on Sunday, August 10, 2025. Mr. Brady began his career with Sussex County in January 2001 serving as the Register in Chancery, he also served as Recorder of Deeds, Clerk of the Peace, and Part-time Chief Deputy Register of Wills for a total of 14 years of service. We would like to extend our condolences to the Brady family.

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

**Aeronau-
tical
Obstruction**

Mark Parker, Assistant County Engineer, presented a balancing change order and project closeout for aeronautical obstruction removal project for Council's consideration.

**M 348 25
Approve CO
& Project
Closeout**

A Motion was made by Mr. Rieley, seconded by Ms. Gruenebaum, that it be moved based on the recommendation of the Sussex County Engineering Department that final balancing change order no. 1 for contract A25-26, Aeronautical Obstruction Removal be approved decreasing the contract amount by \$869.31 and granting project closeout be approved on June 30, 2025 with any held retainages released in according with contract

provisions.

Motion Adopted: 4 Yeas, 1 Absent

**Vote by Roll Call: Ms. Gruenebaum, Yea; Mr. McCarron, Yea;
Mr. Lloyd, Absent; Mr. Rieley, Yea;
Mr. Hudson, Yea**

EMS Station 101 & 111 Amendment Mark Parker, Assistant County Engineer, presented amendment no. 6 and amendment no. 1 for EMS paramedic stations – Lincoln Station 101 & Milton Station 111 for Council’s consideration.

M 349 25 Approve Amendment No. 6 A Motion was made by Mr. Rieley, seconded by Ms. Gruenebaum, be it moved based upon the recommendation of the Sussex County Engineering Department, that amendment no. 6 to the architectural services contract with George, Miles & Buhr be approved in the amount not to exceed \$52,640.00 for additional design and construction related services associated with the future Lincoln and Milton EMS stations.

Motion Adopted: 4 Yeas, 1 Absent

**Vote by Roll Call: Ms. Gruenebaum, Yea; Mr. McCarron, Yea;
Mr. Lloyd, Absent; Mr. Rieley, Yea;
Mr. Hudson, Yea**

M 350 25 Approve Amendment No. 1 A Motion was made by Mr. Rieley, seconded by Ms. Gruenebaum, be it moved based upon the recommendation of the Sussex County Engineering Department, that amendment no. 2 to the EJCDC 2024 miscellaneous engineering base contract with George, Miles & Buhr, be approved in the amount not to exceed \$49,500.00 for additional design related services associated with the future Lincoln and Milton EMS stations.

Motion Adopted: 4 Yeas, 1 Absent

**Vote by Roll Call: Ms. Gruenebaum, Yea; Mr. McCarron, Yea;
Mr. Lloyd, Absent; Mr. Rieley, Yea;
Mr. Hudson, Yea**

Grant Requests Ms. Torbert presented grant requests for Council’s consideration.

M 351 25 Community Resource Center, Inc. A Motion was made by Ms. Gruenebaum, seconded by Mr. McCarron to give \$2,500 (\$2,500 from Ms. Gruenebaum’s Councilmanic Grant Account) to Community Resource Center, Inc. for their safe harbor homeless day shelter.

Motion Adopted: 3 Yeas, 2 Absent

Vote by Roll Call: Ms. Gruenebaum, Yea; Mr. McCarron, Yea;

**Mr. Lloyd, Absent; Mr. Rieley, Absent;
Mr. Hudson, Yea**

M 352 25 **A Motion was made by Ms. Gruenebaum, seconded by Mr. Rieley to give**
Cape **\$1,500 (\$500 each from Ms. Gruenebaum's, Mr. Hudson's, and Mr. Rieley's**
Henlopen **Councilmanic Grant Accounts) to Cape Henlopen Senior Center for their**
Senior **Rehoboth Concert band fundraiser.**
Center

Motion Adopted: 4 Yeas, 1 Absent

Vote by Roll Call: Ms. Gruenebaum, Yea; Mr. McCarron, Yea;
Mr. Lloyd, Absent; Mr. Rieley, Yea;
Mr. Hudson, Yea

M 353 25 **A Motion was made by Ms. Gruenebaum, seconded by Mr. McCarron to**
Speak Out **give \$500 (\$500 from Ms. Gruenebaum's Councilmanic Grant Account) to**
Against **the Speak Out Against Hate Association for their youth education**
Hate **programs.**
Association

Motion Adopted: 3 Yeas, 2 Absent

Vote by Roll Call: Ms. Gruenebaum, Yea; Mr. McCarron, Yea;
Mr. Lloyd, Absent; Mr. Rieley, Absent;
Mr. Hudson, Yea

M 354 25 **A Motion was made by Ms. Gruenebaum, seconded by Mr. McCarron to**
Sussex Land **give \$3,000 (\$1,000 from Ms. Gruenebaum's Councilmanic Grant Account,**
Foundation, **\$1,000 from Mr. Rieley's Councilmanic Grant Account, \$500 from Mr.**
Inc. **Hudson's Councilmanic Grant Account and \$500 from Mr. McCarron's**
Councilmanic Grant Account) to the Sussex Land Foundation, Inc. for their
Dogfish Dash event.

Motion Adopted: 4 Yeas, 1 Absent

Vote by Roll Call: Ms. Gruenebaum, Yea; Mr. McCarron, Yea;
Mr. Lloyd, Absent; Mr. Rieley, Yea;
Mr. Hudson, Yea

M 355 25 **A Motion was made by Ms. Gruenebaum, seconded by Mr. Rieley to give**
Unique **\$500 (\$500 from Ms. Gruenebaum's Councilmanic Grant Account) to**
Mind **Unique Mind Changing Lives Inc. for their summer healthy eating food**
Changing **pantry.**
Lives Inc.

Motion Adopted: 4 Yeas, 1 Absent

Vote by Roll Call: Ms. Gruenebaum, Yea; Mr. McCarron, Yea;
Mr. Lloyd, Absent; Mr. Rieley, Yea;
Mr. Hudson, Yea

M 356 25 **A Motion was made by Ms. Gruenebaum, seconded by Mr. McCarron to**
Autism **give \$2,000 (\$500 each from Ms. Gruenebaum's, Mr. Rieley's, Mr.**
Delaware, **Hudson's and Mr. McCarron's Councilmanic Grant Accounts) to Autism**
Inc. **Delaware, Inc. for their snowflake soiree 2025.**

Motion Adopted: 4 Yeas, 1 Absent

Vote by Roll Call: Ms. Gruenebaum, Yea; Mr. McCarron, Yea;
 Mr. Lloyd, Absent; Mr. Rieley, Yea;
 Mr. Hudson, Yea

M 357 25 **A Motion was made by Ms. Gruenebaum, seconded by Mr. Rieley to give**
Friends of **\$1,000 (\$500 from Ms. Gruenebaum's Councilmanic Grant Account and**
Prime Hook **\$500 from Mr. McCarron's Councilmanic Grant Account) to Friends of**
National **Prime Hook National Wildlife Refuge, Inc. for their family educational**
Wildlife **projects.**
Refuge, Inc.

Motion Adopted: 4 Yeas, 1 Absent

Vote by Roll Call: Ms. Gruenebaum, Yea; Mr. McCarron, Yea;
 Mr. Lloyd, Absent; Mr. Rieley, Yea;
 Mr. Hudson, Yea

M 358 25 **A Motion was made by Ms. Gruenebaum, seconded by Mr. Rieley to give**
DE Law **\$2,000 (\$500 each from Ms. Gruenebaum's, Mr. McCarron's, Mr. Hudson's**
Enforce- **and Mr. Rieley's Councilmanic Grant Accounts) to Delaware Law**
ment Thank **Enforcement Thank You Ride Association for their Thank You Ride 2025.**
You Ride
Association

Motion Adopted: 4 Yeas, 1 Absent

Vote by Roll Call: Ms. Gruenebaum, Yea; Mr. McCarron, Yea;
 Mr. Lloyd, Absent; Mr. Rieley, Yea;
 Mr. Hudson, Yea

M 359 25 **A Motion was made by Ms. Gruenebaum, seconded by Mr. Rieley to give**
Developing **\$500 (\$500 from Ms. Gruenebaum's Councilmanic Grant Account) to**
Artist **Developing Artist Collaboration for their final phase of the 2025 West Side**
Collabor- **creative market renovation.**
ation

Motion Adopted: 4 Yeas, 1 Absent

Vote by Roll Call: Ms. Gruenebaum, Yea; Mr. McCarron, Yea;
 Mr. Lloyd, Absent; Mr. Rieley, Yea;
 Mr. Hudson, Yea

Ord Intro **There were no Proposed Ordinances for introduction.**

Council **Mr. McCarron commented that there are many good organizations that**

Member Comments **apply for grants. He added that it is a tough decision, however, the funds have to last until next June.**

M 360 25 **At 12:58 p.m., a Motion was made by Mr. Rieley, seconded by Ms. Gruenebaum to enter into an Executive Session for the purpose of**
Go Into **discussing matters related to land acquisition and pending & potential**
Executive **litigation.**
Session

Motion Adopted: 4 Yeas, 1 Absent

Vote by Roll Call: Ms. Gruenebaum, Yea; Mr. McCarron, Yea;
Mr. Lloyd, Absent; Mr. Rieley, Yea;
Mr. Hudson, Yea

Executive Session **At 1:01 p.m., an Executive Session was held in Basement Caucus Room to discuss matters related to land acquisition. The Executive Session concluded at 1:29 p.m.**

M 361 25 **At 1:32 p.m., a Motion was made by Ms. Gruenebaum seconded by Mr. Rieley to come out of the Executive Session and go back into the Regular**
Reconvene **Session.**

Motion Adopted: 4 Yeas, 1 Absent

Vote by Roll Call: Ms. Gruenebaum, Yea; Mr. McCarron, Yea;
Mr. Lloyd, Absent; Mr. Rieley, Yea;
Mr. Hudson, Yea

M 362 25 **A Motion was made by Mr. McCarron, seconded by Ms. Gruenebaum to**
Approve **authorize the County Administrator to enter into negotiations, enter into a**
2025-G & **contract and proceed to closing on parcels 2025-G and 2025-H.**
2025-H

Motion Adopted: 4 Yeas, 1 Absent

Vote by Roll Call: Ms. Gruenebaum, Yea; Mr. McCarron, Yea;
Mr. Lloyd, Absent; Mr. Rieley, Yea;
Mr. Hudson, Yea

Rules **Mr. Moore read the rules of procedure for zoning hearings.**

M 363 25 **A Motion was made by Mr. Rieley, seconded by Mr. McCarron to allow**
CU2395 **Conditional Use No. 2395 filed on behalf of Breeze-A-Bella Land Group,**
Withdrawal **LLC to withdrawal and be noticed for a future hearing date.**

Motion Adopted: 4 Yeas, 1 Absent

Vote by Roll Call: Ms. Gruenebaum, Yea; Mr. McCarron, Yea;
Mr. Lloyd, Absent; Mr. Rieley, Yea;

Mr. Hudson, Yea

**Public
Hearing/
CU2537**

A Public Hearing was held for a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A GENERAL TRADE CONTRACTING BUSINESS WITH OFFICE AND STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 1.73 ACRES, MORE OR LESS” (property is lying the southeast side of Pettyjohn Road [S.C.R. 255], approximately 0.65 mile northeast of Prettyman Road [S.C.R. 254]) (911 Address: 18113 Prettyman Road, Milton) (Tax Map Parcel: 235-25.00-45.00) filed on behalf of Ryan Brower.

The Planning & Zoning Commission held a Public Hearing on the application on July 2, 2025. At the meeting of July 23, 2025, the Planning & Zoning Commission recommended approval of the application for the 7 reasons stated and subject to the 10 recommended conditions as outlined.

The Council found that Mr. Mark Davidson, with Pennoni, spoke on behalf of the Applicant, Mr. Ryan Brower, who was also present; that the property is located within the AR-1 (Agricultural Residential) Zoning District; that the application is requesting approval to operate a general trade contracting business with an office and storage; that the parcel is located on the east side of Pettyjohn Road, approximately 1.2 miles south of Harbeson Road, and approximately one mile north of Rt. 30; that the property contains 1.73 acres; that the Applicant and his wife have owned the property since 2017, however the home on the property has been in their family since the 1900s; that it is the original T. Walker Family Farm dwelling; that the dwelling is registered in the Bureau of Archaeology and Historic Preservation; that within the submitted exhibits was information provided by the Historic Preservation Office regarding the existing house; that the dwelling is for their family; that their business is located immediately behind the existing house; the property is currently improved with the existing dwelling, two outbuildings, driveways, parking areas, trash containment, landscaping, domestic well and septic system; that the site is bordered on the North, East, and South by existing agriculture lands owned by the Tyndall family, who are family members of the Brower’s; that the site is located directly across the street from a recently approved Conditional Use No. 2496 for Mr. and Mrs. Wade Hudson; that the site is located within a one mile radius of several other Conditional Uses; that according to the 2045 Future Land Use Map of the Sussex County Comprehensive Plan, the property is identified as being within the Low Density area, which is a rural area; that the proposed use is consistent with the guidelines of the Low Density area, as it provides a place to be primarily for personal service uses, proposing to be developed to serve the needs of a relatively small area, for primarily low density and medium density areas; that according to the 2020 Delaware Strategies for State Policies, the site is located within a Level 4 area; that the application is subject to the

**Public
Hearing/
CU2537
(continued)**

provisions of Articles 4 through 24 and Section 115-22 of the Sussex County Zoning Code; that Mr. and Mrs. Brower have been in business for over 10 year offering high quality heating and air conditioning services to Sussex and Kent County areas; that they have 10 employees, and are looking to add an additional 5 employees to their team; that the Site Plan reflects two accesses; that there is a private access that is paved with a driveway that leads to their residence and garage; that on the opposite side, there is an old farm easement that was deeded to the farmlands to allow access for the tractors; that Mr. Brower had designated the area as an access for the rear of the site; that the easement is made of crushed concrete; that the pole building for the business has been placed as far to the rear of the property that it could possibly be placed; that in that location, there are some existing parking spaces for employees; that he does have two office employees, who answer phones and take business orders; that there is an existing trash containment area which contain two dumpsters; that one dumpster is designated for the larger boxes that the air conditioning and heating systems arrive in, along with a smaller dumpster; that the dumpster area is proposed to be fenced, to provide screening to adjacent properties; that heating and air conditioning sale services and repair businesses are generally of a public or semi-public character, being essential and desirable for the general convenience of and welfare; that because of the nature of the use, the importance of its relationship to the Comprehensive Plan, and the possible impact on neighboring properties, it requires the exercise of the planning, judgement on the location and Site Plan; that everything on the Site Plan is existing, that nothing is being proposed; that the proposed use will not alter the character of the surrounding area, in any manner that substantial limits impairs or precludes the use of surrounding properties; that the property will have access from Prettyman Road; that there are no wetlands located on the property; that there are no endangered species on the property; that central water and sewer will be available in the future for the property; that Mr. Brower currently has an existing private well and septic system, which he will continue to use; that the property is not located within any Excellent Groundwater Recharge Areas; that the site is not located within a floodplain; that the site is located within the Milton Fire Department Service Area; that an Exhibit Book was submitted into the record, with proposed Conditions of Approval, which state that the use shall be limited to the general trade contracting business with an office and storage; that all business and storage will be located within the existing one-story building in the back; that there will be no outside storage of equipment or materials, to prevent pollution and environmental harm; that all used HVAC condensers and equipment, as well as the removing and recycling of air conditioning units will follow all Delaware State laws to ensure proper freon removal and responsible disposal of the unit components; that Mr. Brower has an existing sign, being less than 32 square feet in size; that he requested approval for one un-lit sign, two faced sign being 32 square feet on both sides be approved; that the hours of operation are proposed to be Monday through Friday from 7:30 a.m. until 5:00 p.m., and Saturdays from 8:00 a.m. until 12:00 p.m.; that there will be no

**Public
Hearing/
CU2537
(continued)**

operations on Sundays; that all security lighting will be downward screened; that the site is surrounded by family lands, with no proposed development in the future, as the family does not intend to develop the farms; that in the event the adjacent property would be developed, the Applicant would be willing to place a fence or landscaping to minimize impacts on neighbors; that there are woodlands located on the adjacent parcel to the rear of the property; that Mr. Brower hunts and would request that he be permitted to keep the view of the farmland and woodlands behind him, and that this would allow him and his family would still be able to walk around the land and the woods.

There were no public comments.

The Public Hearing and public record were closed.

**M 364 25
Amend
Condition E/
CU2537**

A Motion was made by Mr. McCarron, seconded by Ms. Gruenebaum to amend Condition E to add another sentence that reads “Except for after hours and Sunday service calls”.

Motion Adopted: 4 Yeas, 1 Absent

**Vote by Roll Call: Ms. Gruenebaum, Yea; Mr. McCarron, Yea;
Mr. Lloyd, Absent; Mr. Rieley, Yea;
Mr. Hudson, Yea**

**M 365 25
Adopt
Ordinance
No. 4011/
CU2537**

A Motion was made by Mr. McCarron, seconded by Ms. Gruenebaum to Adopt Ordinance No. 4011 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A GENERAL TRADE CONTRACTING BUSINESS WITH OFFICE AND STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 1.73 ACRES, MORE OR LESS” for the reasons and conditions given by the Planning & Zoning Commission as follows and as amended by this Council:

1. The applicant operates an HVAC repair business from the site. His business has expanded to the point where a conditional use is now required.
2. The Applicant’s family owns the farmland that surrounds the site, and the Applicant and his family reside in the farmhouse on the property.
3. The use will occur within the existing outbuildings on the property.
4. The business use is located at the rear of the Applicant’s property, where it will have the least impact on any neighboring properties.
5. DelDOT has stated that the traffic generated by the proposed use will be diminutive and will not have a negative impact on the neighboring roadways.
6. The use of HVAC sales, service and repair business is of a public or

**M 365 25
Adopt
Ordinance
No. 4011/
CU2537
(continued)**

semi-public character that is desirable for the general convenience and welfare of the area and the County.

7. No parties appeared in opposition to the application.
8. This recommendation is subject to the following conditions:
 - a. The property shall be used for a general trade contracting business with an office and storage in addition to the Applicant's residence.
 - b. The use will occur within the existing outbuildings on the site.
 - c. The site shall not be permitted to become a junkyard that requires separate zoning and other approvals. Any HVAC equipment used shall be kept within a fenced and screened area, and none of it shall be permanently stored. The Applicant shall only store HVAC equipment it obtains as part of its repair and installation business.
 - d. One indirectly lighted sign shall be permitted. It shall not be larger than 32 square feet per side.
 - e. The hours of operation shall be between 7:30 a.m. and 5:00 p.m., Monday through Friday, and on Saturdays between 8:00 am and 12:00 p.m. on Saturdays. No Sunday hours shall be permitted. Except for after hours and Sunday service calls.
 - f. Any outdoor lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.
 - g. Any dumpsters on the site shall be screened from the view of neighboring properties and roadways. The dumpster location shall be shown on the Final Site Plan.
 - h. The Applicant shall comply with any DelDOT requirements for entrance and roadway improvements.
 - i. Any violation of these conditions of approval may result in the termination of this Conditional Use.
 - j. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion Adopted: 4 Yeas, 1 Absent

**Vote by Roll Call: Ms. Gruenebaum, Yea; Mr. McCarron, Yea;
Mr. Lloyd, Absent; Mr. Rieley, Yea;
Mr. Hudson, Yea**

**Public
Hearing/
CU2511**

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 A GENERAL CONTRACTOR AND CONSTRUCTION BUSINESS WITH AN OFFICE, SHOWROOM, AND STORAGE INCLUDING VEHICLES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 0.46 ACRE, MORE OR LESS" (property is lying the north side of Clay Road [S.C.R. 269], approximately 0.43 mile west of Kings Highway [Rt. 9]) (911 Address: 33847 Clay Road, Lewes) (Tax Map Parcel: 335-12.06-56.00) filed on behalf of Paulina

**Public
Hearing/
CU2511
(continued)**

Owedyk.

The Planning & Zoning Commission held a Public Hearing on the application on July 2, 2025. At the meeting of July 23, 2025, the Planning & Zoning Commission recommended approval of the application for the 9 reasons stated and subject to the 13 recommended conditions as outlined.

The Council found that Mr. David Hutt, Esq., with Morris James LLP, spoke on behalf of the Applicant; that Paulina Owedyk was also present; that the application seeks to allow the operation of a general contractor and construction business with a pole building used for a garage and storage area, and office, a showroom, and vehicle storage; that the property is located across the street from Poore's Propane and Clean Delaware; that the Applicant purchased the property in 2021, where she immediately began making improvements to the property; that she cleaned up the property, renovated the residential home, constructed a pole building located behind the residential home, and various other improvements; that there is a parking area and fencing located on the site; that the site is located within Level 1 according to the State Strategies Map, being an area where the State investments and policies support and encourage a wide range of uses; that the site is located within the County's Coastal Area, according to the Future Land Use Map; that in the direction of Wescoats Corner, there are C-1 (General Commercial) zoned properties, which are located within Commercial Areas of the Future Land Use Map; that the zoning classification of the subject property is AR-1 (Agricultural Residential), as are the properties located immediately adjacent to the site; that to the left of the site, being about three properties down, there is a property located along Clay Road that is zoned B-1 (Neighborhood Business); that this property is the location of Progar & Company., P.A., a professional accounting office, as well as payroll professionals; that as one travels down Clay Road, towards Wescoats Corner, there are a host of C-1 (General Commercial) zoned properties; that in addition to those businesses and commercial uses, Sussex County staff identified 38 Conditional Use applications within a one mile radius of the site since 2011; that 31 of the applications were reported as approved; that there were two Conditional Uses not included within the 38, as their approvals predated 2011; that the location where Clean Delaware is located was approved as Conditional Use No. 278 on July 1, 1975, for an office and storage building; that in 2001, Conditional Use No. 1426 was adopted by County Council as Ordinance No. 1509 to add bulk propane storage to the same location; that there are two additional Conditional Uses along Clay Road, that were referenced by staff, being Conditional Use No. 2069, adopted by Ordinance 2494 in April 2017; that this Conditional Use was approved for a workout, exercise or yoga studio, located about three properties down from the site; that there currently is a hair artistry business in that location via Conditional Use No. 2132, adopted by Ordinance No. 2590 in July 2018; that there are no wetlands located on the property; that there is a rear portion of the property located

**Public
Hearing/
CU2511
(continued)**

within a Wellhead Protection Area, and therefore subject to Chapter 89; that per the FEMA Flood Maps, the property is located within Flood Zone X, being outside of the 500 year floodplain; that water is provided through an on-site well; that the Sussex County Engineering Department evaluated the application, and identified the property as being within a Tier 1 sewer district; that DelDOT responded with a Service Level Evaluation Response, indicating that the traffic impact would be diminutive, being less than 50 vehicle trips per day; that presently, there are no employees of Basement Unlimited, other than the Applicant; that the business uses subcontractors as part of their general contracting business; that occasionally, the subcontractors will visit the site to pick up or drop off things at the site; that the business takes place in the building located behind the residential building on the site; that there is large garage door and one single access door on the right of the building, and two access doors located on the left of the building, leading to the proposed office area; that there is a vinyl fence surrounding the property, which separates the residential portion from the remainder of the site; that the fencing extends down both side line boundaries, and across the rear boundary line; that the fencing separates the use from the adjacent properties; that the same fencing provides screening for the dumpster area; that there are designated parking spots; that the proposed use is of public character by providing services to the area, similar to the other commercial Conditional Uses in the area; that within the project book materials, there were six letters of support provided; that the three neighbors immediately to the right, and the two neighbors immediately to the left of the property have signed letters of support; that Progar & Company, P.A. provided a letter of support, as well as another neighbor located further down Clay Road; that all of these letters came from properties located within close proximity to the site; that proposed Condition B it stated there will be no outside storage; that proposed Condition F stated that the fence would be maintained through the duration of the of the Conditional Use, and would be shown on the Final Site Plan; that proposed Condition H stated the hours of operation would be Monday through Friday from 6:00 a.m. until 6:00 p.m., and Saturdays from 7:00 a.m. until 3:00 p.m.; that no Sunday hours are proposed; that proposed Condition I requested approval for two signs, with one sign being a 32 sq. ft. indirectly illuminated on premise sign; that Condition C states that there are no retail sales; that his client does not have retail sales but clients do come there to make selections; and based on the Comprehensive Plan, the Zoning Code, the nature and character of the area, including the mentioned support letters from immediate neighbors, the Applicant requested that the Council recommend approval of the application with the proffered conditions.

There were no public comments.

The Public Hearing and public record were closed.

A Motion was made by Ms. Gruenebaum, seconded by Mr. McCarron to

**M 366 25
Adopt
Ordinance
No. 4012/
CU2511**

Adopt Ordinance No. 4012 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A GENERAL CONTRACTOR AND CONSTRUCTION BUSINESS WITH AN OFFICE, SHOWROOM, AND STORAGE INCLUDING VEHICLES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 0.46 ACRE, MORE OR LESS” for the reasons and conditions given by the Planning & Zoning Commission as follows:

- 1. The use is situated on a property along Clay Road. The office use will occur within an existing former residence, and the storage will occur within an existing pole building on the property. With the conditions and stipulations of approval, the use will not have a negative impact on the neighboring properties.**
- 2. There are other commercial, and business uses in this area. On Clay Road, there is a property that is zoned B-1 with an accounting office, and there are other conditional uses including offices, storage, a bulk storage propane facility, a yoga and exercise facility, and a hair studio. This site is also near Westcoats Corner and the variety of business and commercial uses that exist near that intersection. This conditional use is appropriate for this location along Clay Road.**
- 3. No retail sales will occur from the property.**
- 4. Most of the work is offsite, so there is not a lot of activity that occurs on this site during the day.**
- 5. DelDOT has stated that the use will have a “Diminutive” impact upon traffic and area roadways. The use will not have an adverse impact on the traffic or area roadways.**
- 6. This area of Sussex County has a need for small, general contracting businesses such as this one. This is an appropriate, convenient location for such a use.**
- 7. A portion of the property is located within a Wellhead Protection Area and will comply with the requirements of Chapter 89 of the Sussex County Code.**
- 8. The site is served by an on-site well and central sewer provided by Sussex County.**
- 9. The record contains six (6) letters in support of the Application from neighboring property owners. No parties appeared in opposition to this application.**
- 10. This recommendation is subject to the following conditions:**
 - a. The use shall be limited to a general contractor business with an office and storage associated with that use.**
 - b. There shall not be any outside storage of construction materials on the site.**
 - c. No retail sales shall occur from the site.**
 - d. All lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.**
 - e. Any dumpsters on the site must be screened from the view of neighboring properties and roadways.**

**M 366 25
Adopt
Ordinance
No. 4012/
CU2511
(continued)**

- f. The existing fence surrounding the site shall be depicted on the Final Site Plan and it shall be maintained at all times.**
- g. The applicant shall comply with all DelDOT requirements for entrance and roadway improvements.**
- h. The hours of operation shall be Monday through Friday from 6:00 a.m. until 6:00 p.m. and from 7:00 am until 3:00 pm on Saturdays. No Sunday hours shall be permitted.**
- i. One lighted sign shall be permitted on the site along Clay Road. It shall be no larger than 32 square feet per side. One on-premises wall sign shall be permitted on the pole building. It shall not be larger than 150 square feet in size.**
- j. All vehicle parking areas shall be clearly shown on the Final Site Plan and clearly marked on the site itself. All vehicles must only be parked within the designated areas.**
- k. No junked, inoperable, or untitled vehicles or equipment shall be located on the site.**
- l. Failure to comply with any of these conditions shall be grounds for the termination of the Conditional Use approval.**
- m. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Motion Adopted: 4 Yeas, 1 Absent

**Vote by Roll Call: Ms. Gruenebaum, Yea; Mr. McCarron, Yea;
Mr. Lloyd, Absent; Mr. Rieley, Yea;
Mr. Hudson, Yea**

**M 367 25
Adjourn**

A Motion was made by Mr. Rieley, seconded by Ms. Gruenebaum to adjourn at 2:15 p.m.

Motion Adopted: 4 Yeas, 1 Absent

**Vote by Roll Call: Ms. Gruenebaum, Yea; Mr. McCarron, Yea;
Mr. Lloyd, Absent; Mr. Rieley, Yea;
Mr. Hudson, Yea**

Respectfully submitted,

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

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

DEPARTMENT OF PUBLIC SAFETY

ROBERT W. MURRAY, JR.
DIRECTOR

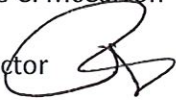


Sussex County

DELAWARE
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(302) 855-7797 F

TO: Sussex County Council
The Honorable Douglas B. Hudson, President
The Honorable John L. Rieley, Vice President
The Honorable Jane Gruenebaum
The Honorable Matt Lloyd
The Honorable Steve C. McCarron

FROM: Robert Murray, Director 

RE: Medic 111 – Milton Lease

DATE: August 8, 2025

The current lease with Cheer, Inc for the paramedic unit in Milton expires at the end of September. The paramedic unit is located in the Milton Cheer Center, 24855 Broadkill Road. Cheer is increasing the rent to three-hundred fifty dollars per month (previously two hundred dollars per month). The lease is for one year, with two additional one-year terms available.

While we look forward to the new facility on Cave Neck Road in the coming years, this site meets our current need and respectfully request your support in renewing the lease with Cheer, Inc.

Enclosure

- Milton Lease Agreement – August 2025

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made this ____ day of _____, 2025 between Cheer, Inc., a corporation of the State of Delaware, with an address of 546 S. Bedford Street, Georgetown, DE 19947 ("Landlord"), and Sussex County, a political subdivision of the State of Delaware, with an address of 2 The Circle, P.O. Box 589, Georgetown, DE 19947 ("Tenant").

The parties hereto, each intending to be legally bound hereby, do mutually covenant and agree as follows:

- 1) The Landlord hereby leases to the Tenant, subject to the conditions hereinafter expressed, exclusive use of a portion of the CHEER building located at 24855 Broadkill Road, Milton, DE 19968 (Sussex County Tax Parcel No. 235-14.00-122.02) consisting of the all-inclusive room located on the northwest side of the building with direct access to the outside, being approximately 504 square feet, together with uninterrupted access (24 hours per day, 7 days per week) to and non-exclusive use of the fitness center, if and for as long as the Landlord, in its sole discretion maintains and operates an on-site fitness center and to bathrooms located within the interior of the CHEER Center, and uninterrupted driveway access and parking as more fully set forth in paragraph 6 hereof ("Leased Premises").
- 2) The Term of this Lease shall commence at midnight on the 1st day of October, 2025 and shall continue for a period of one (1) year until 11:59 p.m. on the 30th day of September, 2026 unless modified by mutual agreement of both parties or terminated by either party by providing the other party at least ninety (90) days' written notice of its intent to terminate the Lease. Unless the Tenant provides Landlord with written notice of its intent not to renew at least sixty (60) days prior to the end of the initial, or any subsequent Lease Term, this Lease shall automatically renew on the same terms and conditions for an additional one (1) year term for up to two (2) additional one (1) year terms.
- 3) Tenant agrees to pay the Landlord a monthly rental of Three Hundred Fifty Dollars (\$350.00), said monthly rental payment to be due and payable commencing on the 1st day of October, 2025 and continuing on the first day of each month thereafter during the entire term of this Lease, including any renewals thereof. Tenant shall send the monthly rental payment to the Landlord at the address set forth in paragraph 21 hereof.
- 4) It is expressly agreed and understood that the Tenant relies upon the General Assembly of the State of Delaware for the funding of the paramedic operations of Sussex County, Delaware, and should the General Assembly of Delaware at any time fail to appropriate sufficient funds for the purpose of maintaining this Lease, the Tenant's total liability under this Lease shall be limited to the funds designated for this Lease by the Sussex County Council and the Tenant's obligation under this Lease shall immediately terminate when the funds available have been exhausted in making payments as provided for in this Lease.
- 5) The Tenant may use and occupy the Leased Premises for any paramedic services and operations, or such other lawful uses designated by the Sussex County Council. The

Tenant shall not use or knowingly permit any part of the Leased Premises to be used for any unlawful purpose.

- 6) During the term of this Lease, the Landlord leases to the Tenant the right to the uninterrupted use of the presently existing driveway and parking lot to be shared with Landlord and the exclusive use of six (6) designated parking spaces for two (2) paramedic units and four (4) employees, and canopy to be installed, which shall be located immediately adjacent to the Leased Premises. The Landlord shall maintain a clear, uninterrupted thoroughfare for ingress/egress of Paramedic vehicles at all times.
- 7) The Tenant shall not place or erect any signs of any nature on any part of the Leased Premises, or the sidewalk adjoining the Leased Premises, or on any part of the Landlord's property adjacent to the Leased Premises which do not conform to requirements of any State, Federal, Municipal or county law, ordinance, rule or regulation. Said sign(s) shall not be placed without the prior consent of the Landlord, which consent shall not be unreasonably withheld.
- 8) The Tenant, upon the payment of the rent herein reserved, and upon performance of all the terms of this Lease, shall at all times during the term of this Lease, and during any extension or renewal hereof, peaceably and quietly enjoy and have the free and uninterrupted right of exclusive access and possession of the Leased Premises without any disturbance from the Landlord or from any other person claiming through the Landlord.
- 9) Maintenance and Repairs
 - a. The Landlord shall maintain and make all necessary repairs to the foundations, load bearing walls, roof, gutters, downspouts, exterior water and sewer lines, fixtures, glass and equipment on or associated with the Leased Premises (including but not limited to heating and air conditioning systems, hot water heater, and plumbing and electrical systems), sidewalks and landscaping on or appurtenant to the building.
 - b. Unless specifically identified herein as a Landlord responsibility, Tenant shall maintain and keep the Leased Premises in good repair. Tenant shall also maintain and keep the Leased Premises free of refuse and rubbish.
 - c. Tenant shall attend to the painting of and repairs to all interior surfaces, including walls, floors and ceilings.
 - d. Notwithstanding the other provisions of this paragraph, any repairs and replacements necessitated by any act, omission or negligence of either party or its agents or servants shall be made at the expense of that party.
 - e. Landlord shall keep the grounds surrounding the building mowed and trimmed to provide a kept appearance to the property.
 - f. Landlord shall be responsible for the timely removal of snow and ice from all sidewalks.
 - g. Tenant shall be responsible for the timely removal of snow and ice from the driveway, entrances/exits and parking areas of the entire property as shown on the drawing attached hereto as Exhibit A which is incorporated herein by reference. Landlord acknowledges that this service is being provided as a courtesy and for convenience

only, and that Tenant shall have no liability whatsoever for any claims for bodily injury (including death) and property damage to Landlord, its employees, volunteers, guests, invitees, representatives or contractors, arising out of Tenant's actions or inactions with regard to snow and ice removal. Landlord acknowledges that any such claims arising from Tenant's actions or inactions for snow and ice removal as set forth herein are expressly excepted from Tenant's obligations under the indemnification provision in paragraph 17c.

- h. Tenant shall be permitted to change the main exterior door lock and main interior door lock so as to be compatible with Tenant's standard key. Tenant shall provide Landlord with four (4) copies of the key. Landlord shall maintain close control over the keys which shall be provided to: (i) the Chief Executive Officer, (ii) the Facilities Manager, (iii) the Information Technology Manager, and (iv) the 4th key shall be kept securely in the CHEER Center's Director's office. Landlord shall only gain access to the Leased Premises by use of Tenant's keys in the event of an on-site emergency and if Tenant is not present.

10) Landlord shall provide all electricity, and other utilities required for adequate lighting and heating, as well as water, sewer and access to Landlord's internet and basic cable TV, the cost of which is included in Tenant's monthly rent. Tenant shall provide all hardware, such as a router, switches, etc., required to use the existing cable TV and internet services. Tenant shall be responsible for the additional cost of any internet or cable TV upgrades incurred by Landlord at Tenant's request which shall be in addition to the monthly rent stated herein. At no additional cost, Tenant shall also be permitted to: (a) use Landlord's dumpster for the disposal of house hold grade waste; and (b) have access to the outside water spigot at the rear of the building for general use, including, but not limited to, washing Tenant's paramedic units, weather permitting.

11) a. Any alterations to the Leased Premises to be made by the Tenant shall be done only with Landlord's prior approval, which shall not be unreasonably withheld, and shall conform to the requirements of any applicable municipal, county, state or federal law, ordinance, rule or regulation. Any alterations to the Leased Premises made by the Tenant shall be maintained at all times by the Tenant in conformance with the terms hereof and shall be removed upon the expiration of the term of the Lease or its earlier termination, at the option of the Landlord, provided Tenant repairs any damage done in connection with such removal.

b. Notwithstanding the foregoing in paragraph 11a., Landlord expressly approves Tenant's purchase and installation of a semi-permanent truck canopy 22 feet by 21 feet to accommodate primary and secondary backup Suburban style medic unit trucks which shall have continuous electric service. The canopy color shall closely match the exterior color of the building and shall be agreed upon by the parties prior to the Tenant's purchase and installation thereof. Tenant shall provide the cord reels and interior lighting which shall be installed by Landlord's electrician. Landlord acknowledges that the canopy is Tenant's property which Tenant may, at its sole option, remove at the expiration of the Lease Term, any renewals thereof, or earlier termination of this Lease.

12) At the expiration of this Lease, the Tenant shall surrender the Leased Premises in as good condition as it was in the beginning of the term, reasonable use and wear and damages by

the elements excepted, or as otherwise provided herein.

- 13) The Landlord acknowledges that no security deposit will be required.
- 14) At Landlord's option, this Lease shall thereupon become null and void, and the Landlord shall have the right to repossess the Leased Premises by summary proceedings if: (a) the Tenant defaults in the payment of rent or any sum collectable by Landlord as rent, and such default shall continue for fifteen (15) days after notice thereof by Landlord to Tenant; or (b) Tenant defaults in the prompt and full performance of any covenant, condition, agreement or provision of this Lease and such default shall continue for fifteen (15) day after written notice thereof ; provided, however , that in the case of a default which Tenant cannot with due diligence correct within a period of fifteen (15) days, Tenant shall have such additional time to correct the same as may reasonably be necessary, provided Tenant proceeds promptly and with due diligence to correct such default.
- 15) The Landlord or its agents shall have the right to enter the Leased Premises at all reasonable times during normal business hours in order to examine it or to show it to prospective lessees, upon no less than twenty-four (24) hours' prior notice to Tenant, unless otherwise agreed to by both parties. All showings shall be in the company of a representative of the Tenant, unless Tenant agrees otherwise. The Landlord's right of entry shall not be deemed to impose upon the Landlord any obligation, responsibility or liability for the care, supervision or repair of the Leased Premises other than as herein provided.
- 16) Insurance and Indemnification:
 - a. Tenant shall secure and maintain, at its own expense the following insurance coverages on the Leased Premises with all policies issued by carriers having an A.M. Best's Financial Strength Rating of A- (or better), an A.M. Best's Financial Size Category of VIII (or better), and who are licensed to provide insurance in the State of Delaware:
 - i. Causes of Loss – Special Form (formerly known as “All-Risk”) Property Insurance which insures against direct physical loss of or damage to Tenant’s business personal property, including improvements and betterments to the Leased Premises at Tenant’s expense, will limits sufficient to insure Tenant’s interest herein.
 - ii. Causes of Loss – Special Form (formerly known as “All-Risk”) business income and extra expense insurance in amounts satisfactory to protect Tenant’s interests for loss of income and/or extra expense that results from direct physical loss of or damage to Tenant’s property situated at Leased Premises.
 - iii. Commercial General Liability (Occurrence Basis) insurance which insures against bodily injury, property damage, and personal injury claims arising from Tenant’s occupancy of the Leased Premises or operation incidental thereto, with the following limits:
 - \$1,000,000 per occurrence
 - \$2,000,000 general aggregate
 - \$2,000,000 product completed operations aggregate limit
 - \$1,000,000 personal and advertising injury limit

\$5,000 medical expense limit

Such insurance shall include Landlord as an additional insured. Tenant shall provide proof of insurance prior to occupancy.

- b. Landlord shall secure and maintain, at its own expense the following insurance coverages on the Leased Premises with all policies issued by carriers having an A.M. Best's Financial Strength Rating of A- (or better), an A.M. Best's Financial Size Category of VIII (or better), and who are licensed to provide insurance in the State of Delaware:
- i. Causes of Loss – Special Form (formerly known as “All-Risk”) Property Insurance which insures against direct physical loss of or damage to the building at the Leased Premises and Landlord's business personal property at the Leased Premises on a replacement cost valuation basis, with limits not less than 100% of the insurable replacement cost of Landlord's property.
 - ii. Causes of Loss – Special Form (formerly known as “All-Risk”) business income and extra expense insurance in amounts satisfactory to insure Landlord's loss of income and/or extra expense that results from direct physical loss of or damage to Landlord's property (Leased Premises and any other property located thereon).
 - iii. Commercial General Liability (Occurrence Basis) insurance which insures against bodily injury, property damage, and personal injury claims arising from Landlord's ownership, maintenance or use of Leased Premises or operations incidental thereto, with the following limits:
 - \$1,000,000 per occurrence
 - \$2,000,000 general aggregate
 - \$2,000,000 product completed operations aggregate limit
 - \$1,000,000 personal and advertising injury limit
 - \$5,000 medical expense limit
- c. To the extent permitted by law, the Tenant shall indemnify, defend and hold Landlord harmless, including court costs, expenses and attorneys' fees, from and against claims for bodily injury (including death) and property damage arising out of Tenant's occupancy of the Leased Premises or operations incidental thereto, unless such claims arise from the negligence or willful act of the Landlord. The above provisions of this subparagraph are not intended to waive, alter, or otherwise amend the immunity of the parties under the Delaware Code or otherwise, including but not limited to the County and Municipal Tort Claims Act. Additionally, the above provisions are not intended to violate any constitutional principles of the State of Delaware or United States. To the extent that any of the above obligations of this paragraph are determined by court or arbitration order or other judicial action to waive, alter, or otherwise amend such immunity or to be constitutionally prohibited or otherwise not in accordance with the laws in effect at the time of any such claim, liability, cost or expense, the offending language shall be stricken from this Agreement by such authority and considered invalid and unenforceable to the extent necessary to allow the application of such immunity to any claims, losses, damages, or suits asserted against either party or to the extent necessary to correct such violation of the

law. The parties agree that any claims, liabilities, damages, costs and expenses that are permitted under this Paragraph shall be subject to the provisions of the County and Municipal Tort Claims Act, including the limitations on damages.

- d. To the extent permitted by law, the Landlord shall indemnify, defend and hold Tenant harmless, including court costs, expenses and attorney's fees, from and against claims for bodily injury (including death) and property damage arising out of Landlord's ownership, maintenance or use of the Leased Premises or operations incidental thereto, unless such claims arise from the negligence or willful act of the Tenant.
 - e. To the fullest extent permitted by law, Landlord and Tenant waive all rights of recovery from the other party and their respective elected and appointed officials, officers, directors, members, employees, agents and consultants for loss of or damage to their respective real and/or personal property and any resulting loss of business income and/or extra expenses resulting from such loss or damage. Any insurance policies maintained by Landlord and Tenant shall permit such waivers of subrogation by endorsement or otherwise. It is agreed that, if it is determined that Tenant's negligence resulted in damage to Landlord's property located on the Leased Premises during the term hereof, Tenant shall reimburse Landlord for the amount of its deductible not to exceed Five Thousand Dollars (\$5,000.00). It is further agreed that, if it is determined that Landlord's negligence resulted in damage to Tenant's property located on the Leased Premises during the term hereof, Landlord shall reimburse Tenant for the amount of its deductible not to exceed Five Thousand Dollars (\$5,000.00).
- 17) If, during the term of the Lease, the building is so injured by fire or otherwise that the Leased Premises are rendered wholly unfit for occupancy and said Leased Premises cannot be repaired within ninety (90) days from the date of such injury, then the Lease shall cease and terminate from the date of such injury. In such case, the Tenant shall pay the rent apportioned to the time of injury and shall surrender to the Landlord, who may enter upon and repossess the Leased Premises. If the injury is such that the Leased Premises can be repaired within the ninety (90) days thereafter, Landlord shall enter and repair with reasonable promptness, and this Lease shall not be affected, except that the rent shall be suspended while such repairs are being made.
- 18) In the event Landlord defaults on any of its obligation under this Lease Tenant shall provide Landlord with written notice of Landlord's default and Landlord shall have a period of ten (10) days from the date of the notice to cure the default. The notice shall be delivered in accordance with paragraph 21 of this Lease. In the event Landlord fails or refuses to cure the default within the 10-day cure period, Tenant shall, at its sole discretion, have the right to terminate this Lease and shall have no further obligation hereunder. In the event Landlord does not cure the default and Tenant does not terminate the Lease, Tenant's failure to terminate shall not act as a waiver of any potential future default on Landlord's behalf.
- 19) Any controversy which shall arise between the Landlord and the Tenant regarding the rights, duties or liabilities hereunder of either party may be settled by arbitration, if

mutually agreed upon by the parties. Such arbitration shall be before one disinterested arbitrator if one can be agreed upon, otherwise before three disinterested arbitrators, one named by the Landlord, one named by the Tenant, and one by the two arbitrators thus chosen. The arbitrator or arbitrators shall determine the controversy in accordance with the laws of the State of Delaware, as applied to the facts found by him or them. The arbitrator's decision shall be non-binding. Nothing herein contained shall be construed as a waiver by either party to file suit, either in law or in equity, against the other party to resolve any and all disputes under this Lease.

- 20) The Tenant may not sublet or assign any or all of the Leased Premises without the prior written consent of the Landlord. Such written consent by the Landlord shall not be unreasonably withheld, provided that the business or occupation of the subtenant is not extra hazardous, disreputable, or illegal. The consent by the Landlord to an assignment or subletting shall not be construed to relieve the Tenant from obtaining the consent in writing of the Landlord to any further assignment or subletting.
- 21) All notices, requests, demands and other communications, including a notice to quit, required or permitted under this Lease shall be in writing, signed by or on behalf of the person giving such notice and may be served in any one of the following manners and shall be effective as of the time specified: (a) If by personal service upon Landlord or Tenant, on the date of such service when served by an adult person upon the party to receive the notice or upon an adult member of the household or upon the agent of any corporation, or other business entity; (b) If by posting on the Leased Premises, on the date of posting the same in a conspicuous place on the Leased Premises (this method of service to be used only for notices, requests, demands and other communications, including notices to quit, from Lessor to Lessee); or (c) If by registered or certified mail, on the date of receipt of the same as evidenced by the return receipt if signed by the party to be served or an adult member of the household or agent of the corporation or other business entity. If the same is returned by the U.S. Postal Service bearing notations such as "Refused" or "Unclaimed," service shall be deemed to have been made on the first business day following mailing of the same.

The Landlord hereby designates his address as:

Cheer, Inc.
546 S. Bedford Street
Georgetown, DE 19947

The Tenant designates its address as:

Sussex County Council
P.O. Box 589
Georgetown, DE 19947

With a copy to:

J. Everett Moore, Jr. Esquire
Moore & Rutt, P.A.
122 W. Market Street
P.O. Box 584
Georgetown, DE 19947

- 22) The language in all parts of this Lease shall in all cases be simply construed according to its fair meaning and not strictly for or against Landlord or Tenant.
- 23) If any particular term, covenant or provision of this Lease shall be determined to be invalid, illegal, void or unenforceable, the same shall not affect the remaining provisions of this Lease which shall nevertheless remain in full force and effect and said term, covenant or provision shall be deemed modified to conform with the law. This Lease shall be governed under the laws of the State of Delaware. The parties acknowledge and agree that this is a Commercial Lease. Accordingly, this Lease shall NOT be governed by the Delaware Landlord-Tenant Code 25 Del. C., Section 5101 et seq.
- 24) This Lease sets forth all the promises or representations, agreements and undertakings between Landlord and Tenant relative to the Leased Premise. There are no promises, representations, agreements or undertakings, either oral or written, between Landlord or Tenant except as set forth herein. No amendment, change or addition to this Lease shall be binding upon either party unless reduced to writing and signed by both parties. This Lease shall be binding upon Landlord and Tenant, their heirs, executors, administrators, assigns and successors, both Landlord and Tenant being duly authorized to execute the same.
- 25) This Lease may be executed in two (2) counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Electronic signatures and photocopies or facsimile copies of signatures shall be deemed to have the same force and effect as originals.
- 26) In the event any action is brought to enforce the terms of this Lease, the prevailing party shall be entitled to collect costs and reasonable attorney's fees arising therefrom.
- 27) This Lease is the product of the parties hereto and no conclusion shall be made as to its drafter in the event of any dispute.
- 28) The parties to this Lease agree to waive their rights to demand a jury trial in any action which may be brought to enforce any portion of this Lease.
- 19) Time shall be of the essence for the performance of all terms of this Lease.

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have here unto set their hands and seals on the respective day(s) and year set forth below.

LANDLORD:

Cheer, Inc.

By: _____ (SEAL)
Beckett M. Wheatley, CEO, CHEER

Attest: _____

Date

Print Name and Title

TENANT:

Sussex County

By: _____ (SEAL)
Douglas B. Hudson, President

Attest: _____

Date

Print Name and Title

Approved as to Form:

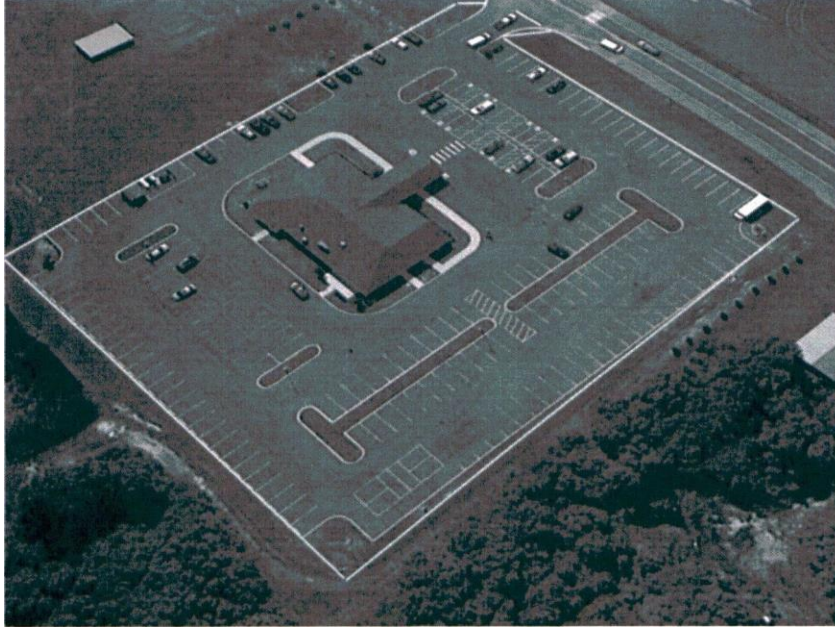
Attest: _____

Date

J. Everett Moore, Jr.,
Sussex County Attorney

EXHIBIT A

Drawing of Parking Area to be Maintained by Tenant for Snow
Removal (Sussex County Tax Parcel No. 235-14.00-122.02)



Sussex



County

Memorandum

TO: Sussex County Council
The Honorable Douglas B Hudson, President
The Honorable John L. Rieley, Vice President
The Honorable Jane Gruenebaum
The Honorable Matt Lloyd
The Honorable Steve C. McCarron

FROM: Andrew Harton
Economic Development

RE: **Delaware Coastal Business Park Lease**

DATE: August 14, 2025

On the agenda Tuesday ~ the following leases will be presented for approval in the Delaware Coastal Business Park:

- KTM 2 LLC, d/b/a ARROW SAFETY DEVICE ~ with a principal office located at 1546 Savannah Road, Lewes, DE 19958.

This new lease is said commercial real property known as 21646 Baltimore Avenue, Georgetown, Delaware, which is improved by a Building and is identified as portions of Lot 19B in the Delaware Coastal Business Park. The property will be used to manufacture and distribute safety devices.

- DELAWARE COAST LINE RAILROAD CO. ~ with a principal office located at 14525 Staytonville Road, Greenwood, DE 19950.



This new lease is said commercial real property known as 21673 Nanticoke Avenue, Georgetown, Delaware, which is improved by a Building and is identified as portions of Lots 19 and 20 in the Delaware Coastal Business Park. The property will be used for railroad construction and repair, boat rehabilitation and repair, or any other use which may be consented to by the Lessor.

COMMERCIAL LEASE AGREEMENT

THIS COMMERCIAL LEASE AGREEMENT ("Lease") is made and entered into this ___ day of _____, 2025 (the "Effective Date"), by and between SUSSEX COUNTY, a political subdivision of the State of Delaware, with an address of 2 The Circle, P.O. Box 589, Georgetown, DE 19947 ("Lessor"), and KTM 2 LLC, doing business as Arrow Safety Device, with a principal office located at 1546 Savannah Road, Lewes, DE 19958, ("KTM") and Travis Wyshock, 1546 Savannah Road, Lewes, DE 19958 ("Wyshock") (KTM and Wyshock are hereinafter collectively referred to as "Lessee"), and it recites and provides as follows.

RECITALS

WHEREAS, Lessor is the owner of certain commercial real property which is improved by a commercial building ("the Building") as hereafter described;

WHEREAS, Lessee desires to lease said commercial real property known as 21646 Baltimore Avenue, Georgetown, Delaware, which is improved by the Building and is identified as portions of Lot 19B in the Delaware Coastal Business Park, for the operation of a safety device manufacturing and distribution company;

W I T N E S S E T H:

That the parties of this Lease, intending to be legally bound, hereby covenant and agree as follows:

1. **PREMISES:** Lessor leases to Lessee and Lessee accepts, as Lessee, the premises to a suitable Lessee for business purposes, described as follows:

A portion of the tract of land as improved by the Building identified as 21646 Baltimore Avenue, Georgetown, Delaware, which is identified as portions of Lot 19B in the Delaware Coastal Business Park and portions of Sussex County Tax Parcel No. 135-20.00-75.00-A being approximately 1 +/- acres of land, more or less, and more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Leased Premises" or "premises"). Lessee acknowledges that Lessor reserves the right to change the parcel numbers and street names located in Delaware Coastal Business Park during the term of this Lease.

2. **TERM:** The initial term of this Lease shall be Twenty (20) years which shall commence at 10:00 o'clock A.M. on October 1, 2025 ("the Commencement Date") and shall terminate at 11:59 o'clock P.M. on September 30, 2045, unless sooner terminated as provided in this Lease.

3. **RENT:**

- a. For the initial lease term referred to in paragraph 2, Lessee shall pay rent annually in one (1) lump sum payment, payments of which shall be due and payable upon the commencement of the Lease term. Notwithstanding the foregoing, if the Lease term commences after January 1, the annual rent shall be prorated on a per diem basis for the remainder of the initial calendar year and payment for the remainder of the initial calendar year shall be due on the Commencement Date ("Initial Rent Payment"). All payments thereafter shall be due and payable annually on the 1st day of January each year for the remainder of the Lease term and any renewal thereof without demand and without setoff or deduction.
- b. The annual rent ("Base Rent") shall be Fourteen Thousand Dollars (\$14,000).
- c. All other costs due hereunder shall be considered additional rent ("Additional Rent") which shall be due and payable as hereinafter set forth.
- d. Any payment by Lessee or acceptance by Lessor of a lesser amount than shall be due from Lessee to Lessor shall be treated as a payment on account. The acceptance by Lessor of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and Lessor may accept such check without prejudice to any other rights or remedies which Lessor may have against Lessee.
- e. **PAYMENT PROVISIONS:** All payments should be made to Sussex County Council, Sussex County Treasury Office, 2 The Circle, P.O. Box 589, Georgetown, Delaware 19947, or such other place or places as may from time to time be designated in writing by Lessor.

4. **RENEWAL OF LEASE:**

- a. Provided Lessee is not otherwise in default of this Lease, Lessee shall have the option to renew this Lease on the same terms expressed herein for two (2) additional five (5) year terms. If Lessee intends to exercise its option to renew this Lease for an additional five (5) year term, Lessee shall provide Lessor with a minimum of one hundred eighty (180) days' written notice prior

to the expiration of this Lease or renewal period, as the case may be. Upon Lessor's receipt of such notice from Lessee, except as otherwise provided herein, the provisions of this rental agreement shall be deemed to have been accepted and agreed to by Lessor, and the terms of this Lease shall remain in full force and effect. In the event Lessee does not provide Lessor with the required notice in a timely manner, unless Lessor and Lessee agree in writing to renew this Lease without modifications or amendments prior to the expiration of this Lease, this Lease shall terminate upon expiration of this Lease. If Lessee fails to exercise the option, at the end of the initial Lease term, or any further extensions or renewals thereof, the land subject to this Lease and all improvements thereon shall revert to Lessor, or its successors or assigns. Each 5 year Renewal Term shall be treated separately.

- b. **CPI-U RENT ADJUSTMENT**: The Base Rent in Paragraph 3 will be adjusted according to this paragraph on January 1, 2030, and every five (5) years thereafter, including any renewals thereof.

- (1) In this Paragraph 4, the following terms shall have the meaning set forth herein:

(a) "Price Index" means the Consumer Price Index for All Items, All Urban Consumers, U.S. City Average (CPI-U Table 1, unadjusted as published monthly by the United States Department of Labor, Bureau of Labor Statistics) compared to the same index sixty (60) months earlier. If publication of the above index shall be discontinued, then another index generally recognized as authoritative shall be substituted, as selected by Lessor in its reasonable discretion.

(b) "Base Price Index" means the Price Index for the month (the "Base Month") nearest before the Commencement Date for which the Price Index is published and/or the most recently available.

- (2) The Base Rent payable pursuant to Paragraph 3 (as it may have been adjusted according to this paragraph) will be increased every five (5) years beginning on January 1, 2030, including renewals hereof, by a fraction whose numerator is the Price Index published for the then most recent anniversary month of the Base Month and whose denominator is the Base Price Index. The Base Rent as adjusted will not be reduced pursuant to this paragraph.

- (3) If a substantial change is made in the Price Index, or its publication is discontinued or changed in such a way as to prevent calculations

pursuant to this Paragraph 4, then the Price Index will be adjusted to the figure that would have been used had the manner of computing the Price Index in effect at the date of this Lease not been altered. If the Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information used in determining the Price Index will be used.

- (4) No adjustments will be made due to any revision that may be made in the Price Index for any month.
- (5) The statements of the adjustment shall be furnished and prepared by Lessor. The statements thus furnished to Lessee will constitute a final determination as between Lessor and Lessee of the relevant adjustment.
- (6) Seasonal adjustments will not be used.
- (7) Lessor's delay or failure in computing or billing for these adjustments will not impair the continuing obligation of Lessee to pay Base Rent adjustments.
- (8) Lessee's obligation to pay Base Rent as adjusted by this Paragraph 4 will continue up to the expiration of this Lease and will survive any earlier termination of this Lease.
- (9) Within thirty (30) days after Lessor gives Lessee notice of the adjusted Rent, Lessee will pay the adjusted Rent retroactive to the first month of the then-current five (5) year lease period. The adjusted Rent will be the yearly Base Rent for the balance of the then-current five (5) year lease period. Lessor will give Lessee written notice indicating how the adjusted Rent amount was computed.

5. **EASEMENTS, RESTRICTIONS AND CONDITIONS; RULES AND REGULATIONS:** This Lease is subject to easements, restrictions and conditions which are of record, or generally applicable to the immediate neighborhood, or may be observed by inspection of the premises. The Lessee shall be responsible for obtaining a title search should the Lessee so desire to verify all such easements, conditions and regulations. Lessee further acknowledges that its use of the Leased Premises is subject to Lessor's Rules and Regulations, which may be reasonably amended from time to time at Lessor's discretion, a copy of which is attached hereto as Exhibit B and are incorporated herein by reference. Failure to comply

with any easements, restrictions, conditions or Rules and Regulations shall constitute a material breach of the terms of this Lease.

6. **USE:**

- a. Lessee shall have the right to utilize the Leased Premises and any improvements to be located thereon for activities such as one or more of the following: safety device manufacturing and distribution, or any other use which may be consented to by Lessor, which consent may be granted or withheld in Lessor's reasonable discretion.
- b. The use of the Leased Premises shall at all times comply with all laws, ordinances, orders, regulations and requirements of any governmental authority having jurisdiction.
- c. It is specifically agreed that this Lease Agreement is non-exclusive. Lessor reserves the right to lease other real property at the Delaware Coastal Business Park or the Delaware Coastal Airport for identical or similar uses.
- d. Lessee agrees not to make any unlawful, improper or offensive use of the Leased Premises or to make any use thereof contrary to any law or ordinance now or hereafter enacted or to make any use thereof which endangers any person or property, threatens the insurability of the Leased Premises, or otherwise constitutes a nuisance (in Lessor sole judgment). Further, Lessee agrees to operate its business within the guidelines, requirements and regulations of all government and regulatory agencies as these apply to Lessee's business and use. Any notices of the Lessee's failure to fully comply, or notices that the Lessee's business violates any regulations or standards contained in the regulations of any agency, shall constitute a material breach of this Lease if not cured within permitted time frames set forth in this Lease.
- e. Lessee agrees to promptly open its business and use and occupy the Leased Premises continuously and uninterruptedly in a commercially reasonable manner throughout the term of this Lease and to be open for business during reasonable business hours.
- f. Lessee agrees to operate the Leased Premises for the purposes set forth above during the entire term of this Lease in a prudent, efficient manner and reflecting the standards of a commercially appropriate business based on the permitted uses.

- g. Lessee may not (i) abandon or vacate the Leased Premises without giving notice to the Lessor; (ii) disfigure or deface the Leased Premises or permit any waste, nuisance or unlawful use on or about the Leased Premises; (iii) use the Leased Premises without a Certificate of Occupancy; or (iv) violate any municipal, county, state or federal law, rule, regulation or order.

7. **ADDITIONAL RENT - PAYMENTS, COMMON AREA MAINTENANCE, TAXES AND INSURANCE.**

- a. **Payments.** In the event any installment of Rent, Additional Rent, or any sum due Lessor under this Lease, is not received in full within thirty (30) days from the due date, then Lessee shall pay to Lessor a late administration fee equal to five percent (5%) of such overdue amount. Further, any Rent, Additional Rent, or other sum past due and owed to the Lessor by the Lessee under this Lease shall be subject to interest at the rate of eighteen percent (18%) per annum. Any check returned to the Lessor for any sum due to Lessor under this Lease, shall be subject to an additional late fee of ten percent (10%) and an administrative fee of the greater of One Hundred Dollars (\$100.00) or the Lessor's standard administrative fees for similar leases in the Delaware Coastal Business Park. Acceptance of late Rent shall in no way prejudice, waive, modify, or alter any of the rights or remedies which the Lessor may have under this Lease.
- b. **Taxes.** Lessor will pay all general real estate taxes, if any, which may be levied or assessed by any lawful authority against the real property only on the Leased Premises. Lessee agrees to pay any and all taxes and assessments levied or assessed against the improvements constructed on the Leased Premises and all equipment installed therein. Lessee shall make payments directly to the taxing authority when due.
- c. **Maintenance** Lessee shall be responsible for operating, repairing, and maintaining the Building, facilities and all grounds of the Leased Premises (hereinafter "Maintenance"). Maintenance of Leased Premises shall be an all-inclusive term which encompasses, among other things, snow and ice removal of all parking areas and drive aisles, lawn mowing, landscaping, debris and refuse removal from the grounds, etc. If Lessee fails to meet its obligations under this Paragraph, Lessor may perform the necessary work and charge Lessee for the same, which charge shall be deemed as Additional Rent due within thirty (30) days of Lessee's receipt of written notice from Lessor. Lessor shall be responsible for ground maintenance, including lawn mowing and snow and ice removal, along Baltimore Avenue up to the edge of the Leased Premises. Lessee shall neither encumber nor

obstruct the sidewalks, driveways, yards or entrances, but shall keep and maintain the same in a clean condition, free from debris, trash, refuse, snow and ice. Lessee shall be responsible for all grass cutting and snow removal on the Leased Premises. Grass shall be mowed regularly so as to prevent grass from growing beyond six (6) inches in height. Snow removal from access road to the Building shall be the sole responsibility of Lessee.

- d. **Common Area Maintenance Charges.** Each year, as part of the Sussex County Government's fiscal year and budget process, Lessor shall prepare an estimate of the total cost required to pay for the maintenance, management, operation, repair and replacement of the common area in the Delaware Coastal Business Park, and shall assess fees against Lessee for its proportionate share of the total cost which shall be calculated based on the acreage of Lessee's Leased Premises in proportion to the total combined acreage of all sites available in the Delaware Coastal Business Park ("Common Area Fees"). The Common Area Fees shall be invoiced to Lessee in August based on costs from the previous July to June and shall be due and payable to Lessor by Lessee within thirty (30) days of Lessee's receipt of Lessor's written invoice. The Common Area Fees shall be deemed Additional Rent hereunder.

- 8. **TRANSFER TAX:** This transaction is exempt from realty transfer tax.

- 9. **UTILITIES:** Lessor shall be responsible for extending electric, potable water, sewer and fire suppression facilities to the edge of the Leased Premises. Lessee shall be solely responsible for all permanent utility installation on and from edge of the Leased Premises. Lessee shall pay all one-time charges, for on and/or off-site improvements levied by utility providers including but not limited to: connection fees, tap-in fees, impact fees, hookup fees and deposits, for electricity, potable water, fire suppression, sewer, internet access, telephone and fire alarm land lines, etc. Lessee shall also pay for any and all recurring charges for utility services used or consumed at the Leased Premises during Lessee's use or occupancy thereof. Each year Lessor has the right to levy water usage fees to all tenants of the Delaware Coastal Business Park based on meter readings if desired.

- 10. **IMPROVEMENTS:**

- a. **Condition of Leased Premises.** Subject to Lessor's responsibilities referred to herein, Lessee accepts the Leased Premises, including the Building, in "as is" condition and acknowledges that the Leased Premises and the Building are suitable for Lessee's intended use.

- b. **Intentionally Omitted.**

- c. **Lessee's Work**. Lessee agrees not to commence any renovations, repairs, or construction until Lessor has approved the Lessee's plans and layout. Lessee shall keep the Leased Premises and the Building free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Lessee. Any work performed by Lessee shall be completed in a good and workman like manner using new construction materials, and Lessee shall obtain all permits required for any such work.
- d. **Stormwater Management**. Lessee shall meet all stormwater and water quality requirements, rules, laws, regulations, statutes, and ordinances, as may be amended from time-to-time by an authority having jurisdiction over the same, pertaining to the Leased Premises either by use of on-site facilities constructed at Lessee's sole expense or through use of existing facilities within the Delaware Coastal Business Park subject to Lessor's prior written approval which may be withheld in Lessor's sole discretion.
- e. **Construction, Repair, Maintenance and Alteration of Improvements**. The Leased Premises are being leased with the Building located thereon. Lessee acknowledges that the Building shall be repaired and maintained at Lessee's sole cost and expense, and that Lessee shall maintain any and all improvements on the Leased Premises in good condition and repair during the Lease term. Any improvements or structure of any kind Lessee constructs on the Leased Premises, and any repairs, maintenance and alterations thereto or to the Building, shall be in compliance with all restrictions, conditions, ordinances, laws, regulations, Rules and Regulations, including Lessee's application for and receipt of all required permits and approvals prior to commencement of any work. All fixtures and equipment shall remain Lessee's property except as otherwise stated herein. The Building shall at all times remain property of Lessor. Lessee shall provide Lessor with a copy of all Certificates of Occupancy and Releases of Liens. At the end of the term of the Lease, all improvements to either the Leased Premises or the Building, or both, shall be the Lessor's property.

11. **LIENS:**

- a. **No Authority to Encumber**. Lessee has no authority whatsoever to encumber the Leased Premises, the Building, or any improvements located thereon.

- b. **Mechanic's Liens.** Lessee shall not permit and shall immediately remove any mechanic's liens placed against the Leased Premises which may have resulted from any work performed on Lessee's behalf. Permitting a Mechanic's Lien to be placed against the Leased Premises or the Delaware Coastal Business Park shall be a material default if not removed within thirty (30) days after notice of its entry. Any improvements by Lessee on said Leased Premises shall be constructed at the sole expense of Lessee, and Lessor and its appointed and elected officials, employees, agents, and volunteers shall not be liable in any way for any amount of money arising out of said construction. Before starting construction, Lessee shall have recorded on the public records of Sussex County, Delaware, such legal notice as may be necessary, and in the form attached hereto as Exhibit C, wherein the public is advised that Lessor and its appointed and elected officials, employees, agents, and volunteers are not in any way liable for any claims or obligations for labor and materials on said job, and that the laborers, material men and subcontractors shall look solely to Lessee for payment and shall not be entitled to place a lien against said demised property. If any mechanic's or materialmen's lien is filed or any claim made on account of labor or other material furnished, alleged to have been furnished or to be furnished to Lessee at the Leased Premises or against Lessor as the owner thereof, in addition to all remedies at law, Lessee shall: (a) pay to Lessor the greater of a fine of \$50.00 per day or the Lessor's standard fine for similar violations in similar leases in the Delaware Coastal Business Park for every day that any such Mechanic's Lien remains shall be due, and (b) within ninety (90) days after written notice from Lessor thereof, either pay or bond the same or procure the discharge thereof in such manner as may be provided by law. Lessee will indemnify Lessor and its appointed and elected officials, employees, agents, and volunteers for its costs, legal fees and expenses in defending any action, suit or proceedings which may be brought thereon or for the enforcement of such lien, or liens and Lessee shall pay any damages and any judgment entered thereon and save harmless and indemnify Lessor and its appointed and elected officials, employees, agents, and volunteers from any claims of damages resulting there from. Failure to do so shall entitle Lessor to resort to remedies as are provided herein in the case of any default of this Lease, in addition to such as are permitted by law.
- c. **Liens.** Any liens placed on property owned by Lessee which are located on the Leased Premises must first be approved by Lessor and Lessor shall have the right, in Lessor's sole discretion, to grant or withhold consent. Lessee shall hold Lessor harmless and without risk with respect to any lien placed on Lessee's equipment or personal property within or about the

Leased Premises. Prior to the expiration or earlier termination of this Lease, Lessee shall promptly remove any and all liens including any against any of Lessee's property or equipment, or with advanced written notice to Lessor, remove any such property or equipment from the Leased Premises. Lessor shall assume no risk or responsibility for any lien remaining on the Leased Premises or Lessee's equipment or property and Lessee shall indemnify Lessor from any liability whatsoever. This paragraph shall apply to any work performed by Lessee on or in the Leased Premises during the entire Term of this Lease and any renewal hereof.

- d. **Statutory Lien**. Lessor hereby claims any and all statutory or other liens which it may have upon the equipment, furniture, fixtures, real and personal property of any Lessee or Sub-Lessee placed upon the improvements, and Lessee agrees that Lessor has such a lien to the extent provided by statute or otherwise. Lessor may, at Lessor's reasonable discretion, subordinate its lien right to the lien of any mortgage, deed of trust, or security instrument given by Lessee for the renovation of the improvements and purchase of the equipment, furniture, fixtures and personal property placed upon the Leased Premises. Lessee shall furnish the Lessor with copies of all such security instruments.

- 12. **INSURANCE**: Lessee shall secure and maintain, at its own expense, the following required insurance coverages:

- a. **Commercial General Liability Insurance** - Lessee shall secure and maintain, at its own expense, commercial general liability insurance that insures against bodily injury, property damage, personal and advertising injury claims arising from Lessee's occupancy of the Leased Premises or operations incidental thereto. The minimum limits of liability for this insurance are as follows:

- (1) \$1,000,000.00 combined single limit – each occurrence
- (2) \$1,000,000.00 combined single limit – personal and advertising injury
- (3) \$2,000,000.00 combined single limit – general aggregate
- (4) \$1,000,000.00 combined single limit – products / completed operations aggregate

Such insurance shall be endorsed to name Lessor and its appointed and elected officials, employees, agents and authorized volunteers as additional insureds on a primary and non-contributory basis, with respect to liability arising out of or in connection with Lessee's occupancy of the Leased Premises or operations incidental thereto under this Lease Agreement. Certificates of insurance shall be delivered prior to occupancy and annually

thereafter to Lessor and the Office of Economic Development, Sussex County Delaware.

- b. **Business Auto Liability Insurance** - Lessee shall secure and maintain, at its own expense business auto liability insurance with a minimum combined single limit of \$1,000,000 per accident and including coverage for bodily injury and property damage claims arising out of the maintenance, use or operation of any auto and contractual liability protection for bodily injury and property damage claims assumed under this Lease Agreement.
- c. **Workers' Compensation & Employers' Liability** - Lessee shall secure and maintain, at its own expense, workers' compensation insurance and employers' liability insurance. The workers' compensation insurance must satisfy Lessee's workers' compensation obligation to its employees in Delaware under State or Federal law. Employers' liability insurance must be secured with minimum limits of \$100,000.00 for bodily injury by accident, \$100,000.00 each employee for bodily injury by disease, and a \$500,000.00 policy limit for bodily injury disease. To the fullest extent permitted by law, Lessee's workers' compensation and employers' liability insurer shall not hold any right of subrogation against Lessor, and its appointed and elected officials, employees, agents, and volunteers. Lessee shall advise its insurer(s) of the foregoing and such waiver shall be permitted under any workers' compensation and employers' liability insurance policies maintained by Lessee.
- d. **Property and Business Income Insurance** - Lessee shall secure and maintain, at its own expense, all risk (special form) property insurance that insures against direct physical loss of or damage to the Building and Lessee's personal property including Lessee's improvements, fixtures, equipment and materials located in or on the Leased Premises, on a replacement cost valuation basis, with limits not less than 100% of the insurable replacement cost of all such property. Lessee shall also secure, at its own expense, all risk (special form) business income and extra expense insurance in amounts satisfactory to protect its interests as a result of direct physical loss of or damage to Lessee's covered property located on the Leased Premises. Lessor shall be an insured on Lessee's property and business income insurance as its interests may appear, in amounts sufficient to protect Lessor's interests.
- e. **Waiver of Subrogation** - To the fullest extent permitted by law, Lessee waives any right of recovery from Lessor, and its appointed and elected officials, employees, agents, and volunteers, for any loss, damage or injury to Lessee's property located on the Leased Premises (or resulting loss of

income or extra expense), by reason of any peril required to be insured against under this Lease. To the fullest extent permitted by law, Lessee's property insurer shall not hold any right of subrogation against Lessor, and its appointed and elected officials, employees, agents, and volunteers. Lessee shall advise its insurer(s) of the foregoing and such waiver shall be permitted under any property and/or business income and extra expense insurance policies maintained by Lessee. Any deductible amount(s) selected by Lessee shall be the sole responsibility of Lessee.

- f. **Umbrella Excess Liability or Excess Liability Insurance** – Lessee shall secure and maintain, at its own expense, umbrella excess liability or excess liability insurance with minimum limits of \$4,000,000 combined single limit - each occurrence and \$4,000,000 combined single limit – aggregates. This insurance shall include the insurance specified in Paragraphs 12(c), 12(d) (Employers' Liability Insurance only) and 12(e) as underlying insurance. This insurance shall follow form with the coverage provisions, including who is an insured, required for underlying insurance.
- g. **Pollution Liability Insurance** – Lessee shall secure and maintain, at its own expense, pollution liability insurance that insures claims for pollution and remediation legal liability arising out of or in connection with the Lessee's occupancy of the Leased Premises. The minimum limits of liability for this insurance are \$1,000,000 each pollution condition and \$1,000,000 annual aggregate. This insurance shall name Lessor, and its appointed and elected officials, employees, agents, and volunteers as additional insureds on a primary and non-contributory basis. The endorsement(s) evidencing the required additional insured status must be submitted in conjunction with certificates of insurance furnished to Lessor. Lessee must continue to maintain such insurance, covering incidents occurring or claims made, for a period of three (3) years after termination of this Agreement.
- h. **Evidence of Insurance / Insurers** - Lessee shall furnish certificates of insurance, acceptable to Lessor, to the Manager, Airport and Business Park Operations, Sussex County, Delaware evidencing all policies required above at execution of this Agreement and prior to each renewal thereafter. Such insurance shall be written with insurers allowed to do business in Delaware, with a Best's Financial Strength Rating of "A-" or better, and a Financial Size Category of "Class VII" or better in the latest evaluation of the A.M. Best Company, unless otherwise approved by the Lessor. All insurance policies required hereunder shall be endorsed to provide that the policy is not subject to cancellation or non-renewal in coverage until sixty (60) days prior written notice has been given to Lessor. Therefore, a copy of the endorsements to the required policies that confirm additional insured status and the insurer is

obligated to send notice to Lessor as required herein, must accompany all certificates of insurance. Liability policies required herein (other than pollution liability) may not be written on a "claims made" basis without the prior written approval of Lessor. If Lessee shall fail, refuse or neglect to secure and maintain any insurance required of Lessee or to furnish satisfactory evidence of insurance, premiums paid by Lessor shall be recoverable by Lessor from Lessee, together with interest thereon, as additional rent promptly upon being billed therefore.

- i. All policy limits as stated herein shall be adjusted every five (5) years in accordance with increases in the consumer price index to levels satisfactory to Lessor.
- j. **Hold Harmless Agreement** – To the fullest extent permitted by law, Lessee agrees to indemnify and hold harmless Lessor and its appointed and elected officials, employees, agents and authorized volunteers against all claims, damages, liabilities, or costs including reasonable attorney fees and defense costs, to the extent resulting from the negligence acts, omissions or willful misconduct of the Lessee in connection with this Lease Agreement.

13. **ENTRY BY LESSOR AND AGENTS**. At any and all reasonable times during the term of this Lease, Lessor and Lessor's duly authorized agent or agents shall have the right to enter the Leased Premises for the following purposes:

- a. To inspect the Leased Premises in the event of an emergency; and
- b. To effect Lessee's compliance with any rule or regulation adopted by Lessor, or to effect Lessee's compliance with any restriction, covenant, law, ordinance, order or regulation of Lessor, including, but not limited to, the existence and validity of permits or other approvals for any work or activity being performed on the Leased Premises.

Lessor shall provide Lessee with at least twenty-four (24) hours advance written notice prior to entering the premises unless such notice has been waived by Lessee. Lessor will use its best efforts to inspect the premises at a time and in a manner that minimizes any interference with Lessee's business operations being conducted on the premises.

14. **LESSEE TO INDEMNIFY LESSOR**. Lessee hereby releases Lessor from any and all liability and shall hold Lessor harmless, defend and indemnify Lessor for any and all liability, claims, causes of action, damage and loss or any kind whatsoever, including but not limited to attorneys' fees and costs, for injuries sustained by any person or persons in or upon the Leased Premises (including death) or injuries to

property (real or personal), unless the basis for the cause of action solely relates to the willful or negligent actions of the Lessor, its employees and agents. For purposes of this provision, "Lessor" shall include its appointed and elected officials, employees, agents, and volunteers.

15. **EXPIRATION OF LEASE TERM.**

- a. At the expiration of the Lease term, Lessee shall peaceably surrender and yield to Lessor, its successors or assigns, the Leased Premises; provided, however, that Lessee shall be responsible for any damage to the Leased Premises not covered by Lessor's insurance if such damage is caused by fire or other casualty resulting from the negligence, accidental conduct or tortuous conduct of Lessee or Lessee's employees, licensees or invitees, ordinary wear and tear excepted.
- b. Lessee may not allow any liens to be placed against any of Lessee's equipment or the improvements remaining in, about or upon the Leased Premises. Lessee agrees to defend and hold Lessor harmless against any claim, liability or loss that may result for any reason from any lien. Lessor shall have the absolute right to dispose, remove or to retain any equipment not removed from the Leased Premises at the termination or expiration of this Lease, surrender or abandonment of the Leased Premises and shall not be bound or subject to any risk, cost or liability from liens Lessee has permitted to be attached thereto. At the termination of this Lease, the improvements erected on the Leased Premises and any fixtures which are a part thereof which cannot be removed without substantial damage to said improvements, shall remain a part to the Leased Premises and shall be the property of the Lessor. Any trade fixtures which were installed on the Leased Premises by Lessee and which are removable without substantial damage to the improvements shall remain the property of the Lessee, provided that Lessee shall promptly repair any damage to the improvements on the Leased Premises caused by their removal and that Lessee is not in default of any covenant or agreement contained in this Lease Agreement; otherwise such trade fixtures shall not be removed and Lessor shall have a lien thereon to secure itself on account of its claims.
- c. If the Lessee shall default in surrendering the Leased Premises upon the expiration or earlier termination of this Lease, the Lessee shall be deemed to be "Holding Over" without Lessor's consent and Lessee shall be liable to Lessor for all costs, losses, claims or liabilities (including attorneys' fees) that Lessor may incur as a result of Lessee's failure to surrender the Leased Premises.

16. **QUIET ENJOYMENT**. Lessor covenants and agrees that, so long as Lessee shall not be in default under any of the terms and conditions of this Lease, Lessee shall lawfully and quietly hold, occupy and enjoy the Leased Premises during the term of this Lease without hindrance or molestation from Lessor, or any person or persons claiming under Lessor wherein Lessor shall have previous knowledge of any actions.
17. **SIGNS**. Prior to installation, Lessee shall submit sign proposals to Lessor for Lessor's approval and consent as to the size, height, type, and location of any on premise sign Lessee seeks to install, such approval not to be unreasonably withheld. Electronic Messaging Centers shall be prohibited. Any sign, device, fixture or other attachment permitted to be installed by Lessee hereunder, shall be installed by Lessee at its own expense and in accordance with the Rules and Regulations attached hereto, all governmental rules, regulations, ordinances, laws and requirements and Lessee shall obtain any and all required permits. Lessee shall be responsible for any damage resulting from the installation or removal of any such sign, device, fixture or other attachment. Lessee shall keep its sign lighted at such reasonable times as Lessor may require under its Rules and Regulations, or as may be required by ordinance, law or regulation of any governing authority. Lessee shall maintain its sign and keep it in good repair during the term of this Lease. Upon the expiration or earlier termination of this Lease or Lessor's right to possession of the Leased Premises in accordance with this Lease, Lessee shall, at Lessee's sole cost and expense, remove any signage and restore and repair that portion of the Leased Premises affected by the installation or removal of the signage to the condition satisfactory to Lessor.
18. **DEFAULT**.
- a. **Events of Default**. The occurrence of one or more of the following events shall constitute an event of default (each being referred to as an "Event of Default") pursuant to the terms of this Lease:
- i. Lessee fails to pay when due any and all monies due hereunder, including, but not limited to Rent, Additional Rent, and/or any other sums due Lessor by Lessee, and such failure continues more than thirty (30) days after receipt by Lessee of Lessor's written notice of such failure; or
- ii. Failure by Lessee to secure required insurance pursuant to Paragraph 12 of this Lease, or to cause renewals to be written and policies or copies thereof to be delivered to Lessor at least ten (10) days before the respective expiration thereof; or

- iii. The failure of Lessee to comply with or to observe any other terms, provisions or conditions of this Lease performable by Lessee to Lessor's satisfaction, including, but not limited to, compliance with the Rules and Regulations, maintenance, removal, repairs and replacements, and such failure continues after Lessor gives Lessee written notice that Lessee has thirty (30) days to cure the default. If such default cannot reasonably be cured within the thirty (30) day period, Lessee shall be permitted such additional time as is needed to cure the same so long as Lessee has notified Lessor and Lessee has commenced its actions to cure within such thirty (30) day period and such cure thereafter is continuously and diligently undertaken and pursued by Lessee (or its mortgagee) and prosecuted to completion, but in no event longer than ninety (90) days, unless the cure involves repairing or correcting any structural issues where the cure time frame shall be a commercially reasonable time frame;
- iv. The dissolution or liquidation of Lessee or the filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee promptly to lift or bond (if legally permissible) any execution, garnishment or attachment of such consequences as will impair its ability to carry on its operation, or the commission by Lessee of any act of bankruptcy, or adjudication of Lessee as bankrupt or assignment by Lessee for the benefit of its creditors, or the entry by Lessee into an agreement of composition with its creditors, or the approval by a Court of competent jurisdiction of a petition applicable to Lessee in any proceedings for its reorganization instituted under the provisions of the Federal Bankruptcy Statutes, as amended, or under any similar act which may hereafter be enacted. The term "dissolution or liquidation of the Lessee", as used in this subsection, shall not be construed to include the cessation of the corporate existence of Lessee resulting from a merger or consolidation of Lessee into or with another corporation or of a dissolution or liquidation of Lessee following a transfer of all or substantially all its assets as an entirety; or
- v. Failure by Lessee to abide by any laws, statutes, rules, or regulations relating to the Leased Premises or the Delaware Coastal Airport and Delaware Coastal Business Park, which failure continues for a period of thirty (30) days after Lessee's receipt of notice by mail that the violation referred to in such notice has not been corrected;
- vi. Lessee shall abandon the Leased Premises or suffer the Leased Premises to become vacant or deserted;

- vii. Lessee shall remove or caused to be removed from the Leased Premises Lessee's fixtures, machines, or equipment without Lessor's prior written consent; or
 - viii. Failure by Lessee to cure immediately after receipt of notice from Lessor, any hazardous condition which Lessee has created in violation of law or this Lease.
- b. **Lessor's Remedies.** In the event Lessee has an Event of Default that has not been cured within the permitted time periods, the Lessor shall have all of the rights and remedies permitted by law, in equity, by statute and otherwise, including, without limitation, the following:
- i. **Terminate Lease.** Lessor may terminate this Lease, in which event, Lessee shall remove all personal property from the Leased Premises within sixty (60) days after termination. If Lessee fails to timely remove said personal property, Lessee will be deemed to have abandoned the property, and title for which shall revert to Lessor, and at Lessor's option, Lessor may remove the property. Lessee agrees to pay Lessor the cost of removing the personal property.
 - ii. **Enter and Cure Default.** If Lessee defaults in the performance of any of its obligations under the provisions of this Lease and if such default shall continue beyond the time periods set forth herein for curing such default, then Lessor may, at its option, enter upon the Leased Premises without terminating this Lease and without being liable to prosecution or for any claim of damages, and do whatever Lessee is obligated to do under the terms of this Lease or otherwise cure any default by removal (including removal of the Improvements), repair or replacement, and cure any such default on behalf of Lessee, and any sums expended by Lessor in the performance of any such obligation of Lessee shall be repaid as Additional Rent, by Lessee to Lessor immediately upon demand, together with interest thereon, at the interest rate of eighteen percent (18%) per annum beginning from the date any such expense was incurred by Lessor. In the event that Lessor determines, in Lessor's reasonable judgment, that it is in best interest of the Lessor for Lessor to complete or perform any of Lessee's obligations under this Lease, Lessor reserves the right to complete or perform any such obligation at Lessee's cost and liability, no written notice being required. This shall not be permitted until the expiration of the time frames in Paragraph 19(a) above.

- iii. **Surrender of Premises**. Upon termination of this Lease for any reason or upon termination of Lessee's right of possession, as provided above, Lessee shall promptly surrender possession to Lessor and vacate the Leased Premises, and Lessor may re-enter the Leased Premises without further notice to Lessee and repossess the Leased Premises by force, summary of proceedings, ejectment or otherwise. Lessor may also dispossess or remove Lessee and all other persons and property from the Leased Premises, and Lessor shall have, hold and enjoy the Leased Premises and the right to receive all rental income therefrom.
- iv. **Re-letting**. At any time after the expiration of Lessee's possessory right to the Leased Premises, Lessor may re-let the Leased Premises, or any part thereof, in the name of Lessor or otherwise for such term (which may be greater or less than the period which would otherwise have constituted the balance of the term of the Lease) and on such conditions (which may include concession or free rent) as Lessor, in its sole and absolute discretion, may determine, and Lessor may collect and receive the rental therefrom which will serve to mitigate the damages due from Lessee. Lessor shall in no way be responsible or liable to Lessee for any failure to re-let the Leased Premises or any part thereof or for any failure to collect any rent due upon such re-letting, and Lessee's liability shall not be affected or diminished in any respect by such failure. In the event Lessor re-lets the Leased Premises at a rental higher than that due from Lessee under the provisions hereof, Lessee shall not be entitled to share in any excess. Lessor, at its option, may make such alterations, repairs and changes to the Leased Premises as Lessor, in its sole judgment, considers advisable or necessary for the purpose of re-letting the Leased Premises, and the making of such alterations, repairs and changes shall not operate or be construed to release Lessee from liability.
- c. **Lessee's Obligation**. The expiration of Lessee's right to possession of the Leased Premises shall not relieve Lessee of its liabilities hereunder, and the obligations created under this Lease shall survive any such expiration. In the event of such expiration, whether or not the Leased Premises or any part thereof shall have been re- let, Lessee shall pay to Lessor all Rent and Additional Rent required to be paid by Lessee up to the time of such expiration; and thereafter, Lessee, until the end of the term of this Lease, shall be liable to Lessor and shall pay to Lessor, as and for liquidated and agreed current damages for Lessee's default(s), the equivalent of the amount of the Rent and Additional Rent which would be payable under this Lease by Lessee if Lessee were still in possession less the net proceeds of any re-letting effected pursuant to the provisions of Section (d) of this

paragraph after deducting all of Lessor's expenses in connection with such re-letting including, without limitation, all repossession costs, brokerage commissions, legal expenses, reasonable attorney's fees actually incurred, alteration and repair costs and expenses of preparation for such re-letting.

- d. **Current Damages**. Lessee shall pay such current damages ("Deficiency") to Lessor in a timely manner when due under the terms of this Lease, and Lessor shall be entitled to recover from Lessee each Deficiency as such Deficiency shall arise. At any time after the expiration of Lessee's possessory right to the Leased Premises, Lessor, at its option, may demand as and for liquidated and agreed final damages for Lessee's default(s), and Lessee shall pay to Lessor an amount equal to the difference between the Rent and Additional Rent payable hereunder for the unexpired portion of the Lease Term and then fair and reasonable rental value of the Leased Premises for the same period. Lessee shall also pay to Lessor all of Lessor's expenses incurred in connection with any re-letting including, without limitation, all repossession costs, brokerage commissions, legal expenses actually incurred of preparation for re-letting. If the Leased Premises or any part thereof is re-let by Lessor for the unexpired term of this Lease Agreement or any part thereof, the amount of rent payable upon such re-letting shall be deemed to be the fair and reasonable rental value for the part or the whole of the Leased Premises re-let. Nothing herein contained shall limit or prejudice the right of Lessor to prove and obtain as damages, by reason of any default by Lessee, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when such damages are to be proved.
- e. **Deficiency**. Any suit brought to collect the amount of the deficiency for any month shall not prejudice the right of Lessor to collect the deficiency for any subsequent month by a similar action.
- f. **Lessor's Right**. Any action taken by Lessor under this Paragraph shall not operate as a waiver of any right Lessor would otherwise have against Lessee for breach of this Lease, and Lessee shall remain liable to Lessor for any damages suffered by reason of Lessee's default or breach of this Lease. Lessor shall also be entitled to enjoin any breach or threatened breach by Lessee of any of the covenants and conditions of this Lease; and in the event of such breach, Lessor shall have all rights and remedies allowed at law and equity by statute or otherwise. Any and all remedies provided for herein are considered cumulative and not exclusive.
- g. **Waiver of Jury Trial**. TO THE EXTENT PERMITTED BY LAW, IT IS MUTUALLY AGREED BY AND BETWEEN LESSOR AND LESSEE THAT

THE RESPECTIVE PARTIES HERETO SHALL, AND THEY DO HEREBY, WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BETWEEN THE PARTIES HERETO OR THEIR SUCCESSORS OR ASSIGNS ON ANY MATTERS ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS LEASE AGREEMENT, THE RELATIONSHIP OF LESSOR AND LESSEE, AND/OR LESSEE'S USE OF, OR OCCUPANCY OF, THE LEASED PREMISES AND ANY CLAIM OR INJURY OR DAMAGES RELATING THERETO. IN ANY EVICTION PROCEEDING ARISING OUT OF A DEFAULT BY LESSEE, LESSOR AND LESSEE CONSENT TO AN EXPEDITED OR SUMMARY PROCEEDING TO THE EXTENT AVAILABLE UNDER APPLICABLE LAW.

19. **EMINENT DOMAIN**. The Lessor agrees not to take the Leased Premises by Eminent Domain or similar vehicle to remove the Lessee from the Leased Premises.
20. **CONDEMNATION**: If at any time during the term hereof the whole of the Leased Premises shall be taken for any public or quasi-public use under any statute or by right of eminent domain, then and in such event, when possession shall have been taken of the Leased Premises by the condemning authority, this Lease and all rights of Lessee hereunder shall immediately cease and terminate and the rent shall be apportioned and paid to the time of such termination. If pursuant to the provisions of this article, this Lease Agreement shall have been terminated and if prior to such termination, Lessee shall have made any improvements upon the Leased Premises, Lessor shall be entitled to all of the condemnation proceeds which may be granted with respect to the land and improvements existing on the Leased Premises at the commencement of this Lease; and Lessee shall be entitled to the proceeds of any condemnation awarded on account of the value of any improvements made by Lessee.
21. **PARTIAL CONDEMNATION**: If after commencement of this Lease Agreement only a part of the Leased Premises shall be taken or condemned, Lessor shall be entitled to any award made with respect to the land and any improvements existing on the Leased Premises at the commencement of this Lease and Lessee shall be entitled to any award made for any improvements made by Lessee which are condemned. In the event such condemnation shall leave a portion of the Leased Premises which in Lessee's sole judgment is usable by Lessee, this Lease shall remain in full force and effect, but the Rent herein reserved to Lessor shall be adjusted so that Lessee shall be entitled to a reduction in Rent in the proportion that the value of land taken bears to the value of the entire Leased Premises. If a portion of the Leased Premises is taken or condemned prior to commencement of construction hereunder, the proceeds shall belong solely to Lessor and the rental hereunder shall not be abated. Notwithstanding the foregoing, Lessee shall have the right to

terminate this Lease if, in its sole judgment, the Leased Premises have been rendered unsuitable for its purpose.

22. **SUBORDINATION.**

- a. This Lease shall be subject and subordinate to, and may be assigned as security for, any present and future mortgage or deed of trust on or of the Leased Premises and all renewals, modifications, extensions, consolidations or replacements thereof. If requested, Lessee agrees to execute written documents evidencing the subordination of this Lease to, and its assignment as additional security for any mortgage or deed of trust. If Lessor requires Lessee to execute a Subordination Agreement, preparation of the Subordination Agreement shall be Lessor's sole cost and expense.
- b. In addition, upon request of any mortgagee of the Leased Premises, Lessee will execute and enter into an attornment and non-disturbance agreement with such mortgagee wherein Lessee will agree that, in the event that such mortgage is foreclosed, Lessee will attorn to the mortgagee or other owner of the Property as Lessee's Lessor and the mortgagee or other owner of the Property will, provided Lessee is not in default under the terms of this Lease, recognize the rights of Lessee under the provisions of this Lease and will not disturb the possession of Lessee hereunder.

23. **PROPERTY RIGHTS RESERVED:** This Lease and all provisions hereof are subject and subordinate to the terms and conditions of the instruments and documents under which Lessor acquired the Leased Premises from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in this Lease of said lands from Lessor, and any existing or subsequent amendments thereto, and are subject to any ordinances, rules or regulations which have been, or may hereafter be adopted by Lessor pertaining to the Delaware Coastal Airport and the Delaware Coastal Business Park. This Lease is expressly subordinate to the terms and conditions of any grant agreement between Sussex County and the Federal Aviation Administration.

24. **ASSIGNMENT & SUBLETTING.**

- a. Lessee shall not have the right to assign this Lease Agreement or sublet the Leased Premises unless the written consent of Lessor is acquired, which consent may be granted or withheld in Lessor's sole discretion. Lessee shall not assign or sublet the Leased Premises for a use other than as specified

in Paragraph 6 above and shall provide Lessor with at least thirty (30) days' prior written notice of any desired assignment or subletting. All assignments and subletting shall require Lessor's prior review and written approval, which Lessor may withhold or grant in its sole discretion. Unless otherwise agreed, such assignment or subletting shall in no way relieve Lessee of any responsibility for the payment of rent or for the performance of any of the other covenants or conditions hereof. Such assignee or Sub-Lessee shall in writing assume all of the obligations to be performed by Lessee hereunder. Lessee agrees to pay for any attorney's fees incurred by Lessor resulting from any sublease or assignment. Lessor reserves the right to require the renegotiation of the terms of the Lease in return for consenting to a sublease or assignment.

- b. If Lessee seeks to sublease the Leased Premises, Lessee shall provide Lessor with information as to the compensation Lessee will receive for the subleased portion of the Leased Premises. If Lessor consents to the sublease, the Base Rent for the Leased Premises shall increase by the greater of the rate of compensation received by Lessee and the New Market Base Rent as hereinafter defined.
- c. Upon Lessee's notification to Lessor of a potential sublease, Lessor shall conduct a market rent analysis to establish the rental value of acreage in the Delaware Coastal Business Park ("the New Market Base Rent"). If Lessor has otherwise conducted a market rent analysis in the Delaware Coastal Business Park within ten (10) years of Lessee's notification to Lessor of a potential assignment or sublease, Lessor may use the results of said analysis to establish the New Market Base Rent instead of conducting a new market rent analysis. Upon receipt of the market rent analysis, Lessor shall provide a copy of the same to Lessee and the value of the property in the Delaware Coastal Business Park as determined by said analysis shall be the rent payable by Lessee for the Leased Premises subject to yearly CPI-U increases thereafter pursuant to Paragraph 52 and provided said market rent is greater than the base rent received by Lessee from the subtenant. In no event shall the rent for the subleased portion of the Leased Premises be lower than the Base Rent due from Lessee.
- d. Within thirty (30) days after Lessor gives Lessee notice of the adjusted Rent and Lessee does not object to the same as provided above, then Lessee will pay the adjusted Rent retroactive to the first month of the then-current sublease period. The adjusted Rent will be the yearly Base Rent for the subleased area for the balance of the sublease period. Lessor will give Lessee written notice indicating how the adjusted Rent amount was computed.

- e. If Lessee objects to the analysis as provided in Paragraph 24(c) above, then Lessee shall be free to engage its own commercial appraiser, having no less than five (5) years' full-time commercial appraisal experience in the State of Delaware and an MAI designation to perform at Lessee's expense, the land rental analysis. The appraiser shall have a certified general license by the Delaware Council on Real Estate Appraisers or, if the appraiser is an out-of-state appraiser, the appraiser shall have a temporary license or certificate issued by the Delaware Council on Real Estate Appraisers. The Lessee's appraiser shall provide its written analysis to Lessor within forty-five (45) days of engagement by the Lessee but in no event more than sixty (60) days from the date of Lessee's objection to the analysis as provided in Paragraph 24(c) above. If the Lessor accepts the Lessee's appraiser's analysis, then it shall constitute an accepted adjustment and the New Market Base Rent. If the Lessor objects to the Lessee's appraiser's analysis within thirty (30) days of its receipt of the same and Lessee's appraiser's analysis is within twenty percent (20%) of the Lessor's appraiser's analysis, the results of both appraisals shall be averaged to determine the New Market Base Rent. If the Lessor objects to the Lessee's appraiser's analysis within thirty (30) days of its receipt of the same and the Lessee's appraiser's analysis differs from the Lessor's appraiser's analysis by greater than twenty percent (20%), then Lessor and Lessee agree that their respective appraisers shall mutually select a third appraiser who must meet the qualifications of an appraiser as set forth in this paragraph. If the Lessor's appraiser and the Lessee's appraiser are unable to agree upon the third appraiser, the Lessor shall appoint a third appraiser. The third appraiser shall review the results of both appraisals conducted by the Lessor's appraiser and the Lessee's appraiser and may request a hearing at which both the Lessor's appraiser and the Lessee's appraiser shall provide such additional information and clarification regarding their studies as the third appraiser may request. The third appraiser shall make a final determination of the land rental value based upon the data contained in the two (2) appraisals and any additional information provided by Lessor's appraiser and Lessee's appraiser provided that the third appraiser shall have the right to gather, analyze, and consider additional data as the third appraiser deems appropriate. The decision of the third appraiser regarding the land rental value shall constitute the accepted adjustment and the New Market Base Rent. All fees and expenses associated with the work of the third appraiser shall be split equally and paid by the Lessor and the Lessee. During any period of disagreement between Lessor and Lessee regarding the rent adjustment, Lessee shall be responsible for the payment of the New Market Base Rent as recommended by Lessor's appraiser. Once the disagreement is resolved, any difference

between the Base Rent paid and the accepted New Market Base Rent shall be refunded or credited to Lessee (as appropriate).

25. **WAIVER**. Waiver by Lessor of any right or remedy available to it in the event of any default hereunder or any breach by Lessee of the terms and conditions of this Lease shall not constitute a waiver of any succeeding default of the same or other terms and conditions of this Lease.
26. **TRANSFER OF LESSOR'S INTEREST**. Lessor shall be entitled to sell, transfer or otherwise convey its interest in the Leased Premises, and any such sale, transfer or conveyance shall operate to relieve Lessor of any of its obligations and responsibilities hereunder, provided that the purchaser or other transferee of such interest shall expressly assume and agree to perform Lessor's obligations and responsibilities to Lessee hereunder.
27. **RISK OF LOSS FOR IMPROVEMENTS AND PERSONAL PROPERTY**. Lessee agrees that all improvements and personal property located in the Leased Premises shall be and remain at Lessee's sole risk, and Lessor shall not be liable for any damage to or loss of such improvements and personal property unless such damage or loss arises from any acts of negligence or willful misconduct by Lessor nor shall Lessor be liable for any damage to or loss of Lessee's personal property resulting from fire or other casualty, from the leaking of the roof or from the bursting, leaking or overflowing of water and sewer pipes or from malfunctions of the heating, plumbing or electrical systems, or from any other cause whatsoever, except if said damage or loss is caused by the acts or negligence or willful misconduct of Lessor or its agents, servants, employees, etc.
28. **APPLICATION OF PAYMENTS**. Lessor shall have the right in its sole discretion to apply any payments made by Lessee to the satisfaction of any debt or obligation of Lessee to Lessor regardless of the instructions of Lessee as to the application of any such payment. The acceptance by Lessor of any rental payment by anyone other than Lessee shall not be deemed to constitute an approval of any assignment of this Lease by Lessee.
29. **MEMORANDUM OF LEASE**. This Lease shall be recorded in the Office of the Recorder of Deeds, in and for Sussex County, DE.
30. **NOTICES**. All notices required to be given hereunder shall be sent by registered or certified mail, return receipt requested or by a nationally recognized overnight delivery service with all charges pre-paid and sent to the address as follows:

If intended for Lessor:

Sussex County Administrator
Sussex County Administration
Building 2 The Circle
P.O. Box 589
Georgetown, DE
19947

With a copy to:

J. Everett Moore, Jr., Esquire
Moore & Rutt, P.A.
122 W. Market Street
P.O. Box 554
Georgetown, DE 19947

If intended for Lessee:

KTM 2 LLC
1546 Savannah Road
Lewes, De 19958

Either party shall be entitled to change the person or address to which notices shall be given hereunder by giving notice to the other party in accordance with the provisions set forth herein.

31. **NO PARTNERSHIP**. The relationship created by this Lease is that of Lessor and Lessee, and nothing in this Lease shall be construed to make Lessor and Lessee partners. Lessee shall have no authority to make any contract or do any act so as to bind Lessor or as to render Lessor or the Leased Premises liable therefore.
32. **PRONOUNS**. All pronouns and any variations thereof used in this Lease shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require. If the Lessor or Lessee be more than one person, these provisions shall be taken to bind and apply to them jointly and severally, or if a corporation, then to its successors and assigns.
33. **COUNTERPARTS; ELECTRONIC SIGNATURES**. This Lease may be executed in two counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Electronic signatures and photocopies or facsimile copies of signatures shall be deemed to have the same force and effect as originals.

34. **BINDING EFFECT**. This Lease shall be binding upon and inure to the benefit of the parties, their respective heirs, successors and assigns.
35. **PARAGRAPH HEADINGS**. Paragraph headings relating to the contents of particular paragraphs have been inserted for the convenience of reference only and shall not be construed as parts of the particular paragraphs to which they refer.
36. **GOVERNING LAW**. This Lease shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict of laws principles, and with venue lying in Sussex County. The parties acknowledge and agree that this is a Commercial Lease. Accordingly, this Lease shall NOT be governed by the Delaware Landlord-Tenant Code 25 Del. C., § 5101 et seq.
37. **ENTIRE AGREEMENT**. This Lease constitutes the entire agreement between the parties, and it supersedes any and all prior understandings or commitments concerning the subject matter of this Lease. This Lease shall not be modified or amended except by a written instrument executed by both Lessor and Lessee.
38. **PARTIAL INVALIDITY**. If any provision of this Lease or the application thereof shall to any extent be held invalid, then the remainder of this Lease or the application of such provision other than those as to which it is held invalid shall not be affected thereby, and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.
39. **ATTORNEYS' FEES**. Lessee shall pay upon demand all of Lessor's costs, charges, reasonable attorney's fees and expenses, incurred in enforcing Lessee's obligations hereunder or incurred by Lessor in any litigation in which Lessor, without Lessor's fault, becomes involved or concerned by reason of the existence of this Lease or the relationship hereunder of Lessor and Lessee. In addition, Lessee shall bear all costs and expenses incurred by Lessor in connection with Lessor's review, negotiation, drafting, or any other expenses and fees, including attorney's fees, related to any amendment, sublease, or assignment of this Lease.
40. **EXHAUST AND ODORS**. Lessee shall, at its sole cost and expense, install and maintain adequate equipment for the Leased Premises so as to keep any and all unreasonable odors from entering the Common Areas or other lands of Lessor. Lessee shall not cause or permit any unreasonable odors to emanate from the Leased Premises. In the event Lessor notifies Lessee in writing that unreasonable odors are emanating from the Leased Premises, Lessee shall within five (5) days after such notice from Lessor, commence to install, at its sole cost and expense, any necessary control devices or procedures to eliminate such odors and shall complete such installation as expeditiously as possible proceeding in a good faith manner. In the event that Lessee fails to stop unreasonable odors from emanating

from the Leased Premises, Lessor may proceed to cure the odor problem at Lessor's discretion and recover all costs and expenses from Lessee.

41. **CONSTRUCTION; FREELY NEGOTIATED.** Lessee and Lessor acknowledge that they have had their respective counsel review this Lease and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Lease. Lessor and Lessee agree that this Lease has been freely negotiated by both parties.
42. **LESSEE WARRANTY.** Lessee represents and warrants that Lessee is a duly formed Delaware limited liability company registered to do business in Delaware, in good standing and has full power and authority under its operating agreement to enter into this Lease. The Certificate of Good Standing from the State of Delaware and all necessary resolutions shall be provided upon Lessor's requests. Lessee has taken all legal action necessary to carry out the transaction contemplated herein, so that when executed, this Lease constitutes a valid and binding obligation enforceable in accordance with its terms.
43. **LESSOR'S RIGHT OF OFFSET.** Notwithstanding anything contained in this Lease to the contrary, Lessor shall have the absolute right to retain and use any of Lessee's funds or monies in Lessor's possession, no matter what the source of the funds or monies may be, and use any such funds or monies to off-set any payments or outstanding sums owed to Lessor.
44. **HAZARDOUS MATERIALS.** Lessee shall not permit any hazardous materials to be used or stored in the Leased Premises, unless used or stored in full compliance with any State or Federal regulations and shall hold Lessor harmless from any liability and expense from same in accordance with paragraph 15 hereof. Lessee shall comply with all Federal and State regulations related to the handling or disposal of any materials or byproducts regulated by State or Federal rules, laws or regulations.
45. **TIME OF THE ESSENCE.** Time shall be of the essence for the performance of all terms of this Lease
46. **JOINT AND SEVERAL LIABILITY.** If the Lessee is more than one person or entity, the obligation created by this Lease is intended to be a joint and several obligation of the undersigned.
47. **COMPLIANCE WITH LAWS.** Lessee shall promptly comply with all laws, ordinances, rules, regulations, requirements and directives of the Federal, State and County Government and Public Authorities and of all their departments, bureaus and subdivisions, applicable to and affecting the said premises, their use and

occupancy, for the correction, prevention and abatement of nuisances, violations or other grievances in, upon or connected with the said premises, during the term hereof; and shall promptly comply with all orders, regulations and directives of the State Fire Marshal or similar authority and of any insurance companies which have issued or are about to issue policies of insurance covering the said premises and its contents, for the prevention of fire or other casualty, damage or injury, at the Lessee's own cost and expense.

48. **NON-PERFORMANCE BY LESSOR.** This Lease and the obligation of Lessee to pay the Rent hereunder and to comply with the covenants and conditions hereof, shall not be affected, curtailed, impaired or excused because of Lessor's inability to supply any service or material called for herein, by reason of any rule, order, regulation or preemption by any governmental entity, authority, department, agency or subdivision or for any delay which may arise by reason of negotiations for the adjustment of any fire or other casualty loss or because of strikes or other labor trouble or for any cause beyond the control of Lessor.

49. **AIRPORT PROTECTION:**

- a. It shall be a condition of this lease, that Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property hereinafter described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on the airport.
- b. Lessee expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the hereinafter described real property to such a height so as to comply with Title 14, Code of Federal Regulations, Part 77.
- c. Lessee expressly agrees for itself, its successors and assigns, to prevent any use of the hereinafter described real property which would interfere with or adversely affect the operation or maintenance of the airport, or otherwise constitute an airport hazard.

50. **NON-DISCRIMINATION:**

- a. Lessee for its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, creed, sexual orientation, or national origin

shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, (3) that Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

- b. That in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate the Lease and to re-enter and as if the Lease had never been made or issued. The provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

51. **ECONOMIC NONDISCRIMINATION.** To the extent Lessee engages in any aeronautical activity for furnishing services to the public at the Delaware Coastal Airport, Lessee shall:

- a. Furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
- b. Charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

52. **CPI-U RENT ADJUSTMENT.** If the Lessee subleases the Leased Premises or a portion thereof, any CPI-U increases as required under Paragraph 24 shall be subject to the following:

- a. In this Paragraph 52, the following terms shall have the meaning set forth herein:
 - (1) "Price Index" means the Consumer Price Index for All Items, All Urban Consumers, U.S. City Average (CPI-U Table 1, unadjusted as published monthly by the United States Department of Labor, Bureau of Labor Statistics) compared to the same index sixty (60) months

earlier. If publication of the above index shall be discontinued, then another index generally recognized as authoritative shall be substituted, as selected by Lessor in its reasonable discretion.

(2) "Base Price Index" means the Price Index for the month (the "Base Month") nearest before the Commencement Date for which the Price Index is published and/or the most recently available.

- b. The Base Rent for the sublet area will be increased beginning on first day of the sublease term by a fraction whose numerator is the Price Index published for the then most recent anniversary month of the Base Month and whose denominator is the Base Price Index. The Base Rent as adjusted will not be reduced pursuant to this paragraph.
- c. If a substantial change is made in the Price Index, or its publication is discontinued or changed in such a way as to prevent calculations pursuant to this Paragraph 52, then the Price Index will be adjusted to the figure that would have been used had the manner of computing the Price Index in effect at the date of this Lease not been altered. If the Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information used in determining the Price Index will be used.
- d. No adjustments will be made due to any revision that may be made in the Price Index for any month.
- e. The statements of the adjustment shall be furnished and prepared by Lessor. The statements thus furnished to Lessee will constitute a final determination as between Lessor and Lessee of the relevant adjustment.
- f. Seasonal adjustments will not be used.
- g. Lessor's delay or failure in computing or billing for these adjustments will not impair the continuing obligation of Lessee to pay Base Rent adjustments.
- h. Lessee's obligation to pay Base Rent as adjusted by this Paragraph 52 will continue up to the expiration of this Lease and will survive any earlier termination of this Lease.
- i. Within thirty (30) days after Lessor gives Lessee notice of the adjusted Rent, Lessee will pay the adjusted Rent retroactive to the first month of the then-current five (5) year lease period. The adjusted Rent will be the yearly Base Rent for the balance of the then-current five (5) year lease period. Lessor

will give Lessee written notice indicating how the adjusted Rent amount was computed.

[Signature Pages to Follow]

LESSEE:

KTM 2 LLC
A Delaware Limited Liability Company

Witness

By: _____ (SEAL)

Authorized Representative

DATED: _____

STATE OF _____ :
: ss.
COUNTY OF _____:

BE IT REMEMBERED, that on this _____ day of _____, A.D. 2025, personally came before me, a Notary Public for the State and County aforesaid, _____, duly authorized Member of KTM 2 LLC, a Limited Liability Company existing under the laws of the State of Delaware, party to this Indenture, known to me personally to be such and acknowledged this Indenture to be his/her act and deed and the act and deed of said company, that the signature of the duly authorized officer thereto is in his / her own proper handwriting and the seal affixed is the common and corporate seal of said company, and that his / her act of sealing, executing, acknowledging and delivering said indenture was duly authorized by the bylaws of said company.

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

Notary Public

Print Name of Notary Public

My commission expires: _____

LESSEE:

Witness

By: _____ (SEAL)
Travis Wyshock

DATED: _____

STATE OF _____ :
: ss.
COUNTY OF _____:

BE IT REMEMBERED, that on this ____ day of _____, A.D. 2025, personally came before me, a Notary Public for the State and County aforesaid, Travis Wyshock, party to this Indenture, known to me personally to be such and acknowledged this Indenture to be his act and deed.

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

Notary Public

Print Name of Notary Public

My commission expires: _____

EXHIBIT A

LEGAL DESCRIPTION

All that certain lot, piece and parcel of land, lying and being situated in Georgetown Hundred, Sussex County, and State of Delaware, being designated as a portion of Lot Numbers 19B, Delaware Coastal Business Park, more particularly described as follows to wit:

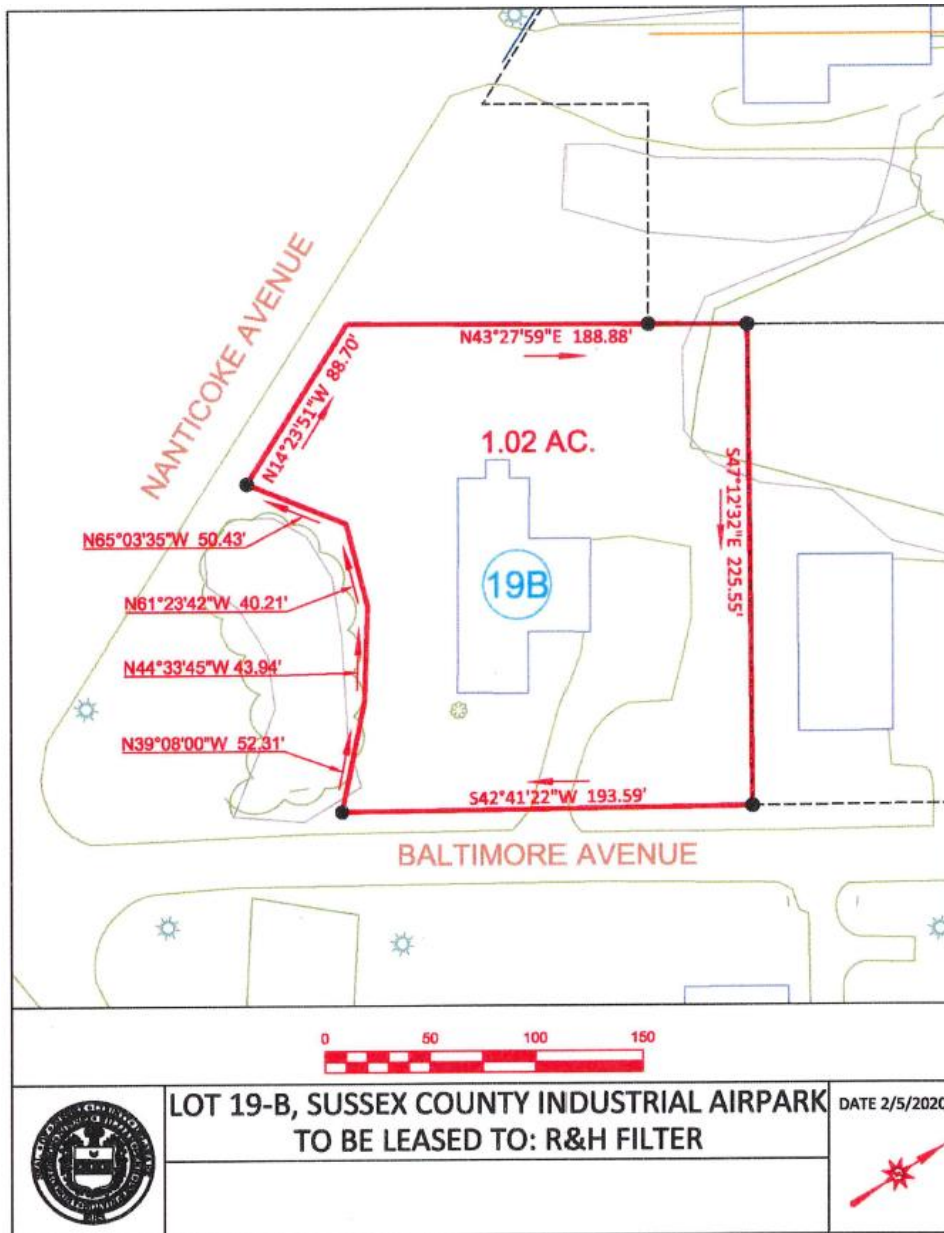


EXHIBIT B

RULES AND REGULATIONS

The Rules and Regulations entitled, "Delaware Coastal Business Park Rules, Regulations and Restrictions," shall remain in effect for the duration of this Lease unless amended in a writing executed by both parties.

The Lessee agrees as follows:

DELAWARE COASTAL BUSINESS PARK RULES, REGULATIONS AND RESTRICTIONS

I. PURPOSE

The purpose of the Delaware Coastal Business Park shall be to provide locations for the development of light to moderate industrial manufacturing, warehousing, wholesale and limited research establishments which, because of their type and nature, would be compatible with or adjacent to residential areas while still providing attractive landscaping, and a better working environment. The emphasis will be on employment rather than warehouse space. Also, the purpose is to provide guidelines and performance standards, which will control and confine any offensive features (i.e., noise, vibration, heat, smoke, glare, dust, objectionable odors, toxic wastes or unsightly storage) to the confines of the premises and within enclosed buildings or within a visually enclosed space.

II. LAND USE CRITERIA

1. Permitted uses. Permitted uses shall be as follows:

- a. Manufacturing, assembling, converting, altering, finishing, cleaning, cooking, baking or any other type of manufacturing or industrial processing of any goods, materials, products, instruments, appliances and devices, provided that the fuel or power supply shall be of an approved type. Also included shall be all incidental clinics, offices and cafeterias for the exclusive use of in-house staff and employees.
- b. Research, design, testing and development laboratories.
- c. Printing, publishing, binding, packaging, storage and warehousing.
- d. Business, medical, professional or administrative offices.

- e. Municipal and public services and facilities, such as utility supply areas (i.e., water, sewer and electric), distribution facilities and substations.
- f. Heating, ventilating, cooling and refrigeration manufacturing.
- g. General light industrial, manufacturing, warehousing and storage uses, including enclosed storage of products, materials and vehicles, and including the following uses and any similar uses which are not likely to create any more offensive noise, vibration, dust, heat, smoke, odor, glare or other objectionable influences than the minimum amount normally resulting from other uses listed, such listed uses being generally wholesale establishments, service industries and light industries that manufacture, process, assemble, store and distribute goods and materials and are, in general, dependent on raw materials refined elsewhere, and manufacture, compounding, processing, packaging or treatment, as specified, of the following products or similar products:

Agricultural, business, commercial or office uses permitted in any business or commercial district; and

Medical and dental equipment, drafting, optical and musical instruments, watches, clocks, toys, games and electrical or electronic apparatus.

- h. Wholesale merchandising or storage warehouses, provided that such uses are not objectionable by reason of odor, dust, noise or similar factors.
- i. Telephone central offices, provided that all storage of materials, all repair facilities and all housing of repair crews are within a completely enclosed area.
- j. Data centers.

All uses must be conducted within a completely enclosed building. There shall be no open storage of raw, in process or finished products, supplies or waste material, except that these items shall be shielded from public view by a landscaped screen that may include a fence or wall.

2. Prohibited Land Use:

- a. No operation or uses shall be permitted or maintained which causes or produces any of the following effects discernible outside the site or affecting any adjacent property:
 - (1) Noise or sound that is objectionable because of its volume, duration, intermittent beat, frequency or shrillness;
 - (2) Smoke;

- (3) Noxious, toxic or corrosive fumes or gases;
 - (4) Obnoxious odors;
 - (5) Dust, dirt, or fly ash; and
 - (6) Unusual fire or explosive hazards.
- b. The operation and use of drilling for and removal of oil, gas, or other hydrocarbon substances on any property subject to these Covenants shall not be permitted without the prior written consent of Sussex County.
- c. The following operations and uses are expressly prohibited on all property subject to these Covenants:
- (1) Residences, including trailer courts.
 - (2) Manufacturing uses involving production of the following products from raw materials: asphalt, cement, charcoal and fuel briquettes; chemicals; aniline dyes, ammonia, carbide, caustic soda, cellulose, chlorine, carbon black and bone black, creosote, hydrogen and oxygen, industrial alcohol, nitrates (both natural and manufactured) of an explosive nature, potash, petro chemical, pyroxylin, rayon yarn and hydrochloric, nitric, picric, phosphoric and sulfuric acids; coal, coke and tar products, including gas manufacturing, explosives, fertilizers, glue and size (animal); linoleum and oil cloth, matches, paint, varnishes and turpentine; rubber (natural and synthetic); and soaps, including fat rendering.
 - (3) Dumps, junkyards, automobile salvage and dismantling plants/yards, storage areas or operations for the storage or resale of used automobile or other machine parts.
 - (4) Operations involving slaughterhouses, stockyards or slag piles.
 - (5) Storage of explosives and bulk or wholesale storage of gasoline above ground.
 - (6) Quarries, stone crushers, screening plants and all associated uses.
 - (7) The following processes: refining, smelting and alloying of iron, tin, zinc and other metal or metal ores; refining petroleum products such as gasoline, kerosene, naphtha and lubricating oil; and reduction and processing of wood pulp and fiber, including paper mill operations.
 - (8) Drilling for the removal of any hydrocarbon substances.

- (9) Fertilizer or Compost Facilities.
- (10) Commercial Excavation of Building or Construction Materials.
- (11) Distillation of Bones.
- (12) Dumping, Disposal, Incineration, or Reduction of Garbage, Sewage, Offal, Dead Animals or Refuse.
- (13) Animals of any kind including the Raising of Pets or Livestock or other animals.

3. No Immoral of Unlawful Use.

No immoral, improper, offensive or unlawful use shall be made of the Property nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed and followed at all times.

III. SPACE ALLOCATIONS AND DIMENSIONAL STANDARDS

1. Building-to-Land Ratio:

The ratio of building coverage (building structure only) to the Site area will be subject to the review and approval of Sussex County.

2. Setbacks:

The placement of any structure or improvement and the distance to a property line on any Site will be subject to the review and approval of Sussex County.

3. Exceptions to Setback Limitations:

Any exception to a setback limitation, including Roof overhang, steps, walks, and access drives from the street, paving and associated curbing, and landscaping will be subject to the review and approval of Sussex County.

4. Off-Street Parking Areas:

Off-street parking will be subject to the review and approval of Sussex County and shall be in compliance with Sussex County Zoning Code, Article XXII. Off-Street Parking, §115-162, *et. seq.*

5. Off-Street Loading Areas:

Off-street loading will be subject to the review and approval of Sussex County and shall be in compliance with Sussex County Zoning Code, Article XXIII. Off-Street Loading, §115-167, *et. seq.*

IV. ARCHITECTURAL AND AESTHETIC STANDARDS

1. Landscaping and Limitations on Cutting Natural Growth:

- a. Every site on which a building shall have been placed shall be landscaped according to plans approved by Sussex County as specified herein and maintained thereafter in a slightly and well-kept condition.
- b. Any part or portion of the Site which is not used for buildings, other structures, loading or parking spaces and aisles, sidewalks are designated storage areas shall be planted with an all-season ground cover and shall be landscaped with trees and shrubs in accordance with an overall landscape plan and shall be in keeping with natural surroundings. A replacement program for non-surviving plants should be included.
- c. The Site Lessee, lessee or occupant shall landscape and maintain unpaved areas between the property lines and the building. The area between paved streets and the setback lines shall be used exclusively for landscaping except for walks and driveways crossing the required landscape area.
- d. The Site Lessee, lessee or occupant shall provide hose bibs in the vicinity of the landscaped areas on improved properties.
- e. Landscaping as approved by Sussex County shall be installed within ninety (90) days of occupancy or completion of the building, whichever occurs first, or as soon as weather will allow if such period falls within winter months.
- f. The Lessee or occupant of any Site shall at all times keep the landscaping in good order and condition. Should the Lessee or occupant of any Site fail to remedy and deficiency in the maintenance of the landscaping within twenty (20) days after written notification, Sussex County hereby expressly reserves the right, privilege and license and license to make any and all corrections or improvements in landscape maintenance at the expense of the Site Lessee.
- g. The Site Lessee shall preserve as much of the natural growth on a Site as practically possible. Special care should be exercised during any construction so that existing trees are not damaged.
- h. The plot plan must show a satisfactory method of irrigating all planted areas. This may be either by a permanent water system or by hose.

- i. Building interior ceiling height must be a minimum of 20 ft., floor to outside walls.

2. Exterior Construction, Permitted Materials, Prohibited Materials, Approved Construction Methods, Design:

- a. Any building erected on a Site will be subject to the review and approval of Sussex County and shall conform to the following construction practices and meet the Sussex County Building Code in effect at the time.

- (1) Exterior front and side walls must be finished on the exterior with the following:

- (a) architectural masonry units, (excluding concrete block and cinder block);
 - (b) natural stone;
 - (c) precast concrete with prior approval by Sussex County.
 - (d) steel;
 - (e) aluminum;
 - (f) glass materials; or
 - (g) their equivalent as approved by Sussex County. Rear exterior walls may be block masonry as defined below.

Minimum standards shall require that thirty (30) percent of the front building exterior and any front lots abutting Park Avenue be approved masonry finish as defined above. Side building walls facing interior park roadways must also have a minimum of thirty (30) percent of approved masonry finish. A masonry block wall (i.e., concrete or cinder block) may be used for a rear building wall only, if the masonry block wall is appropriately painted and meets the approval of Sussex County. These requirements also apply to any accessory building other than temporary structures as defined in paragraph 2 below.

Finish building material shall be applied to all sides of a building, which are visible to the general public as well as from neighboring property and streets. Colors shall be harmonious and compatible with colors of the natural surroundings and other adjacent buildings. Any exception to the exterior construction standards, methods, or design shall be subject to the review and approval of Sussex County.

- (2) Temporary Improvements – No temporary improvements of a temporary nature, including trailers, incomplete buildings, tents or shacks shall be permitted on the Property. Temporary improvements used solely in connection with the construction or sales of permanent approved improvements may be permitted provided they are located as inconspicuously as possible and are removed immediately after completion of such construction.

3. Signs:

Plans and specifications for the construction, installation, or alterations of all outdoor signs including traffic or directional signs shall be first submitted to and have the written approval of Sussex County.

The following signs shall be permitted:

- a. Those identifying the name of the person or firm occupying the Site subject to the following criteria:
 - (1) Signs shall be limited to one (1) per Site. Each sign may be lighted but shall not exceed thirty-two (32) square feet in size.
 - (2) Electronic Messaging Centers shall be prohibited.
 - (3) All signs mounted on a building must identify the primary name of KTM 2 LLC or its d/b/a name of Arrow Safety Device only and shall not be an advertising vehicle. Generally, an identifying sign may be mounted on one wall except that, at the discretion of Sussex County, a smaller sign or logo may be permitted on another exposure.
 - (4) Logos: A logo for a single or multi-line sign, or a logo to be mounted separately, must be sized with the total sign area allowed.
 - (5) No logos or other signs may be mounted so as to project above the roofline of any facility nor can same be ground mounted under any circumstances.
 - (6) Prior to installation of a sign on any Site, Lessee shall submit sign proposals to Sussex County for its approval and consent as to the size, height, type, and location of any on premise sign Lessee seeks to install. Final approval will be based on reasonable architectural standards and overall balance as same applies to identification displays. It should also be understood that Sussex County must approve the manner in which the sign is constructed, lighted and mounted.
 - (7) All Lessees shall maintain its sign and keep it in good repair during the term of its Lease. Lessee shall be responsible for any damage resulting from the installation or removal of any such sign, device, fixture or other attachment.
 - (8) Lessee shall keep its sign lighted at such reasonable times as Lessor may require under these Rules and Regulations, and as may be amended from time to time.

- (9) Upon the expiration or termination of any Site Lease or the Site Lessee's right to possession of the Site, or the Site Lessee's vacation of the Site, Lessee shall, at Lessee's sole cost and expense, remove any signage and restore and repair that portion of the Site affected by the installation or removal of the signage to the condition satisfactory to Sussex County.

4. Outdoor Storage:

- a. Unless specifically approved by Sussex County in writing, no materials, supplies or equipment (including company owned or operated vehicles) including but not limited to trash and garbage receptacles, shall be stored in any area on a Site except inside a closed building, or behind a visual barrier screening such areas from the view of adjoining properties and/or public street.
- b. Screening of Service Containers: Garbage and refuse containers shall be concealed by means of a screening wall of material similar to and compatible with that of the building. These elements shall be integral with the concept of the building plan, be designed so as not to attract attention, and shall be located in the most inconspicuous manner possible. Unless specifically approved by Sussex County in writing, no materials, supplies or equipment shall be stored on the Property except inside a close building, or behind a visual barrier screening such areas so that they are not visible from neighboring streets and property.

5. Maintenance Requirement, Refuse Collection, and Prohibition of Junk Storage:

- a. Each Site Lessee, or occupant shall at all times keep his premises, buildings, improvements and appurtenance in a safe, clean, neat, and sanitary condition and shall comply with all laws, ordinances and regulations pertaining to health and safety. Each Site Lessee shall provide for the removal of trash and rubbish from his premises. The Sites shall not be used for storage of any scrap materials without the prior written approval of Sussex County.
- b. During construction, it shall be the responsibility of each Site Lessee to insure that the construction sites are kept free of unsightly accumulations of rubbish and scrap materials and that construction materials, trailers, shacks, and the like are kept in a neat and orderly manner.

6. Utilities Placement and Design:

Without limiting the generality of any of the foregoing, the following use restrictions shall be maintained and enforced with respect to the property:

- a. Antennas: No antenna for transmission or reception of television signals or any other form of electro-magnetic radiation shall be erected, used or maintained on

the Property outside any building whether attached to an improvement or otherwise, without the prior approval of Sussex County.

- b. Utility Service: No lines, wires, or other devices for the communication of transmission of electric current or power, including telephone, television and radio signals, shall be constructed, placed or maintained anywhere in or upon the Property unless the same shall be contained in conduits or cable, constructed, placed and maintained underground or concealed in, under, or on buildings, or other improvements as approved by Sussex County, Site Lessee, provided electrical transformers may be permitted if properly screened and approved by the Sussex County. Nothing herein shall be deemed to forbid the erection and use of temporary electric or telephone services incident to the construction of approve improvements.
- c. Mail Boxes: No mail or other delivery boxes shall be permitted on the Property unless approved by Sussex County.
- d. Mechanical Equipment: All mechanical equipment, including roof mounted shall be enclosed or screened so as to be an integral part of the architectural design.

7. Repair of Buildings:

No building or other improvement shall be permitted to fall into disrepair and each improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

8. Compliance with Governmental Authorities:

Construction and alteration of all improvements shall be performed in accordance and comply with the requirements of all applicable governmental authorities.

V. IMPLEMENTATION

1. Architectural Review and Approval of Building Plans – Procedures:

Before applying for a building permit and commencing the construction or alteration of all buildings, enclosures, fences, loading areas, parking facilities, or any other structures or permanent improvements (“improvements”) on or to any Site, the Lessee of any Site shall first submit plans and specifications and landscape plans to Sussex County for its written approval, as hereinafter provided.

No improvement, as that term is hereinabove defined, shall be erected, placed, altered, maintained, or permitted to remain on any land subject to these Covenants until plans and specifications showing plot layout an all-exterior elevations, with materials and colors therefore and structural design, signs, and landscaping, shall have been submitted to and approved in writing by Sussex County, and a copy of such plans and specifications prepared by the signature of the Lessee of the Site or

his authorized Agent specifying for which part of such plans and specifications approval is sought.

Approval shall be based, among other things, on adequacy of Site dimensions, storm drain considerations, conformity and harmony of external design with neighboring sites, relation of topography, grade and finished ground elevation of the Site being improved to neighboring sites; proper facing of main elevation with respect to nearby streets; and conformity of the plans and specifications to the purpose and general plan and intent of these covenants.

Sussex County shall have the right to refuse to approve any such plans or specifications or proposed use of the premises for any reason which Sussex County, in its sole discretion, may deem in the best interests of the Industrial Park and the Lessees or prospective lessees of other sites therein.

If Sussex County fails either to approve or disapprove such building and site plans and specification within sixty (60) days after the same have been submitted to it, it shall be conclusively presumed that Sussex County has disapproved said plans and specifications.

Neither Sussex County nor its successors or assigns shall be liable in damages to anyone submitting plans to them for approval, or to any Lessee of land affected by this Declaration, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans. Every person who submits plans to Sussex County for approval agrees, by submission of such plans, and every Lessee of any said Property agrees, by acquiring a leasehold interest therein, that the Lessee will not bring any action or suit against Sussex County to recover such damages. In case of conflict between plan review and the Covenants herein contained, these Covenants shall govern the rights and obligations of the parties.

Building must be constructed in accordance with the plans as approved by Sussex County. Any modification to the approved plans, during construction, which affects the intent of these Covenants, must be approved by Sussex County before the modification to the building is constructed. Lesser shall give written notice of completion of improvements to Sussex County upon completion of said improvements.

2. Enforcement:

Said Covenants shall be jointly and severally enforceable by Sussex County and its successors and assigns and by any Site Lessee and its successors and assigns, provided, however, that only Sussex County or its assignees, shall have the right to exercise the discretionary powers herein reserved to Sussex County.

Violation of any of said Covenants, or breach of any Covenant or agreement herein contained shall give Sussex County or its assignees in addition to all other remedies, the rights (but not the obligation) to enter upon the land which such violation or breach exists and summarily to abate and remove any structure or correct any condition that may constitute such violation or breach at the expense of the then Lessee of such land, which expense shall be a lien on such land enforceable in Equity; provided, however, that no such entry shall be made unless the violation or breach has not been remedied and corrected within thirty (30) days after delivery of written notice of such violation or breach from Sussex County or its said assignees to the Lessee of the premises on which the violation or breach has occurred or in the alternative within thirty (30) days after mailing such notice, by certified or registered mail, postage prepaid, to the Lessee of such premises at his or its last known address.

Sussex County hereby claims any and all statutory or other liens which it may have upon the equipment, furniture, fixtures, real and personal property of any Lessee or Sub-Lessee placed upon the improvements, and Lessee agrees that Sussex County has such a lien to the extent provided by statute or otherwise. Sussex County agrees to subordinate its lien right to the lien of any mortgage, deed of trust, or security instrument given by Lessee for the construction of the improvements and purchase of the equipment, furniture, fixtures and personal property placed upon the property. Lessee shall furnish Sussex County copies of all such security instruments.

If Sussex County prevails in any legal or equitable proceeding seeking to restrain the violation of or enforce any provision herein, of challenging the enforceability of any provision herein, Sussex County shall be entitled to attorneys' fees in the trial and appellate court proceedings; and costs and expenses of investigation and litigation, including expert witness fees, deposition costs (appearance fees and transcript charges), injunction bond premiums, travel and lodging expenses, all fees and charges, and all other reasonable costs and expenses. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

3. Repurchase Rights:

In the event any Lessee or its assigns shall not have substantially completed the construction of a permanent building upon a Site within two (2) years of the date of the execution of the Lease by Sussex County conveying a leasehold interest in that Site said Lessee, Sussex County shall have an option to repurchase said Site for the original purchase price and enter into possession of said Site. This option to repurchase must be exercised in writing within ninety (90) days after the expiration of the two (2) year period following the execution of the Lease referred to above. Settlement of the repurchase shall take place within sixty (60) days of the exercise of the option to repurchase and shall be at location to be designated by Sussex County. All costs of recording, transfer taxes, documentary stamps and all other

excise taxes arising from said Settlement, will be paid for by said Lessee or assigns.

Anything in this paragraph V.3. to the contrary notwithstanding. Sussex County, its successors and assigns may extend, in its sole discretion and in writing, the time in which such construction must be completed by Lessee upon Sussex County's receipt of a request for extension by Lessee upon Lessee's demonstration of its diligence in pursuing completion of said construction.

VI. MISCELLANEOUS

1. Failure to Enforce Not a Waiver of Rights:

Any waiver or failure to enforce any provision of these Covenants in a particular situation shall not be deemed a waiver or abandonment of such provision as it may apply in any other situation or to the same or similar situation at any other location in the Industrial Park or of any other provision of these Covenants. The failure of Sussex County or any Site Lessee to enforce any Covenant herein contained shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other Covenant.

2. Mutuality, Reciprocity:

Runs with Land. All covenants, conditions, and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every part and parcel in favor or every other parcel; shall create reciprocal rights and obligations between the respective lessees of all parcels and privities of contract and estate between all grantees of said parcels, their heirs, successors, and assigns, operate as Covenants running with the land for the benefit of all other Sites. Sussex County reserves the right, however, from time to time hereinafter to delineate, plot, grant or reserve within the remainder of the Industrial Park not hereby conveyed such public streets, road, sidewalks, ways and appurtenances thereto, and such easements for drainage and public utilities, as it may deem necessary or desirable for the development of the Industrial Park (and from time to time to change the location of the same) free and clear of these restrictions and Covenants and to dedicate the same to public use or to grant the same to the County of Sussex and/or to appropriate public utility corporations.

3. Fee:

Each year, as part of the fiscal year and budget of the Sussex County Government, the Council shall include an estimate of the total amount which it considers necessary to pay the cost of the maintenance, management, operation, repair and replacement of and in the common area and provide for an assessment for fees against each lessee in a proportion to their respective site to the total number of sites available in the Delaware Coastal Business Park. Said assessment shall be invoiced at the same time as the annual taxes and to be paid within 30 days of invoice.

EXHIBIT C

Tax Map Number:
P/O# 135-20.00-75.00-A

Return to:
Sussex County
2 The Circle
P.O. Box 589
Georgetown, DE
19947

NOTICE OF AGREEMENT TO RESTRICT LESSEE FROM ENCUMBERING PROPERTY

THIS NOTICE OF AGREEMENT TO RESTRICT LESSEE FROM ENCUMBERING PROPERTY (this "Notice") dated as of this _____ day of _____, 2025, by and between SUSSEX COUNTY, a political subdivision of the State of Delaware, 2 The Circle, P.O. Box 589, Georgetown, Delaware 19947, hereinafter referred to as "Lessor", and KTM 2 LLC, with a principal office located at 1546 Savannah Road, Lewes, DE 19958, ("KTM") and Travis Wyshock, of 1546 Savannah Road, Lewes, DE 19958 ("Wyshock") (KTM and Wyshock are hereinafter collectively referred to as "Lessee").

RECITALS:

WHEREAS, Lessor is the owner of certain real property and improvements known as 21646 Baltimore Avenue, Georgetown, Delaware, which is identified as portions of Lot 19 B in the Delaware Coastal Business Park and as portions of Sussex County Tax Parcel No. 135-20.00-75.00-A, as improved ("the Leased Premises");

WHEREAS, Lessee is a Lessee of the Leased Premises pursuant to a lease agreement dated _____, 2025 ("the Lease"); and

WHEREAS, pursuant to this Lease, Lessor and Lessee agreed that Lessor shall not be liable for debts, acts, or omissions of Lessee and that Lessee has no authority to encumber the Leased Premises; and

WHEREAS, this Notice is to provide legal notice to the public that Lessor and its appointed and elected officials, employees, agents, and volunteers are not in any way liable for any claims or obligations for labor and materials for any work performed on the Leased Premises, and that the laborers, material men and subcontractors shall look solely to Lessee for payment and shall not be entitled to place a lien against said Leased Premises.

WITNESSETH

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound, the parties hereby certify, consent, and agree as follows:

1. The parties acknowledge that Lessee shall not be the agent or partner of Lessor and Lessee shall have no authority to make any contract or do any act so as to bind Lessor or as to render Lessor or Lessor's interest in the Leased Premises liable therefore. Lessee will save Lessor and the Leased Premises harmless from any penalty, damages, neglect, or negligence of Lessee, property damage, illegal act or otherwise. Any improvements by Lessee on said Leased Premises shall be constructed at the sole expense of Lessee, and Lessor and its appointed and elected officials, employees, agents, and volunteers shall not be liable in any way for any amount of money arising out of said construction. No liens may be placed on the Leased Premises without Lessor's prior written approval. Lessee has no authority whatsoever to encumber the Leased Premises or any improvements located thereon.

2. The parties hereby notify the public that Lessor and its appointed and elected officials, employees, agents, and volunteers are not in any way liable for any claims or obligations for labor and materials for any work performed on the Leased Premises, and that the laborers, material men and subcontractors shall look solely to Lessee for payment and shall not be entitled to place a lien against said Leased Premises.

3. This Notice shall be governed by the laws of the State of Delaware.

[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY.
SIGNATURE PAGES TO FOLLOW.]

IN WITNESS WHEREOF, the undersigned has caused this Notice to be signed as a sealed document under Delaware law as of the date set forth above.

LESSOR:

SUSSEX

COUNTY

DATED: _____

By: _____

Douglas B. Hudson, President
Sussex County Council

Attest: _____

STATE OF DELAWARE :
: ss.
COUNTY OF SUSSEX :

BE IT REMEMBERED, That on this _____ day of _____, A. D. 2025, personally appeared before me, the Subscriber, a Notary Public for the State and County aforesaid, Douglas B. Hudson, President, Sussex County Council, a political subdivision 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 deed of the said political subdivision; 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 political subdivision, 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 members of Sussex County Council.

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

NOTARY PUBLIC

Print Name of Notary Public

My Commission Expires: _____

LESSEE:

KTM 2 LLC
A Delaware Limited Liability Company

Witness

By: _____ (SEAL)

Authorized Representative

DATED: _____

STATE OF _____ :
: ss.
COUNTY OF _____:

BE IT REMEMBERED, that on this _____ day of _____, A.D. 2025, personally came before me, a Notary Public for the State and County aforesaid, _____, duly authorized Member of KTM 2 LLC, a Limited Liability Company existing under the laws of the State of Delaware, party to this Indenture, known to me personally to be such and acknowledged this Indenture to be his/her act and deed and the act and deed of said company, that the signature of the duly authorized officer thereto is in his / her own proper handwriting and the seal affixed is the common and corporate seal of said company, and that his / her act of sealing, executing, acknowledging and delivering said indenture was duly authorized by the bylaws of said company.

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

Notary Public

Print Name of Notary Public

My commission expires: _____

LESSEE:

Witness

By: _____ (SEAL)
Travis Wyshock

DATED: _____

STATE OF _____ :
: ss.
COUNTY OF _____:

BE IT REMEMBERED, that on this ____ day of _____, A.D. 2025, personally came before me, a Notary Public for the State and County aforesaid, Travis Wyshock, party to this Indenture, known to me personally to be such and acknowledged this Indenture to be his act and deed.

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

Notary Public

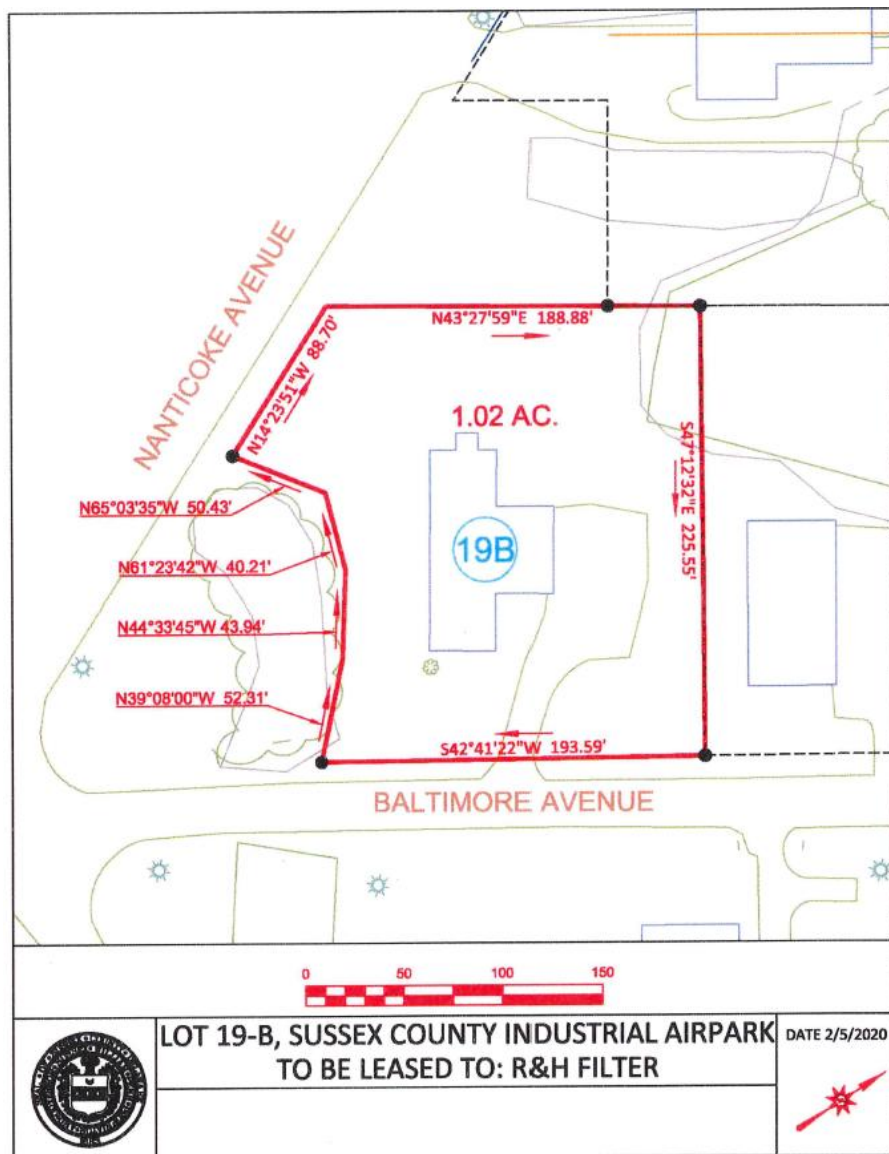
Print Name of Notary Public

My commission expires: _____

EXHIBIT A
TO NOTICE OF AGREEMENT TO
RESTRICT LESSEE FROM
ENCUMBERING PROPERTY

LEGAL DESCRIPTION OF PROPERTY

All that certain lot, piece and parcel of land, lying and being situated in Georgetown Hundred, Sussex County, and State of Delaware, being designated as a portion of Lot Numbers 19B, Delaware Coastal Business Park, more particularly described as follows to wit:



COMMERCIAL LEASE AGREEMENT

THIS COMMERCIAL LEASE AGREEMENT ("Lease") is made and entered into this ___ day of _____, 2025 (the "Effective Date"), by and between **SUSSEX COUNTY**, a political subdivision of the State of Delaware, with an address of 2 The Circle, P.O. Box 589, Georgetown, DE 19947 ("Lessor"), and **DELAWARE COAST LINE RAILROAD CO.**, with a principal office located at 14525 Staytonville Road, Greenwood, DE 19950 ("Lessee"), and it recites and provides as follows.

RECITALS

WHEREAS, Lessor is the owner of certain commercial real property which is improved by a commercial building ("the Building") as hereafter described;

WHEREAS, Lessor and Lessee were parties to a lease dated November 27, 2018, for the Building and the hereinafter defined commercial property and said lease has expired; and

WHEREAS, Lessee desires to lease said commercial real property known as 21673 Nanticoke Avenue, Georgetown, Delaware, which is improved by the Building and is identified as portions of Lots 19 and 20 in the Delaware Coastal Business Park, for the operation of a railroad construction and repair related business;

W I T N E S S E T H :

That the parties of this Lease, intending to be legally bound, hereby covenant and agree as follows:

1. **PREMISES**: Lessor leases to Lessee and Lessee accepts, as Lessee, the premises to a suitable Lessee for business purposes, described as follows:

A portion of the tract of land as improved by the Building identified as 21673 Nanticoke Avenue, Georgetown, Delaware, which is identified as portions of Lots 19 and 20 in the Delaware Coastal Business Park and as Sussex County Tax Parcel No. 135-20.00-75.00 being approximately 1.48 +/- acres of land, more or less, and more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Leased Premises" or "premises"). Lessee acknowledges that Lessor reserves the right to change the parcel numbers and street names located in Delaware Coastal Business

Park during the term of this Lease.

2. **TERM**: The initial term of this Lease shall be two (2) years and one (1) month, which shall commence at 10:00 o'clock A.M. on December 1, 2024 ("the Commencement Date") and shall terminate at 11:59 o'clock P.M. on December 31, 2026, unless sooner terminated as provided in this Lease. The parties acknowledge and agree that the Commencement Date predates the Effective Date and that this Lease shall have retroactive effect to the Commencement Date.
3. **RENT**:
 - a. For the initial lease term referred to in paragraph 2, Lessee shall pay rent annually in one (1) lump sum payment, payments of which shall be due and payable upon the commencement of the Lease term. Notwithstanding the foregoing, if the Lease term commences after January 1, the annual rent shall be prorated on a per diem basis for the remainder of the initial calendar year and payment for the remainder of the initial calendar year shall be due on the Commencement Date ("Initial Rent Payment"). All payments thereafter shall be due and payable annually on the 1st day of January each year for the remainder of the Lease term and any renewal thereof without demand and without setoff or deduction.
 - b. The annual rent ("Base Rent") shall be Twenty Thousand Seven Hundred Twenty Dollars (\$20,720.00).
 - c. All other costs due hereunder shall be considered additional rent ("Additional Rent") which shall be due and payable as hereinafter set forth.
 - d. Any payment by Lessee or acceptance by Lessor of a lesser amount than shall be due from Lessee to Lessor shall be treated as a payment on account. The acceptance by Lessor of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and Lessor may accept such check without prejudice to any other rights or remedies which Lessor may have against Lessee.
 - e. **PAYMENT PROVISIONS**: All payments should be made to Sussex County Council, Sussex County Treasury Office, 2 The Circle, P.O. Box 589, Georgetown, Delaware 19947, or such other place or places as may from time to time be designated in writing by Lessor.
4. **RENEWAL OF LEASE**: Intentionally Omitted.

5. **EASEMENTS, RESTRICTIONS AND CONDITIONS; RULES AND REGULATIONS:** This Lease is subject to easements, restrictions and conditions which are of record, or generally applicable to the immediate neighborhood, or may be observed by inspection of the premises. The Lessee shall be responsible for obtaining a title search should the Lessee so desire to verify all such easements, conditions and regulations. Lessee further acknowledges that its use of the Leased Premises is subject to Lessor's Rules and Regulations, which may be reasonably amended from time to time at Lessor's discretion, a copy of which is attached hereto as Exhibit B and are incorporated herein by reference. Failure to comply with any easements, restrictions, conditions or Rules and Regulations shall constitute a material breach of the terms of this Lease.
6. **USE:**
- a. Lessee shall have the right to utilize the Leased Premises and any improvements to be located thereon for activities such as one or more of the following: railroad construction and repair related business, boat rehabilitation and repair related business, or any other use which may be consented to by Lessor, which consent may be granted or withheld in Lessor's reasonable discretion.
 - b. The use of the Leased Premises shall at all times comply with all laws, ordinances, orders, regulations and requirements of any governmental authority having jurisdiction.
 - c. It is specifically agreed that this Lease Agreement is non-exclusive. Lessor reserves the right to lease other real property at the Delaware Coastal Business Park or the Delaware Coastal Airport for identical or similar uses.
 - d. Lessee agrees not to make any unlawful, improper or offensive use of the Leased Premises or to make any use thereof contrary to any law or ordinance now or hereafter enacted or to make any use thereof which endangers any person or property, threatens the insurability of the Leased Premises, or otherwise constitutes a nuisance (in Lessor sole judgment). Further, Lessee agrees to operate its business within the guidelines, requirements and regulations of all government and regulatory agencies as these apply to Lessee's business and use. Any notices of the Lessee's failure to fully comply, or notices that the Lessee's business violates any regulations or standards contained in the regulations of any agency, shall constitute a material breach of this Lease if not cured within permitted time frames set forth in this Lease.

- e. Lessee agrees to promptly open its business and use and occupy the Leased Premises continuously and uninterrupted in a commercially reasonable manner throughout the term of this Lease and to be open for business during reasonable business hours.
- f. Lessee agrees to operate the Leased Premises for the purposes set forth above during the entire term of this Lease in a prudent, efficient manner and reflecting the standards of a commercially appropriate business based on the permitted uses.
- g. Lessee may not (i) abandon or vacate the Leased Premises without giving notice to the Lessor; (ii) disfigure or deface the Leased Premises or permit any waste, nuisance or unlawful use on or about the Leased Premises; (iii) use the Leased Premises without a Certificate of Occupancy; or (iv) violate any municipal, county, state or federal law, rule, regulation or order.

7. **ADDITIONAL RENT - PAYMENTS, COMMON AREA MAINTENANCE, TAXES AND INSURANCE.**

- a. **Payments.** In the event any installment of Rent, Additional Rent, or any sum due Lessor under this Lease, is not received in full within thirty (30) days from the due date, then Lessee shall pay to Lessor a late administration fee equal to five percent (5%) of such overdue amount. Further, any Rent, Additional Rent, or other sum past due and owed to the Lessor by the Lessee under this Lease shall be subject to interest at the rate of eighteen percent (18%) per annum. Any check returned to the Lessor for any sum due to Lessor under this Lease, shall be subject to an additional late fee of ten percent (10%) and an administrative fee of the greater of One Hundred Dollars (\$100.00) or the Lessor's standard administrative fees for similar leases in the Delaware Coastal Business Park. Acceptance of late Rent shall in no way prejudice, waive, modify, or alter any of the rights or remedies which the Lessor may have under this Lease.
- b. **Taxes.** Lessor will pay all general real estate taxes, if any, which may be levied or assessed by any lawful authority against the real property only on the Leased Premises. Lessee agrees to pay any and all taxes and assessments levied or assessed against the improvements constructed on the Leased Premises and all equipment installed therein. Lessee shall make payments directly to the taxing authority when due.
- c. **Maintenance** Lessee shall be responsible for operating, repairing, and maintaining the Building, facilities and all grounds of the Leased Premises

(hereinafter "Maintenance"). Maintenance of Leased Premises shall be an all-inclusive term which encompasses, among other things, snow and ice removal of all parking areas and drive aisles, lawn mowing, landscaping, debris and refuse removal from the grounds, etc. If Lessee fails to meet its obligations under this Paragraph, Lessor may perform the necessary work and charge Lessee for the same, which charge shall be deemed as Additional Rent due within thirty (30) days of Lessee's receipt of written notice from Lessor. Lessor shall be responsible for ground maintenance, including lawn mowing and snow and ice removal, along Cedar Creek Avenue up to the edge of the Leased Premises. Lessee shall neither encumber nor obstruct the sidewalks, driveways, yards or entrances, but shall keep and maintain the same in a clean condition, free from debris, trash, refuse, snow and ice. Lessee shall be responsible for all grass cutting and snow removal on the Leased Premises. Grass shall be mowed regularly so as to prevent grass from growing beyond six (6) inches in height. Snow removal from access road to the Building shall be the sole responsibility of Lessee.

- d. **Common Area Maintenance Charges**. Each year, as part of the Sussex County Government's fiscal year and budget process, Lessor shall prepare an estimate of the total cost required to pay for the maintenance, management, operation, repair and replacement of the common area in the Delaware Coastal Business Park, and shall assess fees against Lessee for its proportionate share of the total cost which shall be calculated based on the acreage of Lessee's Leased Premises in proportion to the total combined acreage of all sites available in the Delaware Coastal Business Park ("Common Area Fees"). The Common Area Fees shall be invoiced to Lessee in August based on costs from the previous July to June and shall be due and payable to Lessor by Lessee within thirty (30) days of Lessee's receipt of Lessor's written invoice. The Common Area Fees shall be deemed Additional Rent hereunder.

8. **TRANSFER TAX**: This transaction is exempt from realty transfer tax.

9. **UTILITIES**: Lessor shall be responsible for extending electric, potable water, sewer and fire suppression facilities to the edge of the Leased Premises. Lessee shall be solely responsible for all permanent utility installation on and from edge of the Leased Premises. Lessee shall pay all one-time charges, for on and/or off-site improvements levied by utility providers including but not limited to: connection fees, tap-in fees, impact fees, hookup fees and deposits, for electricity, potable water, fire suppression, sewer, internet access, telephone and fire alarm land lines, etc. Lessee shall also pay for any and all recurring charges for utility services used or consumed at the Leased Premises during Lessee's use or occupancy thereof.

Each year Lessor has the right to levy water usage fees to all tenants of the Delaware Coastal Business Park based on meter readings if desired.

10. **IMPROVEMENTS:**

- a. **Condition of Leased Premises.** Subject to Lessor's responsibilities referred to herein, Lessee accepts the Leased Premises, including the Building, in "as is" condition and acknowledges that the Leased Premises and the Building are suitable for Lessee's intended use.
- b. **Intentionally Omitted.**
- c. **Lessee's Work.** Lessee agrees not to commence any renovations, repairs, or construction until Lessor has approved the Lessee's plans and layout. Lessee shall keep the Leased Premises and the Building free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Lessee. Any work performed by Lessee shall be completed in a good and workman like manner using new construction materials, and Lessee shall obtain all permits required for any such work.
- d. **Stormwater Management.** Lessee shall meet all stormwater and water quality requirements, rules, laws, regulations, statutes, and ordinances, as may be amended from time-to-time by an authority having jurisdiction over the same, pertaining to the Leased Premises either by use of on-site facilities constructed at Lessee's sole expense or through use of existing facilities within the Delaware Coastal Business Park subject to Lessor's prior written approval which may be withheld in Lessor's sole discretion.
- e. **Construction, Repair, Maintenance and Alteration of Improvements.** The Leased Premises are being leased with the Building located thereon. Lessee acknowledges that the Building shall be repaired and maintained at Lessee's sole cost and expense, and that Lessee shall maintain any and all improvements on the Leased Premises in good condition and repair during the Lease term. Any improvements or structure of any kind Lessee constructs on the Leased Premises, and any repairs, maintenance and alterations thereto or to the Building, shall be in compliance with all restrictions, conditions, ordinances, laws, regulations, Rules and Regulations, including Lessee's application for and receipt of all required permits and approvals prior to commencement of any work. All fixtures and equipment shall remain Lessee's property except as otherwise stated herein. The Building shall at all times remain property of Lessor. Lessee shall provide Lessor with a copy of all Certificates of Occupancy and

Releases of Liens. At the end of the term of the Lease, all improvements to either the Leased Premises or the Building, or both, shall be the Lessor's property.

11. **LIENS:**

- a. **No Authority to Encumber.** Lessee has no authority whatsoever to encumber the Leased Premises, the Building, or any improvements located thereon.
- b. **Mechanic's Liens.** Lessee shall not permit and shall immediately remove any mechanic's liens placed against the Leased Premises which may have resulted from any work performed on Lessee's behalf. Permitting a Mechanic's Lien to be placed against the Leased Premises or the Delaware Coastal Business Park shall be a material default if not removed within thirty (30) days after notice of its entry. Any improvements by Lessee on said Leased Premises shall be constructed at the sole expense of Lessee, and Lessor and its appointed and elected officials, employees, agents, and volunteers shall not be liable in any way for any amount of money arising out of said construction. Before starting construction, Lessee shall have recorded on the public records of Sussex County, Delaware, such legal notice as may be necessary, and in the form attached hereto as Exhibit C, wherein the public is advised that Lessor and its appointed and elected officials, employees, agents, and volunteers are not in any way liable for any claims or obligations for labor and materials on said job, and that the laborers, material men and subcontractors shall look solely to Lessee for payment and shall not be entitled to place a lien against said demised property. If any mechanic's or materialmen's lien is filed or any claim made on account of labor or other material furnished, alleged to have been furnished or to be furnished to Lessee at the Leased Premises or against Lessor as the owner thereof, in addition to all remedies at law, Lessee shall: (a) pay to Lessor the greater of a fine of \$50.00 per day or the Lessor's standard fine for similar violations in similar leases in the Delaware Coastal Business Park for every day that any such Mechanic's Lien remains shall be due, and (b) within ninety (90) days after written notice from Lessor thereof, either pay or bond the same or procure the discharge thereof in such manner as may be provided by law. Lessee will indemnify Lessor and its appointed and elected officials, employees, agents, and volunteers for its costs, legal fees and expenses in defending any action, suit or proceedings which may be brought thereon or for the enforcement of such lien, or liens and Lessee shall pay any damages and any judgment entered thereon and save harmless and indemnify Lessor and its appointed and

elected officials, employees, agents, and volunteers from any claims of damages resulting there from. Failure to do so shall entitle Lessor to resort to remedies as are provided herein in the case of any default of this Lease, in addition to such as are permitted by law.

- c. **Liens**. Any liens placed on property owned by Lessee which are located on the Leased Premises must first be approved by Lessor and Lessor shall have the right, in Lessor's sole discretion, to grant or withhold consent. Lessee shall hold Lessor harmless and without risk with respect to any lien placed on Lessee's equipment or personal property within or about the Leased Premises. Prior to the expiration or earlier termination of this Lease, Lessee shall promptly remove any and all liens including any against any of Lessee's property or equipment, or with advanced written notice to Lessor, remove any such property or equipment from the Leased Premises. Lessor shall assume no risk or responsibility for any lien remaining on the Leased Premises or Lessee's equipment or property and Lessee shall indemnify Lessor from any liability whatsoever. This paragraph shall apply to any work performed by Lessee on or in the Leased Premises during the entire Term of this Lease and any renewal hereof.
 - d. **Statutory Lien**. Lessor hereby claims any and all statutory or other liens which it may have upon the equipment, furniture, fixtures, real and personal property of any Lessee or Sub-Lessee placed upon the improvements, and Lessee agrees that Lessor has such a lien to the extent provided by statute or otherwise. Lessor may, at Lessor's reasonable discretion, subordinate its lien right to the lien of any mortgage, deed of trust, or security instrument given by Lessee for the renovation of the improvements and purchase of the equipment, furniture, fixtures and personal property placed upon the Leased Premises. Lessee shall furnish the Lessor with copies of all such security instruments.
12. **INSURANCE**: Lessee shall secure and maintain, at its own expense, the following required insurance coverages:
- a. **Commercial General Liability Insurance** - Lessee shall secure and maintain, at its own expense, commercial general liability insurance that insures against bodily injury, property damage, personal and advertising injury claims arising from Lessee's occupancy of the Leased Premises or operations incidental thereto. The minimum limits of liability for this insurance are as follows:
 - (1) \$1,000,000.00 combined single limit – each occurrence

- (2) \$1,000,000.00 combined single limit – personal and advertising injury
- (3) \$2,000,000.00 combined single limit – general aggregate
- (4) \$1,000,000.00 combined single limit – products / completed operations aggregate

Such insurance shall be endorsed to name Lessor and its appointed and elected officials, employees, agents and authorized volunteers as additional insureds on a primary and non-contributory basis, with respect to liability arising out of or in connection with Lessee's occupancy of the Leased Premises or operations incidental thereto under this Lease Agreement. Certificates of insurance shall be delivered prior to occupancy and annually thereafter to Lessor and the Office of Economic Development, Sussex County Delaware.

- b. **Business Auto Liability Insurance** - Lessee shall secure and maintain, at its own expense business auto liability insurance with a minimum combined single limit of \$1,000,000 per accident and including coverage for bodily injury and property damage claims arising out of the maintenance, use or operation of any auto and contractual liability protection for bodily injury and property damage claims assumed under this Lease Agreement.
- c. **Workers' Compensation & Employers' Liability** - Lessee shall secure and maintain, at its own expense, workers' compensation insurance and employers' liability insurance. The workers' compensation insurance must satisfy Lessee's workers' compensation obligation to its employees in Delaware under State or Federal law. Employers' liability insurance must be secured with minimum limits of \$100,000.00 for bodily injury by accident, \$100,000.00 each employee for bodily injury by disease, and a \$500,000.00 policy limit for bodily injury disease. To the fullest extent permitted by law, Lessee's workers' compensation and employers' liability insurer shall not hold any right of subrogation against Lessor, and its appointed and elected officials, employees, agents, and volunteers. Lessee shall advise its insurer(s) of the foregoing and such waiver shall be permitted under any workers' compensation and employers' liability insurance policies maintained by Lessee.
- d. **Property and Business Income Insurance** - Lessee shall secure and maintain, at its own expense, all risk (special form) property insurance that insures against direct physical loss of or damage to the Building and Lessee's personal property including Lessee's improvements, fixtures, equipment and materials located in or on the Leased Premises, on a replacement cost valuation basis, with limits not less than 100% of the insurable replacement cost of all such property. Lessee shall also secure, at its own expense, all

risk (special form) business income and extra expense insurance in amounts satisfactory to protect its interests as a result of direct physical loss of or damage to Lessee's covered property located on the Leased Premises. Lessor shall be an insured on Lessee's property and business income insurance as its interests may appear, in amounts sufficient to protect Lessor's interests.

- e. **Waiver of Subrogation** - To the fullest extent permitted by law, Lessee waives any right of recovery from Lessor, and its appointed and elected officials, employees, agents, and volunteers, for any loss, damage or injury to Lessee's property located on the Leased Premises (or resulting loss of income or extra expense), by reason of any peril required to be insured against under this Lease. To the fullest extent permitted by law, Lessee's property insurer shall not hold any right of subrogation against Lessor, and its appointed and elected officials, employees, agents, and volunteers. Lessee shall advise its insurer(s) of the foregoing and such waiver shall be permitted under any property and/or business income and extra expense insurance policies maintained by Lessee. Any deductible amount(s) selected by Lessee shall be the sole responsibility of Lessee.
- f. **Umbrella Excess Liability or Excess Liability Insurance** – Lessee shall secure and maintain, at its own expense, umbrella excess liability or excess liability insurance with minimum limits of \$4,000,000 combined single limit - each occurrence and \$4,000,000 combined single limit – aggregates. This insurance shall include the insurance specified in Paragraphs 12(c), 12(d) (Employers' Liability Insurance only) and 12(e) as underlying insurance. This insurance shall follow form with the coverage provisions, including who is an insured, required for underlying insurance.
- g. **Pollution Liability Insurance** – Lessee shall secure and maintain, at its own expense, pollution liability insurance that insures claims for pollution and remediation legal liability arising out of or in connection with the Lessee's occupancy of the Leased Premises. The minimum limits of liability for this insurance are \$1,000,000 each pollution condition and \$1,000,000 annual aggregate. This insurance shall name Lessor, and its appointed and elected officials, employees, agents, and volunteers as additional insureds on a primary and non-contributory basis. The endorsement(s) evidencing the required additional insured status must be submitted in conjunction with certificates of insurance furnished to Lessor. Lessee must continue to maintain such insurance, covering incidents occurring or claims made, for a period of three (3) years after termination of this Agreement.

- h. **Evidence of Insurance / Insurers** - Lessee shall furnish certificates of insurance, acceptable to Lessor, to the Manager, Airport and Business Park Operations, Sussex County, Delaware evidencing all policies required above at execution of this Agreement and prior to each renewal thereafter. Such insurance shall be written with insurers allowed to do business in Delaware, with a Best's Financial Strength Rating of "A-" or better, and a Financial Size Category of "Class VII" or better in the latest evaluation of the A.M. Best Company, unless otherwise approved by the Lessor. All insurance policies required hereunder shall be endorsed to provide that the policy is not subject to cancellation or non-renewal in coverage until sixty (60) days prior written notice has been given to Lessor. Therefore, a copy of the endorsements to the required policies that confirm additional insured status and the insurer is obligated to send notice to Lessor as required herein, must accompany all certificates of insurance. Liability policies required herein (other than pollution liability) may not be written on a "claims made" basis without the prior written approval of Lessor. If Lessee shall fail, refuse or neglect to secure and maintain any insurance required of Lessee or to furnish satisfactory evidence of insurance, premiums paid by Lessor shall be recoverable by Lessor from Lessee, together with interest thereon, as additional rent promptly upon being billed therefore.
 - i. All policy limits as stated herein shall be adjusted every five (5) years in accordance with increases in the consumer price index to levels satisfactory to Lessor.
 - j. **Hold Harmless Agreement** – To the fullest extent permitted by law, Lessee agrees to indemnify and hold harmless Lessor and its appointed and elected officials, employees, agents and authorized volunteers against all claims, damages, liabilities, or costs including reasonable attorney fees and defense costs, to the extent resulting from the negligence acts, omissions or willful misconduct of the Lessee in connection with this Lease Agreement.
13. **ENTRY BY LESSOR AND AGENTS**. At any and all reasonable times during the term of this Lease, Lessor and Lessor's duly authorized agent or agents shall have the right to enter the Leased Premises for the following purposes:
- a. To inspect the Leased Premises in the event of an emergency; and
 - b. To effect Lessee's compliance with any rule or regulation adopted by Lessor, or to effect Lessee's compliance with any restriction, covenant, law, ordinance, order or regulation of Lessor, including, but not limited to, the existence and validity of permits or other approvals for any work or activity being performed on the Leased Premises.

Lessor shall provide Lessee with at least twenty-four (24) hours advance written notice prior to entering the premises unless such notice has been waived by Lessee. Lessor will use its best efforts to inspect the premises at a time and in a manner that minimizes any interference with Lessee's business operations being conducted on the premises.

14. **LESSEE TO INDEMNIFY LESSOR.** Lessee hereby releases Lessor from any and all liability and shall hold Lessor harmless, defend and indemnify Lessor for any and all liability, claims, causes of action, damage and loss or any kind whatsoever, including but not limited to attorneys' fees and costs, for injuries sustained by any person or persons in or upon the Leased Premises (including death) or injuries to property (real or personal), unless the basis for the cause of action solely relates to the willful or negligent actions of the Lessor, its employees and agents. For purposes of this provision, "Lessor" shall include its appointed and elected officials, employees, agents, and volunteers.

15. **EXPIRATION OF LEASE TERM.**

- a. At the expiration of the Lease term, Lessee shall peaceably surrender and yield to Lessor, its successors or assigns, the Leased Premises; provided, however, that Lessee shall be responsible for any damage to the Leased Premises not covered by Lessor's insurance if such damage is caused by fire or other casualty resulting from the negligence, accidental conduct or tortuous conduct of Lessee or Lessee's employees, licensees or invitees, ordinary wear and tear excepted.
- b. Lessee may not allow any liens to be placed against any of Lessee's equipment or the improvements remaining in, about or upon the Leased Premises. Lessee agrees to defend and hold Lessor harmless against any claim, liability or loss that may result for any reason from any lien. Lessor shall have the absolute right to dispose, remove or to retain any equipment not removed from the Leased Premises at the termination or expiration of this Lease, surrender or abandonment of the Leased Premises and shall not be bound or subject to any risk, cost or liability from liens Lessee has permitted to be attached thereto. At the termination of this Lease, the improvements erected on the Leased Premises and any fixtures which are a part thereof which cannot be removed without substantial damage to said improvements, shall remain a part to the Leased Premises and shall be the property of the Lessor. Any trade fixtures which were installed on the Leased Premises by Lessee and which are removable without substantial damage to the improvements shall remain the property of the Lessee, provided that Lessee shall promptly repair any damage to the improvements

on the Leased Premises caused by their removal and that Lessee is not in default of any covenant or agreement contained in this Lease Agreement; otherwise such trade fixtures shall not be removed and Lessor shall have a lien thereon to secure itself on account of its claims.

- c. If the Lessee shall default in surrendering the Leased Premises upon the expiration or earlier termination of this Lease, the Lessee shall be deemed to be "Holding Over" without Lessor's consent and Lessee shall be liable to Lessor for all costs, losses, claims or liabilities (including attorneys' fees) that Lessor may incur as a result of Lessee's failure to surrender the Leased Premises.

- 16. **QUIET ENJOYMENT**. Lessor covenants and agrees that, so long as Lessee shall not be in default under any of the terms and conditions of this Lease, Lessee shall lawfully and quietly hold, occupy and enjoy the Leased Premises during the term of this Lease without hindrance or molestation from Lessor, or any person or persons claiming under Lessor wherein Lessor shall have previous knowledge of any actions.
- 17. **SIGNS**. Prior to installation, Lessee shall submit sign proposals to Lessor for Lessor's approval and consent as to the size, height, type, and location of any on premise sign Lessee seeks to install, such approval not to be unreasonably withheld. Electronic Messaging Centers shall be prohibited. Any sign, device, fixture or other attachment permitted to be installed by Lessee hereunder, shall be installed by Lessee at its own expense and in accordance with the Rules and Regulations attached hereto, all governmental rules, regulations, ordinances, laws and requirements and Lessee shall obtain any and all required permits. Lessee shall be responsible for any damage resulting from the installation or removal of any such sign, device, fixture or other attachment. Lessee shall keep its sign lighted at such reasonable times as Lessor may require under its Rules and Regulations, or as may be required by ordinance, law or regulation of any governing authority. Lessee shall maintain its sign and keep it in good repair during the term of this Lease. Upon the expiration or earlier termination of this Lease or Lessor's right to possession of the Leased Premises in accordance with this Lease, Lessee shall, at Lessee's sole cost and expense, remove any signage and restore and repair that portion of the Leased Premises affected by the installation or removal of the signage to the condition satisfactory to Lessor.
- 18. **DEFAULT**.

- a. **Events of Default**. The occurrence of one or more of the following events shall constitute an event of default (each being referred to as an “Event of Default”) pursuant to the terms of this Lease:
- i. Lessee fails to pay when due any and all monies due hereunder, including, but not limited to Rent, Additional Rent, and/or any other sums due Lessor by Lessee, and such failure continues more than thirty (30) days after receipt by Lessee of Lessor’s written notice of such failure; or
 - ii. Failure by Lessee to secure required insurance pursuant to Paragraph 13 of this Lease, or to cause renewals to be written and policies or copies thereof to be delivered to Lessor at least ten (10) days before the respective expiration thereof; or
 - iii. The failure of Lessee to comply with or to observe any other terms, provisions or conditions of this Lease performable by Lessee to Lessor’s satisfaction, including, but not limited to, compliance with the Rules and Regulations, maintenance, removal, repairs and replacements, and such failure continues after Lessor gives Lessee written notice that Lessee has thirty (30) days to cure the default. If such default cannot reasonably be cured within the thirty (30) day period, Lessee shall be permitted such additional time as is needed to cure the same so long as Lessee has notified Lessor and Lessee has commenced its actions to cure within such thirty (30) day period and such cure thereafter is continuously and diligently undertaken and pursued by Lessee (or its mortgagee) and prosecuted to completion, but in no event longer than ninety (90) days, unless the cure involves repairing or correcting any structural issues where the cure time frame shall be a commercially reasonable time frame;
 - iv. The dissolution or liquidation of Lessee or the filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee promptly to lift or bond (if legally permissible) any execution, garnishment or attachment of such consequences as will impair its ability to carry on its operation, or the commission by Lessee of any act of bankruptcy, or adjudication of Lessee as bankrupt or assignment by Lessee for the benefit of its creditors, or the entry by Lessee into an agreement of composition with its creditors, or the approval by a Court of competent jurisdiction of a petition applicable to Lessee in any proceedings for its reorganization instituted under the provisions of the Federal Bankruptcy Statutes, as amended, or under any similar act which may hereafter be enacted. The term "dissolution or liquidation of the Lessee", as used in this subsection, shall not be construed to include the cessation of the corporate existence

of Lessee resulting from a merger or consolidation of Lessee into or with another corporation or of a dissolution or liquidation of Lessee following a transfer of all or substantially all its assets as an entirety; or

- v. Failure by Lessee to abide by any laws, statutes, rules, or regulations relating to the Leased Premises or the Delaware Coastal Airport and Delaware Coastal Business Park, which failure continues for a period of thirty (30) days after Lessee's receipt of notice by mail that the violation referred to in such notice has not been corrected;
 - vi. Lessee shall abandon the Leased Premises or suffer the Leased Premises to become vacant or deserted;
 - vii. Lessee shall remove or caused to be removed from the Leased Premises Lessee's fixtures, machines, or equipment without Lessor's prior written consent; or
 - viii. Failure by Lessee to cure immediately after receipt of notice from Lessor, any hazardous condition which Lessee has created in violation of law or this Lease.
- b. **Lessor's Remedies.** In the event Lessee has an Event of Default that has not been cured within the permitted time periods, the Lessor shall have all of the rights and remedies permitted by law, in equity, by statute and otherwise, including, without limitation, the following:
- i. **Terminate Lease.** Lessor may terminate this Lease, in which event, Lessee shall remove all personal property from the Leased Premises within sixty (60) days after termination. If Lessee fails to timely remove said personal property, Lessee will be deemed to have abandoned the property, and title for which shall revert to Lessor, and at Lessor's option, Lessor may remove the property. Lessee agrees to pay Lessor the cost of removing the personal property.
 - ii. **Enter and Cure Default.** If Lessee defaults in the performance of any of its obligations under the provisions of this Lease and if such default shall continue beyond the time periods set forth herein for curing such default, then Lessor may, at its option, enter upon the Leased Premises without terminating this Lease and without being liable to prosecution or for any claim of damages, and do whatever Lessee is obligated to do under the terms of this Lease or otherwise cure any default by removal (including removal of the Improvements), repair or replacement, and cure any such

default on behalf of Lessee, and any sums expended by Lessor in the performance of any such obligation of Lessee shall be repaid as Additional Rent, by Lessee to Lessor immediately upon demand, together with interest thereon, at the interest rate of eighteen percent (18%) per annum beginning from the date any such expense was incurred by Lessor. In the event that Lessor determines, in Lessor's reasonable judgment, that it is in best interest of the Lessor for Lessor to complete or perform any of Lessee's obligations under this Lease, Lessor reserves the right to complete or perform any such obligation at Lessee's cost and liability, no written notice being required. This shall not be permitted until the expiration of the time frames in Paragraph 19(a) above.

- iii. **Surrender of Premises**. Upon termination of this Lease for any reason or upon termination of Lessee's right of possession, as provided above, Lessee shall promptly surrender possession to Lessor and vacate the Leased Premises, and Lessor may re-enter the Leased Premises without further notice to Lessee and repossess the Leased Premises by force, summary of proceedings, ejectment or otherwise. Lessor may also dispossess or remove Lessee and all other persons and property from the Leased Premises, and Lessor shall have, hold and enjoy the Leased Premises and the right to receive all rental income therefrom.
- iv. **Re-letting**. At any time after the expiration of Lessee's possessory right to the Leased Premises, Lessor may re-let the Leased Premises, or any part thereof, in the name of Lessor or otherwise for such term (which may be greater or less than the period which would otherwise have constituted the balance of the term of the Lease) and on such conditions (which may include concession or free rent) as Lessor, in its sole and absolute discretion, may determine, and Lessor may collect and receive the rental therefrom which will serve to mitigate the damages due from Lessee. Lessor shall in no way be responsible or liable to Lessee for any failure to re-let the Leased Premises or any part thereof or for any failure to collect any rent due upon such re-letting, and Lessee's liability shall not be affected or diminished in any respect by such failure. In the event Lessor re-lets the Leased Premises at a rental higher than that due from Lessee under the provisions hereof, Lessee shall not be entitled to share in any excess. Lessor, at its option, may make such alterations, repairs and changes to the Leased Premises as Lessor, in its sole judgment, considers advisable or necessary for the purpose of re-letting the Leased Premises, and the making of such alterations, repairs and changes shall not operate or be construed to release Lessee from liability.

- c. **Lessee's Obligation**. The expiration of Lessee's right to possession of the Leased Premises shall not relieve Lessee of its liabilities hereunder, and the obligations created under this Lease shall survive any such expiration. In the event of such expiration, whether or not the Leased Premises or any part thereof shall have been re-let, Lessee shall pay to Lessor all Rent and Additional Rent required to be paid by Lessee up to the time of such expiration; and thereafter, Lessee, until the end of the term of this Lease, shall be liable to Lessor and shall pay to Lessor, as and for liquidated and agreed current damages for Lessee's default(s), the equivalent of the amount of the Rent and Additional Rent which would be payable under this Lease by Lessee if Lessee were still in possession less the net proceeds of any re-letting effected pursuant to the provisions of Section (d) of this paragraph after deducting all of Lessor's expenses in connection with such re-letting including, without limitation, all repossession costs, brokerage commissions, legal expenses, reasonable attorney's fees actually incurred, alteration and repair costs and expenses of preparation for such re-letting.
- d. **Current Damages**. Lessee shall pay such current damages ("Deficiency") to Lessor in a timely manner when due under the terms of this Lease, and Lessor shall be entitled to recover from Lessee each Deficiency as such Deficiency shall arise. At any time after the expiration of Lessee's possessory right to the Leased Premises, Lessor, at its option, may demand as and for liquidated and agreed final damages for Lessee's default(s), and Lessee shall pay to Lessor an amount equal to the difference between the Rent and Additional Rent payable hereunder for the unexpired portion of the Lease Term and then fair and reasonable rental value of the Leased Premises for the same period. Lessee shall also pay to Lessor all of Lessor's expenses incurred in connection with any re-letting including, without limitation, all repossession costs, brokerage commissions, legal expenses actually incurred of preparation for re-letting. If the Leased Premises or any part thereof is re-let by Lessor for the unexpired term of this Lease Agreement or any part thereof, the amount of rent payable upon such re-letting shall be deemed to be the fair and reasonable rental value for the part or the whole of the Leased Premises re-let. Nothing herein contained shall limit or prejudice the right of Lessor to prove and obtain as damages, by reason of any default by Lessee, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when such damages are to be proved.
- e. **Deficiency**. Any suit brought to collect the amount of the deficiency for any month shall not prejudice the right of Lessor to collect the deficiency for any subsequent month by a similar action.

- f. **Lessor's Right**. Any action taken by Lessor under this Paragraph shall not operate as a waiver of any right Lessor would otherwise have against Lessee for breach of this Lease, and Lessee shall remain liable to Lessor for any damages suffered by reason of Lessee's default or breach of this Lease. Lessor shall also be entitled to enjoin any breach or threatened breach by Lessee of any of the covenants and conditions of this Lease; and in the event of such breach, Lessor shall have all rights and remedies allowed at law and equity by statute or otherwise. Any and all remedies provided for herein are considered cumulative and not exclusive.
- g. **Waiver of Jury Trial**. TO THE EXTENT PERMITTED BY LAW, IT IS MUTUALLY AGREED BY AND BETWEEN LESSOR AND LESSEE THAT THE RESPECTIVE PARTIES HERETO SHALL, AND THEY DO HEREBY, WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BETWEEN THE PARTIES HERETO OR THEIR SUCCESSORS OR ASSIGNS ON ANY MATTERS ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS LEASE AGREEMENT, THE RELATIONSHIP OF LESSOR AND LESSEE, AND/OR LESSEE'S USE OF, OR OCCUPANCY OF, THE LEASED PREMISES AND ANY CLAIM OR INJURY OR DAMAGES RELATING THERETO. IN ANY EVICTION PROCEEDING ARISING OUT OF A DEFAULT BY LESSEE, LESSOR AND LESSEE CONSENT TO AN EXPEDITED OR SUMMARY PROCEEDING TO THE EXTENT AVAILABLE UNDER APPLICABLE LAW.
19. **EMINENT DOMAIN**. The Lessor agrees not to take the Leased Premises by Eminent Domain or similar vehicle to remove the Lessee from the Leased Premises.
20. **CONDEMNATION**: If at any time during the term hereof the whole of the Leased Premises shall be taken for any public or quasi-public use under any statute or by right of eminent domain, then and in such event, when possession shall have been taken of the Leased Premises by the condemning authority, this Lease and all rights of Lessee hereunder shall immediately cease and terminate and the rent shall be apportioned and paid to the time of such termination. If pursuant to the provisions of this article, this Lease Agreement shall have been terminated and if prior to such termination, Lessee shall have made any improvements upon the Leased Premises, Lessor shall be entitled to all of the condemnation proceeds which may be granted with respect to the land and improvements existing on the Leased Premises at the commencement of this Lease; and Lessee shall be entitled to the proceeds of any condemnation awarded on account of the value of any improvements made by Lessee.

21. **PARTIAL CONDEMNATION:** If after commencement of this Lease Agreement only a part of the Leased Premises shall be taken or condemned, Lessor shall be entitled to any award made with respect to the land and any improvements existing on the Leased Premises at the commencement of this Lease and Lessee shall be entitled to any award made for any improvements made by Lessee which are condemned. In the event such condemnation shall leave a portion of the Leased Premises which in Lessee's sole judgment is usable by Lessee, this Lease shall remain in full force and effect, but the Rent herein reserved to Lessor shall be adjusted so that Lessee shall be entitled to a reduction in Rent in the proportion that the value of land taken bears to the value of the entire Leased Premises. If a portion of the Leased Premises is taken or condemned prior to commencement of construction hereunder, the proceeds shall belong solely to Lessor and the rental hereunder shall not be abated. Notwithstanding the foregoing, Lessee shall have the right to terminate this Lease if, in its sole judgment, the Leased Premises have been rendered unsuitable for its purpose.
22. **SUBORDINATION.**
- a. This Lease shall be subject and subordinate to, and may be assigned as security for, any present and future mortgage or deed of trust on or of the Leased Premises and all renewals, modifications, extensions, consolidations or replacements thereof. If requested, Lessee agrees to execute written documents evidencing the subordination of this Lease to, and its assignment as additional security for any mortgage or deed of trust. If Lessor requires Lessee to execute a Subordination Agreement, preparation of the Subordination Agreement shall be Lessor's sole cost and expense.
 - b. In addition, upon request of any mortgagee of the Leased Premises, Lessee will execute and enter into an attornment and non-disturbance agreement with such mortgagee wherein Lessee will agree that, in the event that such mortgage is foreclosed, Lessee will attorn to the mortgagee or other owner of the Property as Lessee's Lessor and the mortgagee or other owner of the Property will, provided Lessee is not in default under the terms of this Lease, recognize the rights of Lessee under the provisions of this Lease and will not disturb the possession of Lessee hereunder.
23. **PROPERTY RIGHTS RESERVED:** This Lease and all provisions hereof are subject and subordinate to the terms and conditions of the instruments and documents under which Lessor acquired the Leased Premises from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in this Lease of said lands from

Lessor, and any existing or subsequent amendments thereto, and are subject to any ordinances, rules or regulations which have been, or may hereafter be adopted by Lessor pertaining to the Delaware Coastal Airport and the Delaware Coastal Business Park. This Lease is expressly subordinate to the terms and conditions of any grant agreement between Sussex County and the Federal Aviation Administration.

24. **ASSIGNMENT & SUBLETTING.**

- a. Lessee shall not have the right to assign this Lease Agreement or sublet the Leased Premises unless the written consent of Lessor is acquired, which consent may be granted or withheld in Lessor's sole discretion. Lessee shall not assign or sublet the Leased Premises for a use other than as specified in Paragraph 6 above and shall provide Lessor with at least thirty (30) days' prior written notice of any desired assignment or subletting. All assignments and subletting shall require Lessor's prior review and written approval, which Lessor may withhold or grant in its sole discretion. Unless otherwise agreed, such assignment or subletting shall in no way relieve Lessee of any responsibility for the payment of rent or for the performance of any of the other covenants or conditions hereof. Such assignee or Sub-Lessee shall in writing assume all of the obligations to be performed by Lessee hereunder. Lessee agrees to pay for any attorney's fees incurred by Lessor resulting from any sublease or assignment. Lessor reserves the right to require the renegotiation of the terms of the Lease in return for consenting to a sublease or assignment.
- b. If Lessee seeks to sublease the Leased Premises, Lessee shall provide Lessor with information as to the compensation Lessee will receive for the subleased portion of the Leased Premises. If Lessor consents to the sublease, the Base Rent for the Leased Premises shall increase by the greater of the rate of compensation received by Lessee and the New Market Base Rent as hereinafter defined.
- c. Upon Lessee's notification to Lessor of a potential sublease, Lessor shall conduct a market rent analysis to establish the rental value of acreage in the Delaware Coastal Business Park ("the New Market Base Rent"). If Lessor has otherwise conducted a market rent analysis in the Delaware Coastal Business Park within ten (10) years of Lessee's notification to Lessor of a potential assignment or sublease, Lessor may use the results of said analysis to establish the New Market Base Rent instead of conducting a new market rent analysis. Upon receipt of the market rent analysis, Lessor shall provide a copy of the same to Lessee and the value of the property in the Delaware Coastal Business Park as determined by said analysis shall be the

rent payable by Lessee for the Leased Premises subject to yearly CPI-U increases thereafter pursuant to Paragraph 52 and provided said market rent is greater than the base rent received by Lessee from the subtenant. In no event shall the rent for the subleased portion of the Leased Premises be lower than the Base Rent due from Lessee.

- d. Within thirty (30) days after Lessor gives Lessee notice of the adjusted Rent and Lessee does not object to the same as provided above, then Lessee will pay the adjusted Rent retroactive to the first month of the then-current sublease period. The adjusted Rent will be the yearly Base Rent for the subleased area for the balance of the sublease period. Lessor will give Lessee written notice indicating how the adjusted Rent amount was computed.
- e. If Lessee objects to the analysis as provided in Paragraph 24(c) above, then Lessee shall be free to engage its own commercial appraiser, having no less than five (5) years' full-time commercial appraisal experience in the State of Delaware and an MAI designation to perform at Lessee's expense, the land rental analysis. The appraiser shall have a certified general license by the Delaware Council on Real Estate Appraisers or, if the appraiser is an out-of-state appraiser, the appraiser shall have a temporary license or certificate issued by the Delaware Council on Real Estate Appraisers. The Lessee's appraiser shall provide its written analysis to Lessor within forty-five (45) days of engagement by the Lessee but in no event more than sixty (60) days from the date of Lessee's objection to the analysis as provided in Paragraph 24(c) above. If the Lessor accepts the Lessee's appraiser's analysis, then it shall constitute an accepted adjustment and the New Market Base Rent. If the Lessor objects to the Lessee's appraiser's analysis within thirty (30) days of its receipt of the same and Lessee's appraiser's analysis is within twenty percent (20%) of the Lessor's appraiser's analysis, the results of both appraisals shall be averaged to determine the New Market Base Rent. If the Lessor objects to the Lessee's appraiser's analysis within thirty (30) days of its receipt of the same and the Lessee's appraiser's analysis differs from the Lessor's appraiser's analysis by greater than twenty percent (20%), then Lessor and Lessee agree that their respective appraisers shall mutually select a third appraiser who must meet the qualifications of an appraiser as set forth in this paragraph. If the Lessor's appraiser and the Lessee's appraiser are unable to agree upon the third appraiser, the Lessor shall appoint a third appraiser. The third appraiser shall review the results of both appraisals conducted by the Lessor's appraiser and the Lessee's appraiser and may request a hearing at which both the Lessor's appraiser and the Lessee's appraiser shall provide such additional information and clarification regarding their studies as the third appraiser may request. The third

appraiser shall make a final determination of the land rental value based upon the data contained in the two (2) appraisals and any additional information provided by Lessor's appraiser and Lessee's appraiser provided that the third appraiser shall have the right to gather, analyze, and consider additional data as the third appraiser deems appropriate. The decision of the third appraiser regarding the land rental value shall constitute the accepted adjustment and the New Market Base Rent. All fees and expenses associated with the work of the third appraiser shall be split equally and paid by the Lessor and the Lessee. During any period of disagreement between Lessor and Lessee regarding the rent adjustment, Lessee shall be responsible for the payment of the New Market Base Rent as recommended by Lessor's appraiser. Once the disagreement is resolved, any difference between the Base Rent paid and the accepted New Market Base Rent shall be refunded or credited to Lessee (as appropriate).

25. **WAIVER**. Waiver by Lessor of any right or remedy available to it in the event of any default hereunder or any breach by Lessee of the terms and conditions of this Lease shall not constitute a waiver of any succeeding default of the same or other terms and conditions of this Lease.
26. **TRANSFER OF LESSOR'S INTEREST**. Lessor shall be entitled to sell, transfer or otherwise convey its interest in the Leased Premises, and any such sale, transfer or conveyance shall operate to relieve Lessor of any of its obligations and responsibilities hereunder, provided that the purchaser or other transferee of such interest shall expressly assume and agree to perform Lessor's obligations and responsibilities to Lessee hereunder.
27. **RISK OF LOSS FOR IMPROVEMENTS AND PERSONAL PROPERTY**. Lessee agrees that all improvements and personal property located in the Leased Premises shall be and remain at Lessee's sole risk, and Lessor shall not be liable for any damage to or loss of such improvements and personal property unless such damage or loss arises from any acts of negligence or willful misconduct by Lessor nor shall Lessor be liable for any damage to or loss of Lessee's personal property resulting from fire or other casualty, from the leaking of the roof or from the bursting, leaking or overflowing of water and sewer pipes or from malfunctions of the heating, plumbing or electrical systems, or from any other cause whatsoever, except if said damage or loss is caused by the acts or negligence or willful misconduct of Lessor or its agents, servants, employees, etc.
28. **APPLICATION OF PAYMENTS**. Lessor shall have the right in its sole discretion to apply any payments made by Lessee to the satisfaction of any debt or obligation of Lessee to Lessor regardless of the instructions of Lessee as to the application

of any such payment. The acceptance by Lessor of any rental payment by anyone other than Lessee shall not be deemed to constitute an approval of any assignment of this Lease by Lessee.

29. **MEMORANDUM OF LEASE**. This Lease shall be recorded in the Office of the Recorder of Deeds, in and for Sussex County, DE.

30. **NOTICES**. All notices required to be given hereunder shall be sent by registered or certified mail, return receipt requested or by a nationally recognized overnight delivery service with all charges pre-paid and sent to the address as follows:

If intended for Lessor:

Sussex County Administrator
Sussex County Administration
Building 2 The Circle
P.O. Box 589
Georgetown, DE
19947

With a copy to:

J. Everett Moore, Jr., Esquire
Moore & Rutt, P.A.
122 W. Market Street
P.O. Box 554
Georgetown, DE 19947

If intended for Lessee:

Delaware Coast Line Railroad Co.
14525 Staytonville Road
Greenwood, DE 19950

Either party shall be entitled to change the person or address to which notices shall be given hereunder by giving notice to the other party in accordance with the provisions set forth herein.

31. **NO PARTNERSHIP**. The relationship created by this Lease is that of Lessor and Lessee, and nothing in this Lease shall be construed to make Lessor and Lessee partners. Lessee shall have no authority to make any contract or do any act so as to bind Lessor or as to render Lessor or the Leased Premises liable therefore.

32. **PRONOUNS**. All pronouns and any variations thereof used in this Lease shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require. If the Lessor or Lessee be more than one person, these provisions shall be taken to bind and apply to them jointly and severally, or if a corporation, then to its successors and assigns.
33. **COUNTERPARTS; ELECTRONIC SIGNATURES**. This Lease may be executed in two counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Electronic signatures and photocopies or facsimile copies of signatures shall be deemed to have the same force and effect as originals.
34. **BINDING EFFECT**. This Lease shall be binding upon and inure to the benefit of the parties, their respective heirs, successors and assigns.
35. **PARAGRAPH HEADINGS**. Paragraph headings relating to the contents of particular paragraphs have been inserted for the convenience of reference only and shall not be construed as parts of the particular paragraphs to which they refer.
36. **GOVERNING LAW**. This Lease shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict of laws principles, and with venue lying in Sussex County. The parties acknowledge and agree that this is a Commercial Lease. Accordingly, this Lease shall NOT be governed by the Delaware Landlord-Tenant Code 25 Del. C., § 5101 et seq.
37. **ENTIRE AGREEMENT**. This Lease constitutes the entire agreement between the parties, and it supersedes any and all prior understandings or commitments concerning the subject matter of this Lease. This Lease shall not be modified or amended except by a written instrument executed by both Lessor and Lessee.
38. **PARTIAL INVALIDITY**. If any provision of this Lease or the application thereof shall to any extent be held invalid, then the remainder of this Lease or the application of such provision other than those as to which it is held invalid shall not be affected thereby, and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.
39. **ATTORNEYS' FEES**. Lessee shall pay upon demand all of Lessor's costs, charges, reasonable attorney's fees and expenses, incurred in enforcing Lessee's obligations hereunder or incurred by Lessor in any litigation in which Lessor, without Lessor's fault, becomes involved or concerned by reason of the existence of this Lease or the relationship hereunder of Lessor and Lessee. In addition, Lessee shall bear all costs and expenses incurred by Lessor in connection with

Lessor's review, negotiation, drafting, or any other expenses and fees, including attorney's fees, related to any amendment, sublease, or assignment of this Lease.

40. **EXHAUST AND ODORS.** Lessee shall, at its sole cost and expense, install and maintain adequate equipment for the Leased Premises so as to keep any and all unreasonable odors from entering the Common Areas or other lands of Lessor. Lessee shall not cause or permit any unreasonable odors to emanate from the Leased Premises. In the event Lessor notifies Lessee in writing that unreasonable odors are emanating from the Leased Premises, Lessee shall within five (5) days after such notice from Lessor, commence to install, at its sole cost and expense, any necessary control devices or procedures to eliminate such odors and shall complete such installation as expeditiously as possible proceeding in a good faith manner. In the event that Lessee fails to stop unreasonable odors from emanating from the Leased Premises, Lessor may proceed to cure the odor problem at Lessor's discretion and recover all costs and expenses from Lessee.
41. **CONSTRUCTION; FREELY NEGOTIATED.** Lessee and Lessor acknowledge that they have had their respective counsel review this Lease and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Lease. Lessor and Lessee agree that this Lease has been freely negotiated by both parties.
42. **LESSEE WARRANTY.** Lessee represents and warrants that Lessee is a duly formed Delaware limited liability company registered to do business in Delaware, in good standing and has full power and authority under its operating agreement to enter into this Lease. The Certificate of Good Standing from the State of Delaware and all necessary resolutions shall be provided upon Lessor's requests. Lessee has taken all legal action necessary to carry out the transaction contemplated herein, so that when executed, this Lease constitutes a valid and binding obligation enforceable in accordance with its terms.
43. **LESSOR'S RIGHT OF OFFSET.** Notwithstanding anything contained in this Lease to the contrary, Lessor shall have the absolute right to retain and use any of Lessee's funds or monies in Lessor's possession, no matter what the source of the funds or monies may be, and use any such funds or monies to off-set any payments or outstanding sums owed to Lessor.
44. **HAZARDOUS MATERIALS.** Lessee shall not permit any hazardous materials to be used or stored in the Leased Premises, unless used or stored in full compliance with any State or Federal regulations and shall hold Lessor harmless from any liability and expense from same in accordance with paragraph 15 hereof. Lessee shall comply with all Federal and State regulations related to the handling or

disposal of any materials or byproducts regulated by State or Federal rules, laws or regulations.

45. **TIME OF THE ESSENCE**: Time shall be of the essence for the performance of all terms of this Lease
46. **JOINT AND SEVERAL LIABILITY**: If the Lessee is more than one person or entity, the obligation created by this Lease is intended to be a joint and several obligation of the undersigned.
47. **COMPLIANCE WITH LAWS**: Lessee shall promptly comply with all laws, ordinances, rules, regulations, requirements and directives of the Federal, State and County Government and Public Authorities and of all their departments, bureaus and subdivisions, applicable to and affecting the said premises, their use and occupancy, for the correction, prevention and abatement of nuisances, violations or other grievances in, upon or connected with the said premises, during the term hereof; and shall promptly comply will all orders, regulations and directives of the State Fire Marshal or similar authority and of any insurance companies which have issued or are about to issue policies of insurance covering the said premises and its contents, for the prevention of fire or other casualty, damage or injury, at the Lessee's own cost and expense.
48. **NON-PERFORMANCE BY LESSOR**. This Lease and the obligation of Lessee to pay the Rent hereunder and to comply with the covenants and conditions hereof, shall not be affected, curtailed, impaired or excused because of Lessor's inability to supply any service or material called for herein, by reason of any rule, order, regulation or preemption by any governmental entity, authority, department, agency or subdivision or for any delay which may arise by reason of negotiations for the adjustment of any fire or other casualty loss or because of strikes or other labor trouble or for any cause beyond the control of Lessor.
49. **AIRPORT PROTECTION**:
- a. It shall be a condition of this lease, that Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property hereinafter described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on the airport.
 - b. Lessee expressly agrees for itself, its successors and assigns, to restrict

the height of structures, objects of natural growth and other obstructions on the hereinafter described real property to such a height so as to comply with Title 14, Code of Federal Regulations, Part 77.

- c. Lessee expressly agrees for itself, its successors and assigns, to prevent any use of the hereinafter described real property which would interfere with or adversely affect the operation or maintenance of the airport, or otherwise constitute an airport hazard.

50. **NON-DISCRIMINATION:**

- a. Lessee for its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, creed, sexual orientation, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, (3) that Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- b. That in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate the Lease and to re-enter and as if the Lease had never been made or issued. The provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

51. **ECONOMIC NONDISCRIMINATION.** To the extent Lessee engages in any aeronautical activity for furnishing services to the public at the Delaware Coastal Airport, Lessee shall:

- a. Furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
- b. Charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that Lessee may be allowed to make reasonable and

nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

52. **CPI-U RENT ADJUSTMENT**: If the Lessee subleases the Leased Premises or a portion thereof, any CPI-U increases as required under Paragraph 24 shall be subject to the following:

- a. In this Paragraph 52, the following terms shall have the meaning set forth herein:
 - (1) "Price Index" means the Consumer Price Index for All Items, All Urban Consumers, U.S. City Average (CPI-U Table 1, unadjusted as published monthly by the United States Department of Labor, Bureau of Labor Statistics) compared to the same index sixty (60) months earlier. If publication of the above index shall be discontinued, then another index generally recognized as authoritative shall be substituted, as selected by Lessor in its reasonable discretion.
 - (2) "Base Price Index" means the Price Index for the month (the "Base Month") nearest before the Commencement Date for which the Price Index is published and/or the most recently available.
- b. The Base Rent for the sublet area will be increased beginning on first day of the sublease term by a fraction whose numerator is the Price Index published for the then most recent anniversary month of the Base Month and whose denominator is the Base Price Index. The Base Rent as adjusted will not be reduced pursuant to this paragraph.
- c. If a substantial change is made in the Price Index, or its publication is discontinued or changed in such a way as to prevent calculations pursuant to this Paragraph 52, then the Price Index will be adjusted to the figure that would have been used had the manner of computing the Price Index in effect at the date of this Lease not been altered. If the Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information used in determining the Price Index will be used.
- d. No adjustments will be made due to any revision that may be made in the Price Index for any month.
- e. The statements of the adjustment shall be furnished and prepared by Lessor. The statements thus furnished to Lessee will constitute a final determination as between Lessor and Lessee of the relevant adjustment.

- f. Seasonal adjustments will not be used.
- g. Lessor's delay or failure in computing or billing for these adjustments will not impair the continuing obligation of Lessee to pay Base Rent adjustments.
- h. Lessee's obligation to pay Base Rent as adjusted by this Paragraph 52 will continue up to the expiration of this Lease and will survive any earlier termination of this Lease.
- i. Within thirty (30) days after Lessor gives Lessee notice of the adjusted Rent, Lessee will pay the adjusted Rent retroactive to the first month of the then-current five (5) year lease period. The adjusted Rent will be the yearly Base Rent for the balance of the then-current five (5) year lease period. Lessor will give Lessee written notice indicating how the adjusted Rent amount was computed.

[Signature Pages to Follow]

LESSEE:

Delaware Coast Line Railroad Co.
A Delaware corporation

Attest

By: _____ (SEAL)

President

DATED: _____

STATE OF _____ :
: ss.
COUNTY OF _____:

BE IT REMEMBERED, that on this _____ day of _____, A.D. 2025, personally came before me, a Notary Public for the State and County aforesaid, _____, duly authorized Member of Delaware Coast Line Railroad Co., a corporation existing under the laws of the State of Delaware, party to this Indenture, known to me personally to be such and acknowledged this Indenture to be his / her act and deed and the act and deed of said company, that the signature of the duly authorized officer thereto is in his / her own proper handwriting and the seal affixed is the common and corporate seal of said company, and that his / her act of sealing, executing, acknowledging and delivering said indenture was duly authorized by the bylaws of said company.

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

Notary Public

Print Name of Notary Public

My commission expires: _____

EXHIBIT A

LEGAL DESCRIPTION

All that certain lot, piece and parcel of land, lying and being situated in Georgetown Hundred, Sussex County, and State of Delaware, being designated as a portion of Lot Numbers 19 and 20, Delaware Coastal Business Park, more particularly described as per survey dated November 2, 2018, and prepared by Adams-Kemp Associates, Inc., Professional Land Surveyors, as follows to wit:

Beginning for the same at an iron bar/cap set at the southwest corner of the herein described Parcel A Revised of the Delaware Coastal Business Park. Point of beginning also being the northwest corner of Parcel B of the Delaware Coastal Business Park and being located in the easterly line of Nanticoke Ave.

Thence leaving said point of beginning and running and binding with said easterly line of Nanticoke Ave.

1) N 24°49'54" W a distance of 59.05'; to an iron bar/cap set. Thence running with the centerline of a railroad tract extended,

2) N 33°02'00" E a distance of 46.12'; to an iron bar/cap set. Thence leaving said railroad track,

3) N 56°58'06" W a distance of 15.00'; to the northerly line of a 30 foot wide railroad siding. Thence with same,

4) N 33°01'54" E a distance of 325.00'; to an iron bar/cap set. Thence crossing said Railroad siding,

5) S 56°58'06" E a distance of 45.00'; to an iron pipe found. Thence turning and running for the new revised division lines of Parcel A extended,

6) N 33°01'54" E a distance of 53.70'; to an iron bar/cap set, thence

7) S 56°58'06" E a distance of 123.07'; to the southerly line of Parcel A Revised. Thence with same and Parcel B for the following three courses and distances,

8) S 33°01'54" W a distance of 378.70'; to an iron pipe found, thence

9) N 56°58'06" W a distance of 103.07'; to an iron pipe found, thence

10) S 33°01'54" W a distance of 77.53'; to the point of beginning.

Containing 1.48 acres, more or less.

EXHIBIT B

RULES AND REGULATIONS

The Rules and Regulations entitled, "Delaware Coastal Business Park Rules, Regulations and Restrictions," shall remain in effect for the duration of this Lease unless amended in a writing executed by both parties.

The Lessee agrees as follows:

DELAWARE COASTAL BUSINESS PARK RULES, REGULATIONS AND RESTRICTIONS

I. PURPOSE

The purpose of the Delaware Coastal Business Park shall be to provide locations for the development of light to moderate industrial manufacturing, warehousing, wholesale and limited research establishments which, because of their type and nature, would be compatible with or adjacent to residential areas while still providing attractive landscaping, and a better working environment. The emphasis will be on employment rather than warehouse space. Also, the purpose is to provide guidelines and performance standards, which will control and confine any offensive features (i.e., noise, vibration, heat, smoke, glare, dust, objectionable odors, toxic wastes or unsightly storage) to the confines of the premises and within enclosed buildings or within a visually enclosed space.

II. LAND USE CRITERIA

1. Permitted uses. Permitted uses shall be as follows:

- a. Manufacturing, assembling, converting, altering, finishing, cleaning, cooking, baking or any other type of manufacturing or industrial processing of any goods, materials, products, instruments, appliances and devices, provided that the fuel or power supply shall be of an approved type. Also included shall be all incidental clinics, offices and cafeterias for the exclusive use of in-house staff and employees.
- b. Research, design, testing and development laboratories.
- c. Printing, publishing, binding, packaging, storage and warehousing.
- d. Business, medical, professional or administrative offices.

- e. Municipal and public services and facilities, such as utility supply areas (i.e., water, sewer and electric), distribution facilities and substations.
- f. Heating, ventilating, cooling and refrigeration manufacturing.
- g. General light industrial, manufacturing, warehousing and storage uses, including enclosed storage of products, materials and vehicles, and including the following uses and any similar uses which are not likely to create any more offensive noise, vibration, dust, heat, smoke, odor, glare or other objectionable influences than the minimum amount normally resulting from other uses listed, such listed uses being generally wholesale establishments, service industries and light industries that manufacture, process, assemble, store and distribute goods and materials and are, in general, dependent on raw materials refined elsewhere, and manufacture, compounding, processing, packaging or treatment, as specified, of the following products or similar products:

Agricultural, business, commercial or office uses permitted in any business or commercial district; and

Medical and dental equipment, drafting, optical and musical instruments, watches, clocks, toys, games and electrical or electronic apparatus.

- h. Wholesale merchandising or storage warehouses, provided that such uses are not objectionable by reason of odor, dust, noise or similar factors.
- i. Telephone central offices, provided that all storage of materials, all repair facilities and all housing of repair crews are within a completely enclosed area.
- j. Data centers.

All uses must be conducted within a completely enclosed building. There shall be no open storage of raw, in process or finished products, supplies or waste material, except that these items shall be shielded from public view by a landscaped screen that may include a fence or wall.

2. Prohibited Land Use:

- a. No operation or uses shall be permitted or maintained which causes or produces any of the following effects discernible outside the site or affecting any adjacent property:
 - (1) Noise or sound that is objectionable because of its volume, duration, intermittent beat, frequency or shrillness;
 - (2) Smoke;

- (3) Noxious, toxic or corrosive fumes or gases;
 - (4) Obnoxious odors;
 - (5) Dust, dirt, or fly ash; and
 - (6) Unusual fire or explosive hazards.
- b. The operation and use of drilling for and removal of oil, gas, or other hydrocarbon substances on any property subject to these Covenants shall not be permitted without the prior written consent of Sussex County.
 - c. The following operations and uses are expressly prohibited on all property subject to these Covenants:
 - (1) Residences, including trailer courts.
 - (2) Manufacturing uses involving production of the following products from raw materials: asphalt, cement, charcoal and fuel briquettes; chemicals; aniline dyes, ammonia, carbide, caustic soda, cellulose, chlorine, carbon black and bone black, creosote, hydrogen and oxygen, industrial alcohol, nitrates (both natural and manufactured) of an explosive nature, potash, petro chemical, pyroxylin, rayon yarn and hydrochloric, nitric, picric, phosphoric and sulfuric acids; coal, coke and tar products, including gas manufacturing, explosives, fertilizers, glue and size (animal); linoleum and oil cloth, matches, paint, varnishes and turpentine; rubber (natural and synthetic); and soaps, including fat rendering.
 - (3) Dumps, junkyards, automobile salvage and dismantling plants/yards, storage areas or operations for the storage or resale of used automobile or other machine parts.
 - (4) Operations involving slaughterhouses, stockyards or slag piles.
 - (5) Storage of explosives and bulk or wholesale storage of gasoline above ground.
 - (6) Quarries, stone crushers, screening plants and all associated uses.
 - (7) The following processes: refining, smelting and alloying of iron, tin, zinc and other metal or metal ores; refining petroleum products such as gasoline, kerosene, naphtha and lubricating oil; and reduction and processing of wood pulp and fiber, including paper mill operations.
 - (8) Drilling for the removal of any hydrocarbon substances.

- (9) Fertilizer or Compost Facilities.
- (10) Commercial Excavation of Building or Construction Materials.
- (11) Distillation of Bones.
- (12) Dumping, Disposal, Incineration, or Reduction of Garbage, Sewage, Offal, Dead Animals or Refuse.
- (13) Animals of any kind including the Raising of Pets or Livestock or other animals.

3. No Immoral of Unlawful Use.

No immoral, improper, offensive or unlawful use shall be made of the Property nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed and followed at all times.

III. SPACE ALLOCATIONS AND DIMENSIONAL STANDARDS

1. Building-to-Land Ratio:

The ratio of building coverage (building structure only) to the Site area will be subject to the review and approval of Sussex County.

2. Setbacks:

The placement of any structure or improvement and the distance to a property line on any Site will be subject to the review and approval of Sussex County.

3. Exceptions to Setback Limitations:

Any exception to a setback limitation, including Roof overhang, steps, walks, and access drives from the street, paving and associated curbing, and landscaping will be subject to the review and approval of Sussex County.

4. Off-Street Parking Areas:

Off-street parking will be subject to the review and approval of Sussex County and shall be in compliance with Sussex County Zoning Code, Article XXII. Off-Street Parking, §115-162, *et. seq.*

5. Off-Street Loading Areas:

Off-street loading will be subject to the review and approval of Sussex County and shall be in compliance with Sussex County Zoning Code, Article XXIII. Off-Street Loading, §115-167, *et. seq.*

IV. ARCHITECTURAL AND AESTHETIC STANDARDS

1. Landscaping and Limitations on Cutting Natural Growth:

- a. Every site on which a building shall have been placed shall be landscaped according to plans approved by Sussex County as specified herein and maintained thereafter in a slightly and well-kept condition.
- b. Any part or portion of the Site which is not used for buildings, other structures, loading or parking spaces and aisles, sidewalks are designated storage areas shall be planted with an all-season ground cover and shall be landscaped with trees and shrubs in accordance with an overall landscape plan and shall be in keeping with natural surroundings. A replacement program for non-surviving plants should be included.
- c. The Site Lessee, lessee or occupant shall landscape and maintain unpaved areas between the property lines and the building. The area between paved streets and the setback lines shall be used exclusively for landscaping except for walks and driveways crossing the required landscape area.
- d. The Site Lessee, lessee or occupant shall provide hose bibs in the vicinity of the landscaped areas on improved properties.
- e. Landscaping as approved by Sussex County shall be installed within ninety (90) days of occupancy or completion of the building, whichever occurs first, or as soon as weather will allow if such period falls within winter months.
- f. The Lessee or occupant of any Site shall at all times keep the landscaping in good order and condition. Should the Lessee or occupant of any Site fail to remedy and deficiency in the maintenance of the landscaping within twenty (20) days after written notification, Sussex County hereby expressly reserves the right, privilege and license and license to make any and all corrections or improvements in landscape maintenance at the expense of the Site Lessee.
- g. The Site Lessee shall preserve as much of the natural growth on a Site as practically possible. Special care should be exercised during any construction so that existing trees are not damaged.
- h. The plot plan must show a satisfactory method of irrigating all planted areas. This may be either by a permanent water system or by hose.

- i. Building interior ceiling height must be a minimum of 20 ft., floor to outside walls.

2. Exterior Construction, Permitted Materials, Prohibited Materials, Approved Construction Methods, Design:

- a. Any building erected on a Site will be subject to the review and approval of Sussex County and shall conform to the following construction practices and meet the Sussex County Building Code in effect at the time.

- (1) Exterior front and side walls must be finished on the exterior with the following:

- (a) architectural masonry units, (excluding concrete block and cinder block);
 - (b) natural stone;
 - (c) precast concrete with prior approval by Sussex County.
 - (d) steel;
 - (e) aluminum;
 - (f) glass materials; or
 - (g) their equivalent as approved by Sussex County. Rear exterior walls may be block masonry as defined below.

Minimum standards shall require that thirty (30) percent of the front building exterior and any front lots abutting Park Avenue be approved masonry finish as defined above. Side building walls facing interior park roadways must also have a minimum of thirty (30) percent of approved masonry finish. A masonry block wall (i.e., concrete or cinder block) may be used for a rear building wall only, if the masonry block wall is appropriately painted and meets the approval of Sussex County. These requirements also apply to any accessory building other than temporary structures as defined in paragraph 2 below.

Finish building material shall be applied to all sides of a building, which are visible to the general public as well as from neighboring property and streets. Colors shall be harmonious and compatible with colors of the natural surroundings and other adjacent buildings. Any exception to the exterior construction standards, methods, or design shall be subject to the review and approval of Sussex County.

- (2) Temporary Improvements – No temporary improvements of a temporary nature, including trailers, incomplete buildings, tents or shacks shall be permitted on the Property. Temporary improvements used solely in connection with the construction or sales of permanent approved improvements may be permitted provided they are located as inconspicuously as possible and are removed immediately after completion of such construction.

3. Signs:

Plans and specifications for the construction, installation, or alterations of all outdoor signs including traffic or directional signs shall be first submitted to and have the written approval of Sussex County.

The following signs shall be permitted:

- a. Those identifying the name of the person or firm occupying the Site subject to the following criteria:
 - (1) Signs shall be limited to one (1) per Site. Each sign may be lighted but shall not exceed thirty-two (32) square feet in size.
 - (2) Electronic Messaging Centers shall be prohibited.
 - (3) All signs mounted on a building must identify the primary company name only and shall not be an advertising vehicle. Generally, an identifying sign may be mounted on one wall except that, at the discretion of Sussex County, a smaller sign or logo may be permitted on another exposure.
 - (4) Logos: A logo for a single or multi-line sign, or a logo to be mounted separately, must be sized with the total sign area allowed.
 - (5) No logos or other signs may be mounted so as to project above the roofline of any facility nor can same be ground mounted under any circumstances.
 - (6) Prior to installation of a sign on any Site, Lessee shall submit sign proposals to Sussex County for its approval and consent as to the size, height, type, and location of any on premise sign Lessee seeks to install. Final approval will be based on reasonable architectural standards and overall balance as same applies to identification displays. It should also be understood that Sussex County must approve the manner in which the sign is constructed, lighted and mounted.
 - (7) All Lessees shall maintain its sign and keep it in good repair during the term of its Lease. Lessee shall be responsible for any damage resulting from the installation or removal of any such sign, device, fixture or other attachment.
 - (8) Lessee shall keep its sign lighted at such reasonable times as Lessor may require under these Rules and Regulations, and as may be amended from time to time.
 - (9) Upon the expiration or termination of any Site Lease or the Site Lessee's right to possession of the Site, or the Site Lessee's vacation of the Site,

Lessee shall, at Lessee's sole cost and expense, remove any signage and restore and repair that portion of the Site affected by the installation or removal of the signage to the condition satisfactory to Sussex County.

4. Outdoor Storage:

- a. Unless specifically approved by Sussex County in writing, no materials, supplies or equipment (including company owned or operated vehicles) including but not limited to trash and garbage receptacles, shall be stored in any area on a Site except inside a closed building, or behind a visual barrier screening such areas from the view of adjoining properties and/or public street.
- b. Screening of Service Containers: Garbage and refuse containers shall be concealed by means of a screening wall of material similar to and compatible with that of the building. These elements shall be integral with the concept of the building plan, be designed so as not to attract attention, and shall be located in the most inconspicuous manner possible. Unless specifically approved by Sussex County in writing, no materials, supplies or equipment shall be stored on the Property except inside a close building, or behind a visual barrier screening such areas so that they are not visible from neighboring streets and property.

5. Maintenance Requirement, Refuse Collection, and Prohibition of Junk Storage:

- a. Each Site Lessee, or occupant shall at all times keep his premises, buildings, improvements and appurtenance in a safe, clean, neat, and sanitary condition and shall comply with all laws, ordinances and regulations pertaining to health and safety. Each Site Lessee shall provide for the removal of trash and rubbish from his premises. The Sites shall not be used for storage of any scrap materials without the prior written approval of Sussex County.
- b. During construction, it shall be the responsibility of each Site Lessee to insure that the construction sites are kept free of unsightly accumulations of rubbish and scrap materials and that construction materials, trailers, shacks, and the like are kept in a neat and orderly manner.

6. Utilities Placement and Design:

Without limiting the generality of any of the foregoing, the following use restrictions shall be maintained and enforced with respect to the property:

- a. Antennas: No antenna for transmission or reception of television signals or any other form of electro-magnetic radiation shall be erected, used or maintained on the Property outside any building whether attached to an improvement or otherwise, without the prior approval of Sussex County.

- b. Utility Service: No lines, wires, or other devices for the communication of transmission of electric current or power, including telephone, television and radio signals, shall be constructed, placed or maintained anywhere in or upon the Property unless the same shall be contained in conduits or cable, constructed, placed and maintained underground or concealed in, under, or on buildings, or other improvements as approved by Sussex County, Site Lessee, provided electrical transformers may be permitted if properly screened and approved by the Sussex County. Nothing herein shall be deemed to forbid the erection and use of temporary electric or telephone services incident to the construction of approve improvements.
- c. Mail Boxes: No mail or other delivery boxes shall be permitted on the Property unless approved by Sussex County.
- d. Mechanical Equipment: All mechanical equipment, including roof mounted shall be enclosed or screened so as to be an integral part of the architectural design.

7. Repair of Buildings:

No building or other improvement shall be permitted to fall into disrepair and each improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

8. Compliance with Governmental Authorities:

Construction and alteration of all improvements shall be performed in accordance and comply with the requirements of all applicable governmental authorities.

V. IMPLEMENTATION

1. Architectural Review and Approval of Building Plans – Procedures:

Before applying for a building permit and commencing the construction or alteration of all buildings, enclosures, fences, loading areas, parking facilities, or any other structures or permanent improvements (“improvements”) on or to any Site, the Lessee of any Site shall first submit plans and specifications and landscape plans to Sussex County for its written approval, as hereinafter provided.

No improvement, as that term is hereinabove defined, shall be erected, placed, altered, maintained, or permitted to remain on any land subject to these Covenants until plans and specifications showing plot layout an all-exterior elevations, with materials and colors therefore and structural design, signs, and landscaping, shall have been submitted to and approved in writing by Sussex County, and a copy of such plans and specifications prepared by the signature of the Lessee of the Site or his authorized Agent specifying for which part of such plans and specifications approval is sought.

Approval shall be based, among other things, on adequacy of Site dimensions, storm drain considerations, conformity and harmony of external design with neighboring sites, relation of topography, grade and finished ground elevation of the Site being improved to neighboring sites; proper facing of main elevation with respect to nearby streets; and conformity of the plans and specifications to the purpose and general plan and intent of these covenants.

Sussex County shall have the right to refuse to approve any such plans or specifications or proposed use of the premises for any reason which Sussex County, in its sole discretion, may deem in the best interests of the Industrial Park and the Lessees or prospective lessees of other sites therein.

If Sussex County fails either to approve or disapprove such building and site plans and specification within sixty (60) days after the same have been submitted to it, it shall be conclusively presumed that Sussex County has disapproved said plans and specifications.

Neither Sussex County nor its successors or assigns shall be liable in damages to anyone submitting plans to them for approval, or to any Lessee of land affected by this Declaration, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans. Every person who submits plans to Sussex County for approval agrees, by submission of such plans, and every Lessee of any said Property agrees, by acquiring a leasehold interest therein, that the Lessee will not bring any action or suit against Sussex County to recover such damages. In case of conflict between plan review and the Covenants herein contained, these Covenants shall govern the rights and obligations of the parties.

Building must be constructed in accordance with the plans as approved by Sussex County. Any modification to the approved plans, during construction, which affects the intent of these Covenants, must be approved by Sussex County before the modification to the building is constructed. Lesser shall give written notice of completion of improvements to Sussex County upon completion of said improvements.

2. Enforcement:

Said Covenants shall be jointly and severally enforceable by Sussex County and its successors and assigns and by any Site Lessee and its successors and assigns, provided, however, that only Sussex County or its assignees, shall have the right to exercise the discretionary powers herein reserved to Sussex County.

Violation of any of said Covenants, or breach of any Covenant or agreement herein contained shall give Sussex County or its assignees in addition to all other remedies, the rights (but not the obligation) to enter upon the land which such violation or breach exists and summarily to abate and remove any structure or

correct any condition that may constitute such violation or breach at the expense of the then Lessee of such land, which expense shall be a lien on such land enforceable in Equity; provided, however, that no such entry shall be made unless the violation or breach has not been remedied and corrected within thirty (30) days after delivery of written notice of such violation or breach from Sussex County or its said assignees to the Lessee of the premises on which the violation or breach has occurred or in the alternative within thirty (30) days after mailing such notice, by certified or registered mail, postage prepaid, to the Lessee of such premises at his or its last known address.

Sussex County hereby claims any and all statutory or other liens which it may have upon the equipment, furniture, fixtures, real and personal property of any Lessee or Sub-Lessee placed upon the improvements, and Lessee agrees that Sussex County has such a lien to the extent provided by statute or otherwise. Sussex County agrees to subordinate its lien right to the lien of any mortgage, deed of trust, or security instrument given by Lessee for the construction of the improvements and purchase of the equipment, furniture, fixtures and personal property placed upon the property. Lessee shall furnish Sussex County copies of all such security instruments.

If Sussex County prevails in any legal or equitable proceeding seeking to restrain the violation of or enforce any provision herein, of challenging the enforceability of any provision herein, Sussex County shall be entitled to attorneys' fees in the trial and appellate court proceedings; and costs and expenses of investigation and litigation, including expert witness fees, deposition costs (appearance fees and transcript charges), injunction bond premiums, travel and lodging expenses, all fees and charges, and all other reasonable costs and expenses. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

3. Repurchase Rights:

In the event any Lessee or its assigns shall not have substantially completed the construction of a permanent building upon a Site within two (2) years of the date of the execution of the Lease by Sussex County conveying a leasehold interest in that Site said Lessee, Sussex County shall have an option to repurchase said Site for the original purchase price and enter into possession of said Site. This option to repurchase must be exercised in writing within ninety (90) days after the expiration of the two (2) year period following the execution of the Lease referred to above. Settlement of the repurchase shall take place within sixty (60) days of the exercise of the option to repurchase and shall be at location to be designated by Sussex County. All costs of recording, transfer taxes, documentary stamps and all other excise taxes arising from said Settlement, will be paid for by said Lessee or assigns.

Anything in this paragraph V.3. to the contrary notwithstanding. Sussex County, its successors and assigns may extend, in its sole discretion and in writing, the time in

which such construction must be completed by Lessee upon Sussex County's receipt of a request for extension by Lessee upon Lessee's demonstration of its diligence in pursuing completion of said construction.

VI. MISCELLANEOUS

1. Failure to Enforce Not a Waiver of Rights:

Any waiver or failure to enforce any provision of these Covenants in a particular situation shall not be deemed a waiver or abandonment of such provision as it may apply in any other situation or to the same or similar situation at any other location in the Industrial Park or of any other provision of these Covenants. The failure of Sussex County or any Site Lessee to enforce any Covenant herein contained shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other Covenant.

2. Mutuality, Reciprocity:

Runs with Land. All covenants, conditions, and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every part and parcel in favor of every other parcel; shall create reciprocal rights and obligations between the respective lessees of all parcels and privities of contract and estate between all grantees of said parcels, their heirs, successors, and assigns, operate as Covenants running with the land for the benefit of all other Sites. Sussex County reserves the right, however, from time to time hereinafter to delineate, plot, grant or reserve within the remainder of the Industrial Park not hereby conveyed such public streets, road, sidewalks, ways and appurtenances thereto, and such easements for drainage and public utilities, as it may deem necessary or desirable for the development of the Industrial Park (and from time to time to change the location of the same) free and clear of these restrictions and Covenants and to dedicate the same to public use or to grant the same to the County of Sussex and/or to appropriate public utility corporations.

3. Fee:

Each year, as part of the fiscal year and budget of the Sussex County Government, the Council shall include an estimate of the total amount which it considers necessary to pay the cost of the maintenance, management, operation, repair and replacement of and in the common area and provide for an assessment for fees against each lessee in a proportion to their respective site to the total number of sites available in the Delaware Coastal Business Park. Said assessment shall be invoiced at the same time as the annual taxes and to be paid within 30 days of invoice.

EXHIBIT C

Tax Map Number:
135-20.00-75.00

Return to:
Sussex County
2 The Circle
P.O. Box 589
Georgetown, DE
19947

NOTICE OF AGREEMENT TO RESTRICT LESSEE FROM ENCUMBERING PROPERTY

THIS NOTICE OF AGREEMENT TO RESTRICT LESSEE FROM ENCUMBERING PROPERTY (this "Notice") dated as of this _____ day of _____, 2025, by and between SUSSEX COUNTY, a political subdivision of the State of Delaware, 2 The Circle, P.O. Box 589, Georgetown, Delaware 19947, hereinafter referred to as "Lessor", and Delaware Coast Line Railroad Co., with a principal office located at 14525 Staytonville Road, Greenwood, DE 19950, "Lessee".

RECITALS:

WHEREAS, Lessor is the owner of certain real property and improvements known as 21673 Nanticoke Avenue, Georgetown, Delaware, which is identified as portions of Lots 19 and 20 in the Delaware Coastal Business Park and as Sussex County Tax Parcel No. 135-20.00-75.00, as improved ("the Leased Premises");

WHEREAS, Lessee is a Lessee of the Leased Premises pursuant to a lease agreement dated _____, 2025 ("the Lease"); and

WHEREAS, pursuant to this Lease, Lessor and Lessee agreed that Lessor shall not be liable for debts, acts, or omissions of Lessee and that Lessee has no authority to encumber the Leased Premises; and

WHEREAS, this Notice is to provide legal notice to the public that Lessor and its appointed and elected officials, employees, agents, and volunteers are not in any way liable for any claims or obligations for labor and materials for any work performed on the Leased Premises, and that the laborers, material men and subcontractors shall look solely to Lessee for payment and shall not be entitled to place a lien against said Leased Premises.

WITNESSETH

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound, the parties hereby certify, consent, and agree as follows:

1. The parties acknowledge that Lessee shall not be the agent or partner of Lessor and Lessee shall have no authority to make any contract or do any act so as to bind Lessor or as to render Lessor or Lessor's interest in the Leased Premises liable therefore. Lessee will save Lessor and the Leased Premises harmless from any penalty, damages, neglect, or negligence of Lessee, property damage, illegal act or otherwise. Any improvements by Lessee on said Leased Premises shall be constructed at the sole expense of Lessee, and Lessor and its appointed and elected officials, employees, agents, and volunteers shall not be liable in any way for any amount of money arising out of said construction. No liens may be placed on the Leased Premises without Lessor's prior written approval. Lessee has no authority whatsoever to encumber the Leased Premises or any improvements located thereon.

2. The parties hereby notify the public that Lessor and its appointed and elected officials, employees, agents, and volunteers are not in any way liable for any claims or obligations for labor and materials for any work performed on the Leased Premises, and that the laborers, material men and subcontractors shall look solely to Lessee for payment and shall not be entitled to place a lien against said Leased Premises.

3. This Notice shall be governed by the laws of the State of Delaware.

[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY.
SIGNATURE PAGES TO FOLLOW.]

IN WITNESS WHEREOF, the undersigned has caused this Notice to be signed as a sealed document under Delaware law as of the date set forth above.

LESSOR:

SUSSEX

COUNTY

DATED: _____

By: _____

Douglas B. Hudson, President
Sussex County Council

Attest: _____

STATE OF DELAWARE :
: ss.
COUNTY OF SUSSEX :

BE IT REMEMBERED, That on this _____ day of _____, A. D. 2025, personally appeared before me, the Subscriber, a Notary Public for the State and County aforesaid, Douglas B. Hudson, President, Sussex County Council, a political subdivision 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 deed of the said political subdivision; 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 political subdivision, 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 members of Sussex County Council.

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

NOTARY PUBLIC

Print Name of Notary Public

My Commission Expires: _____

LESSEE:

Delaware Coast Line Railroad Co.
A Delaware corporation

Attest

By: _____ (SEAL)

President

DATED: _____

STATE OF _____ :
: ss.
COUNTY OF _____:

BE IT REMEMBERED, that on this _____ day of _____, A.D. 2025, personally came before me, a Notary Public for the State and County aforesaid, _____, duly authorized Member of Delaware Coast Line Railroad Co., a corporation existing under the laws of the State of Delaware, party to this Indenture, known to me personally to be such and acknowledged this Indenture to be her act and deed and the act and deed of said company, that the signature of the duly authorized officer thereto is in his / her own proper handwriting and the seal affixed is the common and corporate seal of said company, and that his / her act of sealing, executing, acknowledging and delivering said indenture was duly authorized by the bylaws of said company.

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

Notary Public

Print Name of Notary Public

My commission expires: _____

EXHIBIT A
TO NOTICE OF AGREEMENT TO
RESTRICT LESSEE FROM
ENCUMBERING PROPERTY

LEGAL DESCRIPTION OF PROPERTY

All that certain lot, piece and parcel of land, lying and being situated in Georgetown Hundred, Sussex County, and State of Delaware, being designated as a portion of Lot Numbers 19 and 20, Delaware Coastal Business Park, more particularly described as per survey dated November 2, 2018, and prepared by Adams-Kemp Associates, Inc., Professional Land Surveyors, as follows to wit:

Beginning for the same at an iron bar/cap set at the southwest corner of the herein described Parcel A Revised of the Delaware Coastal Business Park. Point of beginning also being the northwest corner of Parcel B of the Delaware Coastal Business Park and being located in the easterly line of Nanticoke Ave.

Thence leaving said point of beginning and running and binding with said easterly line of Nanticoke Ave.

- 1) N 24°49'54" W a distance of 59.05'; to an iron bar/cap set. Thence running with the centerline of a railroad tract extended,
- 2) N 33°02'00" E a distance of 46.12'; to an iron bar/cap set. Thence leaving said railroad track,
- 3) N 56°58'06" W a distance of 15.00'; to the northerly line of a 30 foot wide railroad siding. Thence with same,
- 4) N 33°01'54" E a distance of 325.00'; to an iron bar/cap set. Thence crossing said Railroad siding,
- 5) S 56°58'06" E a distance of 45.00'; to an iron pipe found. Thence turning and running for the new revised division lines of Parcel A extended,
- 6) N 33°01'54" E a distance of 53.70'; to an iron bar/cap set, thence
- 7) S 56°58'06" E a distance of 123.07'; to the southerly line of Parcel A Revised. Thence with same and Parcel B for the following three courses and distances,
- 8) S 33°01'54" W a distance of 378.70'; to an iron pipe found, thence
- 9) N 56°58'06" W a distance of 103.07'; to an iron pipe found, thence
- 10) S 33°01'54" W a distance of 77.53'; to the point of beginning.

Containing 1.48 acres, more or less.

Sussex



County

Memorandum

TO: Sussex County Council
The Honorable Douglas B Hudson, President
The Honorable John L. Rieley, Vice President
The Honorable Jane Gruenebaum
The Honorable Matt Lloyd
The Honorable Steve C. McCarron

FROM: Andrew Harton
Economic Development

RE: **8 Mulberry Street, Suite B, Georgetown, DE Lease**

DATE: August 14, 2025

On the agenda Tuesday ~ the following lease will be presented for approval:

- ATLANTIC CONTRACTING AND MATERIAL CO., INC. ~ with a principal office located at 9712 Dorval Avenue, Upper Marlboro, MD 20772.

This new lease is said commercial real property known as 8 Mulberry Street, Suite B, Georgetown, Delaware, which is improved by a Building and is identified as portions of Sussex County Tax Parcel No. 135-19.00-69.00. The property will be used as office space while the Lessee completes work for DelDOT in Sussex County.



COMMERCIAL LEASE AGREEMENT

THIS COMMERCIAL LEASE AGREEMENT ("Lease") is made and entered into this ___ day of _____, 2025 (the "Effective Date"), by and between SUSSEX COUNTY, a political subdivision of the State of Delaware, with an address of 2 The Circle, P.O. Box 589, Georgetown, DE 19947 ("Lessor"), and Atlantic Contracting and Material Co., Inc., with a principal office located at 9712 Dorval Avenue, Upper Marlboro, MD 20772 ("Lessee"), and it recites and provides as follows.

RECITALS

WHEREAS, Lessor is the owner of certain commercial real property which is improved by a commercial building ("the Building") as hereafter described;

WHEREAS, Lessee desires to lease said commercial real property known as 8 Mulberry Street, Suite B, Georgetown, DE 19947, which is improved by the Building and is identified as portions of Parcel No. 135-19.00-69.00, for the operation of office space;

W I T N E S S E T H:

That the parties of this Lease, intending to be legally bound, hereby covenant and agree as follows:

1. **PREMISES:** Lessor leases to Lessee and Lessee accepts, as Lessee, the premises to a suitable Lessee for business purposes, described as follows:

A portion of the tract of land as improved by the Building identified as 8 Mulberry Street, Suite B, Georgetown, DE 19947, , which is identified as Sussex County Tax Parcel No. 135-19.00-69.00, which is improved by the Building being approximately 1,500 +/- square feet, more or less, and more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Leased Premises" or "premises"). Lessee acknowledges that Lessor reserves the right to change the parcel numbers and street names during the term of this Lease.

2. **TERM:** The initial term of this Lease shall be Thirteen Months (13) months, which shall commence at 10:00 o'clock A.M. on September 1st, 2025 ("the Commencement Date") and shall terminate at 11:59 o'clock P.M. on September 30, 2026, unless sooner terminated as provided in this Lease.

3. **RENT:**

- a. For the initial lease term referred to in paragraph 2, Lessee shall pay rent monthly, payments of which shall be due and payable upon the commencement of the Lease term. All payments thereafter shall be due and payable monthly on the 1st day of each month for the remainder of the Lease term and any renewal thereof without demand and without setoff or deduction.
- b. The monthly rent ("Base Rent") shall be Two Thousand, Five Hundred Dollars (\$2,500.00).
- c. All other costs due hereunder shall be considered additional rent ("Additional Rent") which shall be due and payable as hereinafter set forth.
- d. Any payment by Lessee or acceptance by Lessor of a lesser amount than shall be due from Lessee to Lessor shall be treated as a payment on account. The acceptance by Lessor of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and Lessor may accept such check without prejudice to any other rights or remedies which Lessor may have against Lessee.
- e. **PAYMENT PROVISIONS:** All payments should be made to Sussex County Council, Sussex County Treasury Office, 2 The Circle, P.O. Box 589, Georgetown, Delaware 19947, or such other place or places as may from time to time be designated in writing by Lessor.

4. **RENEWAL OF LEASE:** At the end of the lease term set forth in Paragraph 2, the Lease shall continue on a month-to-month basis on the same terms and conditions unless either Lessor or Lessee provide the other with a minimum of 45 days written notice of the intent to terminate the Lease.

5. **EASEMENTS, RESTRICTIONS AND CONDITIONS; RULES AND REGULATIONS:** This Lease is subject to easements, restrictions and conditions which are of record, or generally applicable to the immediate neighborhood, or may be observed by inspection of the premises. The Lessee shall be responsible for obtaining a title search should the Lessee so desire to verify all such easements, conditions and regulations. Lessee further acknowledges that its use of the Leased Premises is subject to Lessor's Rules and Regulations, which may be reasonably amended from time to time at Lessor's discretion, a copy of which is attached hereto as Exhibit B and are incorporated herein by reference. Failure to comply

with any easements, restrictions, conditions or Rules and Regulations shall constitute a material breach of the terms of this Lease.

6. **USE:**

- a. Lessee shall have the right to utilize the Leased Premises and any improvements to be located thereon for activities such as one or more of the following: office space, or any other use which may be consented to by Lessor, which consent may be granted or withheld in Lessor's reasonable discretion.
- b. The use of the Leased Premises shall at all times comply with all laws, ordinances, orders, regulations and requirements of any governmental authority having jurisdiction.
- c. It is specifically agreed that this Lease Agreement is non-exclusive. Lessor reserves the right to lease other real property for identical or similar uses.
- d. Lessee agrees not to make any unlawful, improper or offensive use of the Leased Premises or to make any use thereof contrary to any law or ordinance now or hereafter enacted or to make any use thereof which endangers any person or property, threatens the insurability of the Leased Premises, or otherwise constitutes a nuisance (in Lessor sole judgment). Further, Lessee agrees to operate its business within the guidelines, requirements and regulations of all government and regulatory agencies as these apply to Lessee's business and use. Any notices of the Lessee's failure to fully comply, or notices that the Lessee's business violates any regulations or standards contained in the regulations of any agency, shall constitute a material breach of this Lease if not cured within permitted time frames set forth in this Lease.
- e. Lessee agrees to promptly open its business and use and occupy the Leased Premises continuously and uninterruptedly in a commercially reasonable manner throughout the term of this Lease and to be open for business during reasonable business hours.
- f. Lessee agrees to operate the Leased Premises for the purposes set forth above during the entire term of this Lease in a prudent, efficient manner and reflecting the standards of a commercially appropriate business based on the permitted uses.

- g. Lessee may not (i) abandon or vacate the Leased Premises without giving notice to the Lessor; (ii) disfigure or deface the Leased Premises or permit any waste, nuisance or unlawful use on or about the Leased Premises; (iii) use the Leased Premises without a Certificate of Occupancy; or (iv) violate any municipal, county, state or federal law, rule, regulation or order.

7. **ADDITIONAL RENT - PAYMENTS, COMMON AREA MAINTENANCE, TAXES AND INSURANCE.**

- a. **Payments.** In the event any installment of Rent, Additional Rent, or any sum due Lessor under this Lease, is not received in full within thirty (30) days from the due date, then Lessee shall pay to Lessor a late administration fee equal to five percent (5%) of such overdue amount. Further, any Rent, Additional Rent, or other sum past due and owed to the Lessor by the Lessee under this Lease shall be subject to interest at the rate of eighteen percent (18%) per annum. Any check returned to the Lessor for any sum due to Lessor under this Lease, shall be subject to an additional late fee of ten percent (10%) and an administrative fee of the greater of One Hundred Dollars (\$100.00) or the Lessor's standard administrative fees for similar leases. Acceptance of late Rent shall in no way prejudice, waive, modify, or alter any of the rights or remedies which the Lessor may have under this Lease.
- b. **Taxes.** Lessor will pay all general real estate taxes, if any, which may be levied or assessed by any lawful authority against the real property only on the Leased Premises. Lessee agrees to pay any and all taxes and assessments levied or assessed against the improvements constructed on the Leased Premises and all equipment installed therein. Lessee shall make payments directly to the taxing authority when due.
- c. **Maintenance** Lessee shall be responsible for operating, repairing, and maintaining the Leased Premises and facilities of the Leased Premises (hereinafter "Maintenance"). Notwithstanding the foregoing, Lessor shall be responsible for all grass cutting and snow removal on the Leased Premises.
- d. **Intentionally Omitted.**

8. **TRANSFER TAX:** This transaction is exempt from realty transfer tax.

9. **UTILITIES:** Lessor shall be responsible for extending electric, potable water, sewer and fire suppression facilities to the edge of the Leased Premises. Lessee shall be solely responsible for all permanent utility installation on and from edge of the

Leased Premises. Lessee shall pay all one-time charges, for on and/or off-site improvements levied by utility providers including but not limited to: connection fees, tap-in fees, impact fees, hookup fees and deposits, for electricity, potable water, fire suppression, sewer, internet access, telephone and fire alarm land lines, etc. Lessee shall also pay for any and all recurring charges for utility services used or consumed at the Leased Premises during Lessee's use or occupancy thereof, except for the use of electricity, water, and sewer, which shall be provided by the Lessor. Notwithstanding the foregoing, if Lessor determines, in Lessor's sole discretion, that Lessee's consumption of electricity, water, sewer, or other utility charges is excessive for the proposed use, Lessor shall have the right to unilaterally charge Lessee for electricity, water, sewer, and other utilities serving the Leased Premises.

10. **IMPROVEMENTS:**

- a. **Condition of Leased Premises.** Subject to Lessor's responsibilities referred to herein, Lessee accepts the Leased Premises, including the Building, in "as is" condition and acknowledges that the Leased Premises and the Building are suitable for Lessee's intended use.
- b. **Intentionally Omitted.**
- c. **Lessee's Work.** Lessee agrees not to commence any renovations, repairs, or construction until Lessor has approved the Lessee's plans and layout. Lessee shall keep the Leased Premises and the Building free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Lessee. Any work performed by Lessee shall be completed in a good and workman like manner using new construction materials, and Lessee shall obtain all permits required for any such work.
- d. **Stormwater Management.** Lessee shall meet all stormwater and water quality requirements, rules, laws, regulations, statutes, and ordinances, as may be amended from time-to-time by an authority having jurisdiction over the same, pertaining to the Leased Premises either by use of on-site facilities constructed at Lessee's sole expense or through use of existing facilities subject to Lessor's prior written approval which may be withheld in Lessor's sole discretion.
- e. **Construction, Repair, Maintenance and Alteration of Improvements.** The Leased Premises are being leased with the Building located thereon. Lessee acknowledges that the Building shall be repaired and maintained at Lessee's sole cost and expense, and that Lessee shall maintain any and

all improvements on the Leased Premises in good condition and repair during the Lease term. Any improvements or structure of any kind Lessee constructs on the Leased Premises, and any repairs, maintenance and alterations thereto or to the Building, shall be in compliance with all restrictions, conditions, ordinances, laws, regulations, Rules and Regulations, including Lessee's application for and receipt of all required permits and approvals prior to commencement of any work. All fixtures and equipment shall remain Lessee's property except as otherwise stated herein. The Building shall at all times remain property of Lessor. Lessee shall provide Lessor with a copy of all Certificates of Occupancy and Releases of Liens. At the end of the term of the Lease, all improvements to either the Leased Premises or the Building, or both, shall be the Lessor's property.

11. **LIENS:**

- a. **No Authority to Encumber.** Lessee has no authority whatsoever to encumber the Leased Premises, the Building, or any improvements located thereon.
- b. **Mechanic's Liens.** Lessee shall not permit and shall immediately remove any mechanic's liens placed against the Leased Premises which may have resulted from any work performed on Lessee's behalf. Permitting a Mechanic's Lien to be placed against the Leased Premises shall be a material default if not removed within thirty (30) days after notice of its entry. Any improvements by Lessee on said Leased Premises shall be constructed at the sole expense of Lessee, and Lessor and its appointed and elected officials, employees, agents, and volunteers shall not be liable in any way for any amount of money arising out of said construction. Before starting construction, Lessee shall have recorded on the public records of Sussex County, Delaware, such legal notice as may be necessary, and in the form attached hereto as Exhibit C, wherein the public is advised that Lessor and its appointed and elected officials, employees, agents, and volunteers are not in any way liable for any claims or obligations for labor and materials on said job, and that the laborers, material men and subcontractors shall look solely to Lessee for payment and shall not be entitled to place a lien against said demised property. If any mechanic's or materialmen's lien is filed or any claim made on account of labor or other material furnished, alleged to have been furnished or to be furnished to Lessee at the Leased Premises or against Lessor as the owner thereof, in addition to all remedies at law, Lessee shall: (a) pay to Lessor the greater of a fine of \$50.00 per day or the Lessor's standard fine for similar violations

in similar leases for every day that any such Mechanic's Lien remains shall be due, and (b) within ninety (90) days after written notice from Lessor thereof, either pay or bond the same or procure the discharge thereof in such manner as may be provided by law. Lessee will indemnify Lessor and its appointed and elected officials, employees, agents, and volunteers for its costs, legal fees and expenses in defending any action, suit or proceedings which may be brought thereon or for the enforcement of such lien, or liens and Lessee shall pay any damages and any judgment entered thereon and save harmless and indemnify Lessor and its appointed and elected officials, employees, agents, and volunteers from any claims of damages resulting there from. Failure to do so shall entitle Lessor to resort to remedies as are provided herein in the case of any default of this Lease, in addition to such as are permitted by law.

- c. **Liens**. Any liens placed on property owned by Lessee which are located on the Leased Premises must first be approved by Lessor and Lessor shall have the right, in Lessor's sole discretion, to grant or withhold consent. Lessee shall hold Lessor harmless and without risk with respect to any lien placed on Lessee's equipment or personal property within or about the Leased Premises. Prior to the expiration or earlier termination of this Lease, Lessee shall promptly remove any and all liens including any against any of Lessee's property or equipment, or with advanced written notice to Lessor, remove any such property or equipment from the Leased Premises. Lessor shall assume no risk or responsibility for any lien remaining on the Leased Premises or Lessee's equipment or property and Lessee shall indemnify Lessor from any liability whatsoever. This paragraph shall apply to any work performed by Lessee on or in the Leased Premises during the entire Term of this Lease and any renewal hereof.
- d. **Statutory Lien**. Lessor hereby claims any and all statutory or other liens which it may have upon the equipment, furniture, fixtures, real and personal property of any Lessee or Sub-Lessee placed upon the improvements, and Lessee agrees that Lessor has such a lien to the extent provided by statute or otherwise. Lessor may, at Lessor's reasonable discretion, subordinate its lien right to the lien of any mortgage, deed of trust, or security instrument given by Lessee for the renovation of the improvements and purchase of the equipment, furniture, fixtures and personal property placed upon the Leased Premises. Lessee shall furnish the Lessor with copies of all such security instruments.

12. **INSURANCE**: Lessee shall secure and maintain, at its own expense, the following required insurance coverages:

- a. **Commercial General Liability Insurance** - Lessee shall secure and maintain, at its own expense, commercial general liability insurance that insures against bodily injury, property damage, personal and advertising injury claims arising from Lessee's occupancy of the Leased Premises or operations incidental thereto. The minimum limits of liability for this insurance are as follows:

- (1) \$1,000,000.00 combined single limit – each occurrence
- (2) \$1,000,000.00 combined single limit – personal and advertising injury
- (3) \$2,000,000.00 combined single limit – general aggregate
- (4) \$1,000,000.00 combined single limit – products / completed operations aggregate

Such insurance shall be endorsed to name Lessor and its appointed and elected officials, employees, agents and authorized volunteers as additional insureds on a primary and non-contributory basis, with respect to liability arising out of or in connection with Lessee's occupancy of the Leased Premises or operations incidental thereto under this Lease Agreement. Certificates of insurance shall be delivered prior to occupancy and annually thereafter to Lessor and the Office of Economic Development, Sussex County Delaware.

- b. **Business Auto Liability Insurance** - Lessee shall secure and maintain, at its own expense business auto liability insurance with a minimum combined single limit of \$1,000,000 per accident and including coverage for bodily injury and property damage claims arising out of the maintenance, use or operation of any auto and contractual liability protection for bodily injury and property damage claims assumed under this Lease Agreement.
- c. **Workers' Compensation & Employers' Liability** - Lessee shall secure and maintain, at its own expense, workers' compensation insurance and employers' liability insurance. The workers' compensation insurance must satisfy Lessee's workers' compensation obligation to its employees in Delaware under State or Federal law. Employers' liability insurance must be secured with minimum limits of \$100,000.00 for bodily injury by accident, \$100,000.00 each employee for bodily injury by disease, and a \$500,000.00 policy limit for bodily injury disease. To the fullest extent permitted by law, Lessee's workers' compensation and employers' liability insurer shall not hold any right of subrogation against Lessor, and its appointed and elected officials, employees, agents, and volunteers. Lessee shall advise its insurer(s) of the foregoing and such waiver shall be permitted under any workers'

compensation and employers' liability insurance policies maintained by Lessee.

- d. **Property and Business Income Insurance** - Lessee shall secure and maintain, at its own expense, all risk (special form) property insurance that insures against direct physical loss of or damage to the Building and Lessee's personal property including Lessee's improvements, fixtures, equipment and materials located in or on the Leased Premises, on a replacement cost valuation basis, with limits not less than 100% of the insurable replacement cost of all such property. Lessee shall also secure, at its own expense, all risk (special form) business income and extra expense insurance in amounts satisfactory to protect its interests as a result of direct physical loss of or damage to Lessee's covered property located on the Leased Premises. Lessor shall be an insured on Lessee's property and business income insurance as its interests may appear, in amounts sufficient to protect Lessor's interests.
- e. **Waiver of Subrogation** - To the fullest extent permitted by law, Lessee waives any right of recovery from Lessor, and its appointed and elected officials, employees, agents, and volunteers, for any loss, damage or injury to Lessee's property located on the Leased Premises (or resulting loss of income or extra expense), by reason of any peril required to be insured against under this Lease. To the fullest extent permitted by law, Lessee's property insurer shall not hold any right of subrogation against Lessor, and its appointed and elected officials, employees, agents, and volunteers. Lessee shall advise its insurer(s) of the foregoing and such waiver shall be permitted under any property and/or business income and extra expense insurance policies maintained by Lessee. Any deductible amount(s) selected by Lessee shall be the sole responsibility of Lessee.
- f. **Umbrella Excess Liability or Excess Liability Insurance** – Lessee shall secure and maintain, at its own expense, umbrella excess liability or excess liability insurance with minimum limits of \$4,000,000 combined single limit - each occurrence and \$4,000,000 combined single limit – aggregates. This insurance shall include the insurance specified in Paragraphs 12(c), 12(d) (Employers' Liability Insurance only) and 12(e) as underlying insurance. This insurance shall follow form with the coverage provisions, including who is an insured, required for underlying insurance.
- g. **Pollution Liability Insurance** – Lessee shall secure and maintain, at its own expense, pollution liability insurance that insures claims for pollution and remediation legal liability arising out of or in connection with the Lessee's occupancy of the Leased Premises. The minimum limits of liability for this

insurance are \$1,000,000 each pollution condition and \$1,000,000 annual aggregate. This insurance shall name Lessor, and its appointed and elected officials, employees, agents, and volunteers as additional insureds on a primary and non-contributory basis. The endorsement(s) evidencing the required additional insured status must be submitted in conjunction with certificates of insurance furnished to Lessor. Lessee must continue to maintain such insurance, covering incidents occurring or claims made, for a period of three (3) years after termination of this Agreement.

- h. **Evidence of Insurance / Insurers** - Lessee shall furnish certificates of insurance, acceptable to Lessor, to the Manager, Airport and Business Park Operations, Sussex County, Delaware evidencing all policies required above at execution of this Agreement and prior to each renewal thereafter. Such insurance shall be written with insurers allowed to do business in Delaware, with a Best's Financial Strength Rating of "A-" or better, and a Financial Size Category of "Class VII" or better in the latest evaluation of the A.M. Best Company, unless otherwise approved by the Lessor. All insurance policies required hereunder shall be endorsed to provide that the policy is not subject to cancellation or non-renewal in coverage until sixty (60) days prior written notice has been given to Lessor. Therefore, a copy of the endorsements to the required policies that confirm additional insured status and the insurer is obligated to send notice to Lessor as required herein, must accompany all certificates of insurance. Liability policies required herein (other than pollution liability) may not be written on a "claims made" basis without the prior written approval of Lessor. If Lessee shall fail, refuse or neglect to secure and maintain any insurance required of Lessee or to furnish satisfactory evidence of insurance, premiums paid by Lessor shall be recoverable by Lessor from Lessee, together with interest thereon, as additional rent promptly upon being billed therefore.
- i. All policy limits as stated herein shall be adjusted every five (5) years in accordance with increases in the consumer price index to levels satisfactory to Lessor.
- j. **Hold Harmless Agreement** – To the fullest extent permitted by law, Lessee agrees to indemnify and hold harmless Lessor and its appointed and elected officials, employees, agents and authorized volunteers against all claims, damages, liabilities, or costs including reasonable attorney fees and defense costs, to the extent resulting from the negligence acts, omissions or willful misconduct of the Lessee in connection with this Lease Agreement.

13. **ENTRY BY LESSOR AND AGENTS.** At any and all reasonable times during the term of this Lease, Lessor and Lessor's duly authorized agent or agents shall have the right to enter the Leased Premises for the following purposes:
- a. To inspect the Leased Premises in the event of an emergency; and
 - b. To effect Lessee's compliance with any rule or regulation adopted by Lessor, or to effect Lessee's compliance with any restriction, covenant, law, ordinance, order or regulation of Lessor, including, but not limited to, the existence and validity of permits or other approvals for any work or activity being performed on the Leased Premises.

Lessor shall provide Lessee with at least twenty-four (24) hours advance written notice prior to entering the premises unless such notice has been waived by Lessee. Lessor will use its best efforts to inspect the premises at a time and in a manner that minimizes any interference with Lessee's business operations being conducted on the premises.

14. **LESSEE TO INDEMNIFY LESSOR.** Lessee hereby releases Lessor from any and all liability and shall hold Lessor harmless, defend and indemnify Lessor for any and all liability, claims, causes of action, damage and loss or any kind whatsoever, including but not limited to attorneys' fees and costs, for injuries sustained by any person or persons in or upon the Leased Premises (including death) or injuries to property (real or personal), unless the basis for the cause of action solely relates to the willful or negligent actions of the Lessor, its employees and agents. For purposes of this provision, "Lessor" shall include its appointed and elected officials, employees, agents, and volunteers.

15. **EXPIRATION OF LEASE TERM.**
- a. At the expiration of the Lease term and any renewals thereof pursuant to Paragraph 4, Lessee shall peaceably surrender and yield to Lessor, its successors or assigns, the Leased Premises; provided, however, that Lessee shall be responsible for any damage to the Leased Premises not covered by Lessor's insurance if such damage is caused by fire or other casualty resulting from the negligence, accidental conduct or tortuous conduct of Lessee or Lessee's employees, licensees or invitees, ordinary wear and tear excepted.
 - b. Lessee may not allow any liens to be placed against any of Lessee's equipment or the improvements remaining in, about or upon the Leased Premises. Lessee agrees to defend and hold Lessor harmless against any claim, liability or loss that may result for any reason from any lien. Lessor

shall have the absolute right to dispose, remove or to retain any equipment not removed from the Leased Premises at the termination or expiration of this Lease, surrender or abandonment of the Leased Premises and shall not be bound or subject to any risk, cost or liability from liens Lessee has permitted to be attached thereto. At the termination of this Lease, the improvements erected on the Leased Premises and any fixtures which are a part thereof which cannot be removed without substantial damage to said improvements, shall remain a part to the Leased Premises and shall be the property of the Lessor. Any trade fixtures which were installed on the Leased Premises by Lessee and which are removable without substantial damage to the improvements shall remain the property of the Lessee, provided that Lessee shall promptly repair any damage to the improvements on the Leased Premises caused by their removal and that Lessee is not in default of any covenant or agreement contained in this Lease Agreement; otherwise such trade fixtures shall not be removed and Lessor shall have a lien thereon to secure itself on account of its claims.

- c. If the Lessee shall default in surrendering the Leased Premises upon the expiration or earlier termination of this Lease, the Lessee shall be deemed to be "Holding Over" without Lessor's consent and Lessee shall be liable to Lessor for all costs, losses, claims or liabilities (including attorneys' fees) that Lessor may incur as a result of Lessee's failure to surrender the Leased Premises.

- 16. **QUIET ENJOYMENT**. Lessor covenants and agrees that, so long as Lessee shall not be in default under any of the terms and conditions of this Lease, Lessee shall lawfully and quietly hold, occupy and enjoy the Leased Premises during the term of this Lease without hindrance or molestation from Lessor, or any person or persons claiming under Lessor wherein Lessor shall have previous knowledge of any actions.
- 17. **SIGNS**. Prior to installation, Lessee shall submit sign proposals to Lessor for Lessor's approval and consent as to the size, height, type, and location of any on premise sign Lessee seeks to install, such approval not to be unreasonably withheld. Electronic Messaging Centers shall be prohibited. Any sign, device, fixture or other attachment permitted to be installed by Lessee hereunder, shall be installed by Lessee at its own expense and in accordance with the Rules and Regulations attached hereto, all governmental rules, regulations, ordinances, laws and requirements and Lessee shall obtain any and all required permits. Lessee shall be responsible for any damage resulting from the installation or removal of any such sign, device, fixture or other attachment. Lessee shall keep its sign lighted at such reasonable times as Lessor may require under its Rules and Regulations,

or as may be required by ordinance, law or regulation of any governing authority. Lessee shall maintain its sign and keep it in good repair during the term of this Lease. Upon the expiration or earlier termination of this Lease or Lessor's right to possession of the Leased Premises in accordance with this Lease, Lessee shall, at Lessee's sole cost and expense, remove any signage and restore and repair that portion of the Leased Premises affected by the installation or removal of the signage to the condition satisfactory to Lessor.

18. **DEFAULT.**

- a. **Events of Default.** The occurrence of one or more of the following events shall constitute an event of default (each being referred to as an "Event of Default") pursuant to the terms of this Lease:
 - i. Lessee fails to pay when due any and all monies due hereunder, including, but not limited to Rent, Additional Rent, and/or any other sums due Lessor by Lessee, and such failure continues more than thirty (30) days after receipt by Lessee of Lessor's written notice of such failure; or
 - ii. Failure by Lessee to secure required insurance pursuant to Paragraph 13 of this Lease, or to cause renewals to be written and policies or copies thereof to be delivered to Lessor at least ten (10) days before the respective expiration thereof; or
 - iii. The failure of Lessee to comply with or to observe any other terms, provisions or conditions of this Lease performable by Lessee to Lessor's satisfaction, including, but not limited to, compliance with the Rules and Regulations, maintenance, removal, repairs and replacements, and such failure continues after Lessor gives Lessee written notice that Lessee has thirty (30) days to cure the default. If such default cannot reasonably be cured within the thirty (30) day period, Lessee shall be permitted such additional time as is needed to cure the same so long as Lessee has notified Lessor and Lessee has commenced its actions to cure within such thirty (30) day period and such cure thereafter is continuously and diligently undertaken and pursued by Lessee (or its mortgagee) and prosecuted to completion, but in no event longer than ninety (90) days, unless the cure involves repairing or correcting any structural issues where the cure time frame shall be a commercially reasonable time frame;
 - iv. The dissolution or liquidation of Lessee or the filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee promptly to lift or bond (if legally permissible) any execution, garnishment or attachment of

such consequences as will impair its ability to carry on its operation, or the commission by Lessee of any act of bankruptcy, or adjudication of Lessee as bankrupt or assignment by Lessee for the benefit of its creditors, or the entry by Lessee into an agreement of composition with its creditors, or the approval by a Court of competent jurisdiction of a petition applicable to Lessee in any proceedings for its reorganization instituted under the provisions of the Federal Bankruptcy Statutes, as amended, or under any similar act which may hereafter be enacted. The term "dissolution or liquidation of the Lessee", as used in this subsection, shall not be construed to include the cessation of the corporate existence of Lessee resulting from a merger or consolidation of Lessee into or with another corporation or of a dissolution or liquidation of Lessee following a transfer of all or substantially all its assets as an entirety; or

- v. Failure by Lessee to abide by any laws, statutes, rules, or regulations relating to the Leased Premises, which failure continues for a period of thirty (30) days after Lessee's receipt of notice by mail that the violation referred to in such notice has not been corrected;
 - vi. Lessee shall abandon the Leased Premises or suffer the Leased Premises to become vacant or deserted;
 - vii. Lessee shall remove or caused to be removed from the Leased Premises Lessee's fixtures, machines, or equipment without Lessor's prior written consent; or
 - viii. Failure by Lessee to cure immediately after receipt of notice from Lessor, any hazardous condition which Lessee has created in violation of law or this Lease.
- b. **Lessor's Remedies.** In the event Lessee has an Event of Default that has not been cured within the permitted time periods, the Lessor shall have all of the rights and remedies permitted by law, in equity, by statute and otherwise, including, without limitation, the following:
- i. **Terminate Lease.** Lessor may terminate this Lease, in which event, Lessee shall remove all personal property from the Leased Premises within sixty (60) days after termination. If Lessee fails to timely remove said personal property, Lessee will be deemed to have abandoned the property, and title for which shall revert to Lessor, and at Lessor's option, Lessor may remove the property. Lessee agrees to pay Lessor the cost of removing the personal property.

- ii. **Enter and Cure Default.** If Lessee defaults in the performance of any of its obligations under the provisions of this Lease and if such default shall continue beyond the time periods set forth herein for curing such default, then Lessor may, at its option, enter upon the Leased Premises without terminating this Lease and without being liable to prosecution or for any claim of damages, and do whatever Lessee is obligated to do under the terms of this Lease or otherwise cure any default by removal (including removal of the Improvements), repair or replacement, and cure any such default on behalf of Lessee, and any sums expended by Lessor in the performance of any such obligation of Lessee shall be repaid as Additional Rent, by Lessee to Lessor immediately upon demand, together with interest thereon, at the interest rate of eighteen percent (18%) per annum beginning from the date any such expense was incurred by Lessor. In the event that Lessor determines, in Lessor's reasonable judgment, that it is in best interest of the Lessor for Lessor to complete or perform any of Lessee's obligations under this Lease, Lessor reserves the right to complete or perform any such obligation at Lessee's cost and liability, no written notice being required. This shall not be permitted until the expiration of the time frames in Paragraph 19(a) above.
- iii. **Surrender of Premises.** Upon termination of this Lease for any reason or upon termination of Lessee's right of possession, as provided above, Lessee shall promptly surrender possession to Lessor and vacate the Leased Premises, and Lessor may re-enter the Leased Premises without further notice to Lessee and repossession the Leased Premises by force, summary of proceedings, ejectment or otherwise. Lessor may also dispossess or remove Lessee and all other persons and property from the Leased Premises, and Lessor shall have, hold and enjoy the Leased Premises and the right to receive all rental income therefrom.
- iv. **Re-letting.** At any time after the expiration of Lessee's possessory right to the Leased Premises, Lessor may re-let the Leased Premises, or any part thereof, in the name of Lessor or otherwise for such term (which may be greater or less than the period which would otherwise have constituted the balance of the term of the Lease) and on such conditions (which may include concession or free rent) as Lessor, in its sole and absolute discretion, may determine, and Lessor may collect and receive the rental therefrom which will serve to mitigate the damages due from Lessee. Lessor shall in no way be responsible or liable to Lessee for any failure to re-let the Leased Premises or any part thereof or for any failure to collect any rent due upon such re-letting, and Lessee's liability shall not be affected or diminished in any respect by such failure. In the event Lessor re-lets the Leased Premises at a rental higher than that due from

Lessee under the provisions hereof, Lessee shall not be entitled to share in any excess. Lessor, at its option, may make such alterations, repairs and changes to the Leased Premises as Lessor, in its sole judgment, considers advisable or necessary for the purpose of re-letting the Leased Premises, and the making of such alterations, repairs and changes shall not operate or be construed to release Lessee from liability.

- c. **Lessee's Obligation**. The expiration of Lessee's right to possession of the Leased Premises shall not relieve Lessee of its liabilities hereunder, and the obligations created under this Lease shall survive any such expiration. In the event of such expiration, whether or not the Leased Premises or any part thereof shall have been re-let, Lessee shall pay to Lessor all Rent and Additional Rent required to be paid by Lessee up to the time of such expiration; and thereafter, Lessee, until the end of the term of this Lease, shall be liable to Lessor and shall pay to Lessor, as and for liquidated and agreed current damages for Lessee's default(s), the equivalent of the amount of the Rent and Additional Rent which would be payable under this Lease by Lessee if Lessee were still in possession less the net proceeds of any re-letting effected pursuant to the provisions of Section (d) of this paragraph after deducting all of Lessor's expenses in connection with such re-letting including, without limitation, all repossession costs, brokerage commissions, legal expenses, reasonable attorney's fees actually incurred, alteration and repair costs and expenses of preparation for such re-letting.
- d. **Current Damages**. Lessee shall pay such current damages ("Deficiency") to Lessor in a timely manner when due under the terms of this Lease, and Lessor shall be entitled to recover from Lessee each Deficiency as such Deficiency shall arise. At any time after the expiration of Lessee's possessory right to the Leased Premises, Lessor, at its option, may demand as and for liquidated and agreed final damages for Lessee's default(s), and Lessee shall pay to Lessor an amount equal to the difference between the Rent and Additional Rent payable hereunder for the unexpired portion of the Lease Term and then fair and reasonable rental value of the Leased Premises for the same period. Lessee shall also pay to Lessor all of Lessor's expenses incurred in connection with any re-letting including, without limitation, all repossession costs, brokerage commissions, legal expenses actually incurred of preparation for re-letting. If the Leased Premises or any part thereof is re-let by Lessor for the unexpired term of this Lease Agreement or any part thereof, the amount of rent payable upon such re-letting shall be deemed to be the fair and reasonable rental value for the part or the whole of the Leased Premises re-let. Nothing herein contained shall limit or prejudice the right of Lessor to prove and obtain as damages, by

reason of any default by Lessee, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when such damages are to be proved.

- e. **Deficiency**. Any suit brought to collect the amount of the deficiency for any month shall not prejudice the right of Lessor to collect the deficiency for any subsequent month by a similar action.
 - f. **Lessor's Right**. Any action taken by Lessor under this Paragraph shall not operate as a waiver of any right Lessor would otherwise have against Lessee for breach of this Lease, and Lessee shall remain liable to Lessor for any damages suffered by reason of Lessee's default or breach of this Lease. Lessor shall also be entitled to enjoin any breach or threatened breach by Lessee of any of the covenants and conditions of this Lease; and in the event of such breach, Lessor shall have all rights and remedies allowed at law and equity by statute or otherwise. Any and all remedies provided for herein are considered cumulative and not exclusive.
 - g. **Waiver of Jury Trial**. TO THE EXTENT PERMITTED BY LAW, IT IS MUTUALLY AGREED BY AND BETWEEN LESSOR AND LESSEE THAT THE RESPECTIVE PARTIES HERETO SHALL, AND THEY DO HEREBY, WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BETWEEN THE PARTIES HERETO OR THEIR SUCCESSORS OR ASSIGNS ON ANY MATTERS ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS LEASE AGREEMENT, THE RELATIONSHIP OF LESSOR AND LESSEE, AND/OR LESSEE'S USE OF, OR OCCUPANCY OF, THE LEASED PREMISES AND ANY CLAIM OR INJURY OR DAMAGES RELATING THERETO. IN ANY EVICTION PROCEEDING ARISING OUT OF A DEFAULT BY LESSEE, LESSOR AND LESSEE CONSENT TO AN EXPEDITED OR SUMMARY PROCEEDING TO THE EXTENT AVAILABLE UNDER APPLICABLE LAW.
19. **EMINENT DOMAIN**. The Lessor agrees not to take the Leased Premises by Eminent Domain or similar vehicle to remove the Lessee from the Leased Premises.
20. **CONDEMNATION**: If at any time during the term hereof the whole of the Leased Premises shall be taken for any public or quasi-public use under any statute or by right of eminent domain, then and in such event, when possession shall have been taken of the Leased Premises by the condemning authority, this Lease and all rights of Lessee hereunder shall immediately cease and terminate and the rent shall be apportioned and paid to the time of such termination. If pursuant to the provisions of this article, this Lease Agreement shall have been terminated and if prior to such

termination, Lessee shall have made any improvements upon the Leased Premises, Lessor shall be entitled to all of the condemnation proceeds which may be granted with respect to the land and improvements existing on the Leased Premises at the commencement of this Lease; and Lessee shall be entitled to the proceeds of any condemnation awarded on account of the value of any improvements made by Lessee.

21. **PARTIAL CONDEMNATION**: If after commencement of this Lease Agreement only a part of the Leased Premises shall be taken or condemned, Lessor shall be entitled to any award made with respect to the land and any improvements existing on the Leased Premises at the commencement of this Lease and Lessee shall be entitled to any award made for any improvements made by Lessee which are condemned. In the event such condemnation shall leave a portion of the Leased Premises which in Lessee's sole judgment is usable by Lessee, this Lease shall remain in full force and effect, but the Rent herein reserved to Lessor shall be adjusted so that Lessee shall be entitled to a reduction in Rent in the proportion that the value of land taken bears to the value of the entire Leased Premises. If a portion of the Leased Premises is taken or condemned prior to commencement of construction hereunder, the proceeds shall belong solely to Lessor and the rental hereunder shall not be abated. Notwithstanding the foregoing, Lessee shall have the right to terminate this Lease if, in its sole judgment, the Leased Premises have been rendered unsuitable for its purpose.

22. **SUBORDINATION**.

- a. This Lease shall be subject and subordinate to, and may be assigned as security for, any present and future mortgage or deed of trust on or of the Leased Premises and all renewals, modifications, extensions, consolidations or replacements thereof. If requested, Lessee agrees to execute written documents evidencing the subordination of this Lease to, and its assignment as additional security for any mortgage or deed of trust. If Lessor requires Lessee to execute a Subordination Agreement, preparation of the Subordination Agreement shall be Lessor's sole cost and expense.
- b. In addition, upon request of any mortgagee of the Leased Premises, Lessee will execute and enter into an attornment and non-disturbance agreement with such mortgagee wherein Lessee will agree that, in the event that such mortgage is foreclosed, Lessee will attorn to the mortgagee or other owner of the Property as Lessee's Lessor and the mortgagee or other owner of the Property will, provided Lessee is not in default under the terms of this Lease,

recognize the rights of Lessee under the provisions of this Lease and will not disturb the possession of Lessee hereunder.

23. **PROPERTY RIGHTS RESERVED:** This Lease and all provisions hereof are subject and subordinate to the terms and conditions of the instruments and documents under which Lessor acquired the Leased Premises from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in this Lease of said lands from Lessor, and any existing or subsequent amendments thereto, and are subject to any ordinances, rules or regulations which have been, or may hereafter be adopted by Lessor.

24. **ASSIGNMENT AND SUBLETTING.**

- a. Lessee shall not have the right to assign this Lease Agreement or sublet the Leased Premises unless the written consent of Lessor is acquired, which consent may be granted or withheld in Lessor's sole discretion. Lessee shall not assign or sublet the Leased Premises for a use other than as specified in Paragraph 6 above and shall provide Lessor with at least thirty (30) days' prior written notice of any desired assignment or subletting. All assignments and subletting shall require Lessor's prior review and written approval, which Lessor may withhold or grant in its sole discretion. Unless otherwise agreed, such assignment or subletting shall in no way relieve Lessee of any responsibility for the payment of rent or for the performance of any of the other covenants or conditions hereof. Such assignee or Sub-Lessee shall in writing assume all of the obligations to be performed by Lessee hereunder. Lessee agrees to pay for any attorney's fees incurred by Lessor resulting from any sublease or assignment. Lessor reserves the right to require the renegotiation of the terms of the Lease in return for consenting to a sublease or assignment.
- b. If Lessee seeks to sublease the Leased Premises, Lessee shall provide Lessor with information as to the compensation Lessee will receive for the subleased portion of the Leased Premises. If Lessor consents to the sublease, the Base Rent for the subleased portion of the Leased Premises shall increase by the difference between the compensation to be paid to Lessee and the Base Rent.
25. **WAIVER.** Waiver by Lessor of any right or remedy available to it in the event of any default hereunder or any breach by Lessee of the terms and conditions of this Lease shall not constitute a waiver of any succeeding default of the same or other terms and conditions of this Lease.

26. **TRANSFER OF LESSOR'S INTEREST.** Lessor shall be entitled to sell, transfer or otherwise convey its interest in the Leased Premises, and any such sale, transfer or conveyance shall operate to relieve Lessor of any of its obligations and responsibilities hereunder, provided that the purchaser or other transferee of such interest shall expressly assume and agree to perform Lessor's obligations and responsibilities to Lessee hereunder.
27. **RISK OF LOSS FOR IMPROVEMENTS AND PERSONAL PROPERTY.** Lessee agrees that all improvements and personal property located in the Leased Premises shall be and remain at Lessee's sole risk, and Lessor shall not be liable for any damage to or loss of such improvements and personal property unless such damage or loss arises from any acts of negligence or willful misconduct by Lessor nor shall Lessor be liable for any damage to or loss of Lessee's personal property resulting from fire or other casualty, from the leaking of the roof or from the bursting, leaking or overflowing of water and sewer pipes or from malfunctions of the heating, plumbing or electrical systems, or from any other cause whatsoever, except if said damage or loss is caused by the acts or negligence or willful misconduct of Lessor or its agents, servants, employees, etc.
28. **APPLICATION OF PAYMENTS.** Lessor shall have the right in its sole discretion to apply any payments made by Lessee to the satisfaction of any debt or obligation of Lessee to Lessor regardless of the instructions of Lessee as to the application of any such payment. The acceptance by Lessor of any rental payment by anyone other than Lessee shall not be deemed to constitute an approval of any assignment of this Lease by Lessee.
29. **MEMORANDUM OF LEASE.** This Lease shall be recorded in the Office of the Recorder of Deeds, in and for Sussex County, DE.
30. **NOTICES.** All notices required to be given hereunder shall be sent by registered or certified mail, return receipt requested or by a nationally recognized overnight delivery service with all charges pre-paid and sent to the address as follows:

If intended for Lessor:

Sussex County Administrator
Sussex County Administration
Building 2 The Circle
P.O. Box 589
Georgetown, DE
19947

With a copy to:

J. Everett Moore, Jr., Esquire
Moore & Rutt, P.A.
122 W. Market Street
P.O. Box 554
Georgetown, DE 19947

If intended for Lessee:

Atlantic Contracting and Material Co., Inc.
9712 Dorval Avenue
Upper Marlboro, MD 20772

Either party shall be entitled to change the person or address to which notices shall be given hereunder by giving notice to the other party in accordance with the provisions set forth herein.

31. **NO PARTNERSHIP**. The relationship created by this Lease is that of Lessor and Lessee, and nothing in this Lease shall be construed to make Lessor and Lessee partners. Lessee shall have no authority to make any contract or do any act so as to bind Lessor or as to render Lessor or the Leased Premises liable therefore.
32. **PRONOUNS**. All pronouns and any variations thereof used in this Lease shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require. If the Lessor or Lessee be more than one person, these provisions shall be taken to bind and apply to them jointly and severally, or if a corporation, then to its successors and assigns.
33. **COUNTERPARTS; ELECTRONIC SIGNATURES**. This Lease may be executed in two counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Electronic signatures and photocopies or facsimile copies of signatures shall be deemed to have the same force and effect as originals.
34. **BINDING EFFECT**. This Lease shall be binding upon and inure to the benefit of the parties, their respective heirs, successors and assigns.
35. **PARAGRAPH HEADINGS**. Paragraph headings relating to the contents of particular paragraphs have been inserted for the convenience of reference only and shall not be construed as parts of the particular paragraphs to which they refer.

36. **GOVERNING LAW.** This Lease shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict of laws principles, and with venue lying in Sussex County. The parties acknowledge and agree that this is a Commercial Lease. Accordingly, this Lease shall NOT be governed by the Delaware Landlord-Tenant Code 25 Del. C., § 5101 et seq.
37. **ENTIRE AGREEMENT.** This Lease constitutes the entire agreement between the parties, and it supersedes any and all prior understandings or commitments concerning the subject matter of this Lease. This Lease shall not be modified or amended except by a written instrument executed by both Lessor and Lessee.
38. **PARTIAL INVALIDITY.** If any provision of this Lease or the application thereof shall to any extent be held invalid, then the remainder of this Lease or the application of such provision other than those as to which it is held invalid shall not be affected thereby, and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.
39. **ATTORNEYS' FEES.** Lessee shall pay upon demand all of Lessor's costs, charges, reasonable attorney's fees and expenses, incurred in enforcing Lessee's obligations hereunder or incurred by Lessor in any litigation in which Lessor, without Lessor's fault, becomes involved or concerned by reason of the existence of this Lease or the relationship hereunder of Lessor and Lessee. In addition, Lessee shall bear all costs and expenses incurred by Lessor in connection with Lessor's review, negotiation, drafting, or any other expenses and fees, including attorney's fees, related to any amendment, sublease, or assignment of this Lease.
40. **EXHAUST AND ODORS.** Lessee shall, at its sole cost and expense, install and maintain adequate equipment for the Leased Premises so as to keep any and all unreasonable odors from entering the Common Areas or other lands of Lessor. Lessee shall not cause or permit any unreasonable odors to emanate from the Leased Premises. In the event Lessor notifies Lessee in writing that unreasonable odors are emanating from the Leased Premises, Lessee shall within five (5) days after such notice from Lessor, commence to install, at its sole cost and expense, any necessary control devices or procedures to eliminate such odors and shall complete such installation as expeditiously as possible proceeding in a good faith manner. In the event that Lessee fails to stop unreasonable odors from emanating from the Leased Premises, Lessor may proceed to cure the odor problem at Lessor's discretion and recover all costs and expenses from Lessee.
41. **CONSTRUCTION; FREELY NEGOTIATED.** Lessee and Lessor acknowledge that they have had their respective counsel review this Lease and the normal rule of construction to the effect that any ambiguities are to be resolved against the

drafting party will not be employed in the interpretation of this Lease. Lessor and Lessee agree that this Lease has been freely negotiated by both parties.

42. **LESSEE WARRANTY.** Lessee represents and warrants that Lessee is a duly formed Delaware corporation registered to do business in Delaware, in good standing and has full power and authority under its operating agreement to enter into this Lease. The Certificate of Good Standing from the State of Delaware and all necessary resolutions shall be provided upon Lessor's requests. Lessee has taken all legal action necessary to carry out the transaction contemplated herein, so that when executed, this Lease constitutes a valid and binding obligation enforceable in accordance with its terms.
43. **LESSOR'S RIGHT OF OFFSET.** Notwithstanding anything contained in this Lease to the contrary, Lessor shall have the absolute right to retain and use any of Lessee's funds or monies in Lessor's possession, no matter what the source of the funds or monies may be, and use any such funds or monies to off-set any payments or outstanding sums owed to Lessor.
44. **HAZARDOUS MATERIALS.** Lessee shall not permit any hazardous materials to be used or stored in the Leased Premises, unless used or stored in full compliance with any State or Federal regulations and shall hold Lessor harmless from any liability and expense from same in accordance with paragraph 15 hereof. Lessee shall comply with all Federal and State regulations related to the handling or disposal of any materials or byproducts regulated by State or Federal rules, laws or regulations.
45. **TIME OF THE ESSENCE.** Time shall be of the essence for the performance of all terms of this Lease
46. **JOINT AND SEVERAL LIABILITY:** If the Lessee is more than one person or entity, the obligation created by this Lease is intended to be a joint and several obligation of the undersigned.
47. **COMPLIANCE WITH LAWS:** Lessee shall promptly comply with all laws, ordinances, rules, regulations, requirements and directives of the Federal, State and County Government and Public Authorities and of all their departments, bureaus and subdivisions, applicable to and affecting the said premises, their use and occupancy, for the correction, prevention and abatement of nuisances, violations or other grievances in, upon or connected with the said premises, during the term hereof; and shall promptly comply will all orders, regulations and directives of the State Fire Marshal or similar authority and of any insurance companies which have issued or are about to issue policies of insurance covering the said premises and

its contents, for the prevention of fire or other casualty, damage or injury, at the Lessee's own cost and expense.

48. **NON-PERFORMANCE BY LESSOR.** This Lease and the obligation of Lessee to pay the Rent hereunder and to comply with the covenants and conditions hereof, shall not be affected, curtailed, impaired or excused because of Lessor's inability to supply any service or material called for herein, by reason of any rule, order, regulation or preemption by any governmental entity, authority, department, agency or subdivision or for any delay which may arise by reason of negotiations for the adjustment of any fire or other casualty loss or because of strikes or other labor trouble or for any cause beyond the control of Lessor.

49. **INTENTIONALLY OMITTED.**

50. **NON-DISCRIMINATION:**

- a. Lessee for its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, creed, sexual orientation, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, (3) that Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- b. That in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate the Lease and to re-enter and as if the Lease had never been made or issued. The provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

[Signature Pages to Follow]

Atlantic Contracting and Material Co., Inc.
A Delaware corporation

By: _____ (SEAL)

President

STATE OF _____ :
 _____ : ss.
 COUNTY OF _____ :

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

My commission expires: _____

EXHIBIT A

LEGAL DESCRIPTION

All that certain lot, piece and parcel of land, lying and being situated in Georgetown Hundred, Sussex County, and State of Delaware, being designated as 8 Mulberry Street, Suite B, Georgetown, DE 19947 located on parcel No. 135-19.00-69.00.

EXHIBIT B

RULES AND REGULATIONS

The Rules and Regulations shall remain in effect for the duration of this Lease unless amended in a writing executed by both parties.

The Lessee agrees as follows:

RULES, REGULATIONS AND RESTRICTIONS

I. PURPOSE

The purpose of these Rules, Regulations and Restrictions is to provide guidelines and performance standards, which will control and confine any offensive features (i.e., noise, vibration, heat, smoke, glare, dust, objectionable odors, toxic wastes or unsightly storage) to the confines of the premises and within enclosed buildings or within a visually enclosed space.

II. LAND USE CRITERIA

1. Permitted uses. Permitted uses shall be as follows:

- b. Business, medical, professional or administrative offices.

2. Prohibited Land Use:

- a. No operation or uses shall be permitted or maintained which causes or produces any of the following effects discernible outside the site or affecting any adjacent property:
 - (1) Noise or sound that is objectionable because of its volume, duration, intermittent beat, frequency or shrillness;
 - (2) Smoke;
 - (3) Noxious, toxic or corrosive fumes or gases;
 - (4) Obnoxious odors;
 - (5) Dust, dirt, or fly ash; and

- (6) Unusual fire or explosive hazards.
- b. The operation and use of drilling for and removal of oil, gas, or other hydrocarbon substances on any property subject to these Covenants shall not be permitted without the prior written consent of Sussex County.
- c. The following operations and uses are expressly prohibited on all property subject to these Covenants:
- (1) Residences, including trailer courts.
 - (2) Manufacturing uses involving production of the following products from raw materials: asphalt, cement, charcoal and fuel briquettes; chemicals; aniline dyes, ammonia, carbide, caustic soda, cellulose, chlorine, carbon black and bone black, creosote, hydrogen and oxygen, industrial alcohol, nitrates (both natural and manufactured) of an explosive nature, potash, petro chemical, pyroxylin, rayon yarn and hydrochloric, nitric, picric, phosphoric and sulfuric acids; coal, coke and tar products, including gas manufacturing, explosives, fertilizers, glue and size (animal); linoleum and oil cloth, matches, paint, varnishes and turpentine; rubber (natural and synthetic); and soaps, including fat rendering.
 - (3) Dumps, junkyards, automobile salvage and dismantling plants/yards, storage areas or operations for the storage or resale of used automobile or other machine parts.
 - (4) Operations involving slaughterhouses, stockyards or slag piles.
 - (5) Storage of explosives and bulk or wholesale storage of gasoline above ground.
 - (6) Quarries, stone crushers, screening plants and all associated uses.
 - (7) The following processes: refining, smelting and alloying of iron, tin, zinc and other metal or metal ores; refining petroleum products such as gasoline, kerosene, naphtha and lubricating oil; and reduction and processing of wood pulp and fiber, including paper mill operations.
 - (8) Drilling for the removal of any hydrocarbon substances.
 - (9) Fertilizer or Compost Facilities.
 - (10) Commercial Excavation of Building or Construction Materials.

- (11) Distillation of Bones.
- (12) Dumping, Disposal, Incineration, or Reduction of Garbage, Sewage, Offal, Dead Animals or Refuse.
- (13) Animals of any kind including the Raising of Pets or Livestock or other animals.

3. No Immoral or Unlawful Use.

No immoral, improper, offensive or unlawful use shall be made of the Property nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed and followed at all times.

III. Intentionally Omitted.

IV. ARCHITECTURAL AND AESTHETIC STANDARDS

1. Signs:

Plans and specifications for the construction, installation, or alterations of all outdoor signs including traffic or directional signs shall be first submitted to and have the written approval of Sussex County.

The following signs shall be permitted:

- a. Those identifying the name of the person or firm occupying the Site subject to the following criteria:
 - (1) Prior to installation of a sign on any Site, Lessee shall submit sign proposals to Sussex County for its approval and consent as to the size, height, type, and location of any on premise sign Lessee seeks to install. Final approval will be based on reasonable architectural standards and overall balance as same applies to identification displays. It should also be understood that Sussex County must approve the manner in which the sign is constructed, lighted and mounted.
 - (2) All Lessees shall maintain its sign and keep it in good repair during the term of its Lease. Lessee shall be responsible for any damage resulting from the installation or removal of any such sign, device, fixture or other attachment.

- (3) Lessee shall keep its sign lighted at such reasonable times as Lessor may require under these Rules and Regulations, and as may be amended from time to time.
- (4) Upon the expiration or termination of any Site Lease or the Lessee's right to possession of the Site, or the Lessee's vacation of the Site, Lessee shall, at Lessee's sole cost and expense, remove any signage and restore and repair that portion of the Site affected by the installation or removal of the signage to the condition satisfactory to Sussex County.

4. Outdoor Storage:

- a. Unless specifically approved by Sussex County in writing, no materials, supplies or equipment (including company owned or operated vehicles) including but not limited to trash and garbage receptacles, shall be stored in any area on a Site except inside a closed building, or behind a visual barrier screening such areas from the view of adjoining properties and/or public street.
- b. Screening of Service Containers: Garbage and refuse containers shall be concealed by means of a screening wall of material similar to and compatible with that of the building. These elements shall be integral with the concept of the building plan, be designed so as not to attract attention, and shall be located in the most inconspicuous manner possible. Unless specifically approved by Sussex County in writing, no materials, supplies or equipment shall be stored on the Property except inside a close building, or behind a visual barrier screening such areas so that they are not visible from neighboring streets and property.

5. Maintenance Requirement, Refuse Collection, and Prohibition of Junk Storage:

- a. Each Lessee, or occupant shall at all times keep his premises, buildings, improvements and appurtenance in a safe, clean, neat, and sanitary condition and shall comply with all laws, ordinances and regulations pertaining to health and safety. Each Lessee shall provide for the removal of trash and rubbish from his premises. The Sites shall not be used for storage of any scrap materials without the prior written approval of Sussex County.
- b. During construction, it shall be the responsibility of each Lessee to insure that the construction sites are kept free of unsightly accumulations of rubbish and scrap materials and that construction materials, trailers, shacks, and the like are kept in a neat and orderly manner.

6. Utilities Placement and Design:

Without limiting the generality of any of the foregoing, the following use restrictions shall be maintained and enforced with respect to the property:

- a. Antennas: No antenna for transmission or reception of television signals or any other form of electro-magnetic radiation shall be erected, used or maintained on the Property outside any building whether attached to an improvement or otherwise, without the prior approval of Sussex County.
- b. Utility Service: No lines, wires, or other devices for the communication of transmission of electric current or power, including telephone, television and radio signals, shall be constructed, placed or maintained anywhere in or upon the Property unless the same shall be contained in conduits or cable, constructed, placed and maintained underground or concealed in, under, or on buildings, or other improvements as approved by Sussex County, Lessee, provided electrical transformers may be permitted if properly screened and approved by the Sussex County. Nothing herein shall be deemed to forbid the erection and use of temporary electric or telephone services incident to the construction of approve improvements.
- c. Mail Boxes: No mail or other delivery boxes shall be permitted on the Property unless approved by Sussex County.
- d. Mechanical Equipment: All mechanical equipment, including roof mounted shall be enclosed or screened so as to be an integral part of the architectural design.

7. Repair of Leased Premises:

No leased premises or other improvement shall be permitted to fall into disrepair and each improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

8. Compliance with Governmental Authorities:

Construction and alteration of all improvements shall be performed in accordance and comply with the requirements of all applicable governmental authorities.

V. IMPLEMENTATION

2. Enforcement:

Said Covenants shall be jointly and severally enforceable by Sussex County and its successors and assigns and by any Lessee and its successors and assigns, provided, however, that only Sussex County or its assignees, shall have the right to exercise the discretionary powers herein reserved to Sussex County.

Violation of any of said Covenants, or breach of any Covenant or agreement herein contained shall give Sussex County or its assignees in addition to all other remedies, the rights (but not the obligation) to enter upon the land which such violation or breach exists and summarily to abate and remove any structure or correct any condition that may constitute such violation or breach at the expense of the then Lessee of such land, which expense shall be a lien on such land enforceable in Equity; provided, however, that no such entry shall be made unless the violation or breach has not been remedied and corrected within thirty (30) days after delivery of written notice of such violation or breach from Sussex County or its said assignees to the Lessee of the premises on which the violation or breach has occurred or in the alternative within thirty (30) days after mailing such notice, by certified or registered mail, postage prepaid, to the Lessee of such premises at his or its last known address.

Sussex County hereby claims any and all statutory or other liens which it may have upon the equipment, furniture, fixtures, real and personal property of any Lessee or Sub-Lessee placed upon the improvements, and Lessee agrees that Sussex County has such a lien to the extent provided by statute or otherwise. Sussex County agrees to subordinate its lien right to the lien of any mortgage, deed of trust, or security instrument given by Lessee for the construction of the improvements and purchase of the equipment, furniture, fixtures and personal property placed upon the property. Lessee shall furnish Sussex County copies of all such security instruments.

If Sussex County prevails in any legal or equitable proceeding seeking to restrain the violation of or enforce any provision herein, of challenging the enforceability of any provision herein, Sussex County shall be entitled to attorneys' fees in the trial and appellate court proceedings; and costs and expenses of investigation and litigation, including expert witness fees, deposition costs (appearance fees and transcript charges), injunction bond premiums, travel and lodging expenses, all fees and charges, and all other reasonable costs and expenses. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

VI. MISCELLANEOUS

1. Failure to Enforce Not a Waiver of Rights:

Any waiver or failure to enforce any provision of these Covenants in a particular situation shall not be deemed a waiver or abandonment of such provision as it may apply in any other situation or to the same or similar situation at any other location or of any other provision of these Covenants. The failure of Sussex County or any Lessee to enforce any Covenant herein contained shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other Covenant.

2. Mutuality, Reciprocity:

Runs with Land. All covenants, conditions, and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every part and parcel in favor or every other parcel; shall create reciprocal rights and obligations between the respective lessees of all parcels and privities of contract and estate between all grantees of said parcels, their heirs, successors, and assigns, operate as Covenants running with the land for the benefit of all other Sites.

EXHIBIT C

Tax Map Number:
135-19.00-69.00
Return to:
Sussex County
2 The Circle
P.O. Box 589
Georgetown, DE
19947

NOTICE OF AGREEMENT TO
RESTRICT LESSEE FROM
ENCUMBERING PROPERTY

THIS NOTICE OF AGREEMENT TO RESTRICT LESSEE FROM ENCUMBERING PROPERTY (this "Notice") dated as of this _____ day of _____, 2025, by and between SUSSEX COUNTY, a political subdivision of the State of Delaware, 2 The Circle, P.O. Box 589, Georgetown, Delaware 19947, hereinafter referred to as "Lessor", and Atlantic Contracting and Material Co., Inc., with a principal office located at 9712 Dorval Avenue, Upper Marlboro, MD 20772, "Lessee".

RECITALS:

WHEREAS, Lessor is the owner of certain real property and improvements known as 8 Mulberry Street, Suite B, Georgetown, Delaware , as improved ("the Leased Premises");

WHEREAS, Lessee is a Lessee of the Leased Premises pursuant to a lease agreement dated _____, 2025 ("the Lease"); and

WHEREAS, pursuant to this Lease, Lessor and Lessee agreed that Lessor shall not be liable for debts, acts, or omissions of Lessee and that Lessee has no authority to encumber the Leased Premises; and

WHEREAS, this Notice is to provide legal notice to the public that Lessor and its appointed and elected officials, employees, agents, and volunteers are not in any way liable for any claims or obligations for labor and materials for any work performed on the Leased Premises, and that the laborers, material men and subcontractors shall look solely to Lessee for payment and shall not be entitled to place a lien against said Leased Premises.

WITNESSETH

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound, the parties hereby certify, consent, and agree as follows:

1. The parties acknowledge that Lessee shall not be the agent or partner of Lessor and Lessee shall have no authority to make any contract or do any act so as to bind Lessor or as to render Lessor or Lessor's interest in the Leased Premises liable therefore. Lessee will save Lessor and the Leased Premises harmless from any penalty, damages, neglect, or negligence of Lessee, property damage, illegal act or otherwise. Any improvements by Lessee on said Leased Premises shall be constructed at the sole expense of Lessee, and Lessor and its appointed and elected officials, employees, agents, and volunteers shall not be liable in any way for any amount of money arising out of said construction. No liens may be placed on the Leased Premises without Lessor's prior written approval. Lessee has no authority whatsoever to encumber the Leased Premises or any improvements located thereon.

2. The parties hereby notify the public that Lessor and its appointed and elected officials, employees, agents, and volunteers are not in any way liable for any claims or obligations for labor and materials for any work performed on the Leased Premises, and that the laborers, material men and subcontractors shall look solely to Lessee for payment and shall not be entitled to place a lien against said Leased Premises.

3. This Notice shall be governed by the laws of the State of Delaware.

[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY.
SIGNATURE PAGES TO FOLLOW.]

IN WITNESS WHEREOF, the undersigned has caused this Notice to be signed as a sealed document under Delaware law as of the date set forth above.

LESSOR:

SUSSEX

COUNTY

DATED: _____

By: _____

Douglas B. Hudson, President
Sussex County Council

Attest: _____

STATE OF DELAWARE :
: ss.
COUNTY OF SUSSEX :

BE IT REMEMBERED, That on this _____ day of _____, A. D. 2025, personally appeared before me, the Subscriber, a Notary Public for the State and County aforesaid, Douglas B. Hudson, President, Sussex County Council, a political subdivision 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 deed of the said political subdivision; 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 political subdivision, 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 members of Sussex County Council.

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

NOTARY PUBLIC

Print Name of Notary Public

My Commission Expires: _____

LESSEE:

Atlantic Contracting and Material Co., Inc.
A Delaware corporation

Attest

By: _____ (SEAL)

President

DATED: _____

STATE OF _____ :
: ss.
COUNTY OF _____:

BE IT REMEMBERED, that on this _____ day of _____, A.D. 2025, personally came before me, a Notary Public for the State and County aforesaid, _____, duly authorized Member of Atlantic Contracting and Material Co., Inc., a corporation existing under the laws of the State of Delaware, party to this Indenture, known to me personally to be such and acknowledged this Indenture to be her act and deed and the act and deed of said company, that the signature of the duly authorized officer thereto is in his / her own proper handwriting and the seal affixed is the common and corporate seal of said company, and that his / her act of sealing, executing, acknowledging and delivering said indenture was duly authorized by the bylaws of said company.

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

Notary Public

Print Name of Notary Public

My commission expires: _____

EXHIBIT A
TO NOTICE OF AGREEMENT TO
RESTRICT LESSEE FROM
ENCUMBERING PROPERTY

LEGAL DESCRIPTION OF PROPERTY

All that certain lot, piece and parcel of land, lying and being situated in Georgetown Hundred, Sussex County, and State of Delaware, being designated as 8 Mulberry Street, Suite B, Georgetown, DE 19947 located on parcel No. 135-19.00-69.00.

ENGINEERING DEPARTMENT

MIKE HARMER, P.E.
SUSSEX COUNTY ENGINEER

(302) 855-7370 T
(302) 854-5391 F
mike.harmer@sussexcountype.gov



Sussex County

DELAWARE
sussexcountype.gov

Memorandum

TO: Sussex County Council
The Honorable Douglas B. Hudson, President
The Honorable John L. Rieley, Vice President
The Honorable Jane Gruenebaum
The Honorable Matthew R. Lloyd
The Honorable Steven C. McCarron

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

DATE: August 19, 2025

RE: ***Infrastructure Evaluation – Valve Exercising
Johnson, Mirmiran & Thompson, Inc. (JMT) – Amendment 3***

The Engineering Department advertised a request for Miscellaneous Engineering Services proposals in March 2024. On May 14, 2024, Council approved a motion selecting four (4) consulting firms to provide professional services for a 5-year period: Davis, Bowen & Friedel (DBF); George Miles and Buhr (GMB); Johnson, Mirmiran & Thompson, Inc. (JMT); and Arcadis U.S., Inc. Council has previously approved two amendments under JMT's contract, Amendment 1 for design of the Briarwood Septic Elimination Project and Amendment 2 for the Water Storage Modifications.

Sussex County continues to identify and modify aging infrastructure that has reached or passed its life cycle. There are approximately 2,800 various types of valves throughout the County's potable water and sanitary sewer system that are in varying states of condition. Some valves are very old and can be found non-operable and others newly installed, but have not been serviced. Through coordination with JMT, they have provided a proposal to identify each valve's condition and implement a program for the replacement and repair of all valves within the system with a yearly maintenance program to keep all apparatus in top working condition. This Valve Exercising Program is just a small piece of the infrastructure puzzle that can bring a utility from a reactive state to a proactive state, where we will be able to proactively plan and perform the necessary maintenance of our valves in a systematic manner instead of realizing valves do not operate correctly during urgent situations.

The Engineering Department now requests approval of JMT's Amendment 3, in the amount of \$613,880.00.





SCOPE OF SERVICES

Sussex County Engineering Department Delaware

Valve Exercising Program

JMT has been contracted by the Sussex County Engineering Department (County) to perform various miscellaneous engineering services such as planning, evaluation, design, construction management, and inspection under an on-call task order agreement executed in August of 2024. JMT's services will provide an approach that assures open communications and demonstrates JMT's commitment to a team approach. The services performed under this contract may vary based on the needs of the County and services outlined in JMT's proposal submission.

All work under this Task Proposal shall be performed in accordance with Request For Proposal (RFP) 24-17.

SCOPE PHASES

The County owns and operates approximately 2,800 air release, gate, and check valves throughout their potable water and sanitary sewer system. The valves are in a varying state of condition with some being very old and non-operable and others newly installed but have not been serviced. The County is seeking assistance with the development of a valve exercising and condition assessment program that systematically operates each valve and provides a condition assessment of the valve including capturing of key data points into one comprehensive program. Following the completion of the valve exercising and condition assessment, the County will be able to proactively plan for and perform the necessary maintenance and replacement of their valves in a systematic and proactive manner. To complete the scope of work for this project, we have divided our proposal into the following tasks:

- Task 1 – Data Review and Program Development
- Task 2 – Valve Exercising and Condition Assessment
- Task 3 – Program Implementation

SCOPE OF CONSULTANT SERVICES

1. PROJECT ADMINISTRATION

JMT will operate in coordination with, and report to the County's Project Manager. The County's Project Manager for this assignment is Parker Burdell and will communicate any change in Project Management to JMT in writing. JMT designates Christopher Brendza, P.E., as its Project Manager, and will communicate any change in Project Management to the County. JMT will develop a work plan, master schedule, project budget, prepare progress reports, and organize and attend meetings.

- A. Work Plan - JMT will prepare an internal project work plan that identifies the tasks included in the scope of work and provide a management and tracking tool to facilitate work effort planning, scope control, project communication, and progress tracking.
- B. Schedule - JMT will prepare and periodically update a project schedule identifying the major project tasks and critical dates. The critical path through project completion will be identified

and revised with each update. The schedule will also include periodic progress meetings and deliverable submittal dates.

- C. Project Initiation (Kickoff) Meeting - JMT will prepare an agenda for a project initiation meeting to be attended by key County and JMT project personnel and will submit the agenda for County input and concurrence. JMT will conduct the meeting at County offices and will keep a written record of the meeting. JMT will produce and circulate a formal record of the meeting. The meeting will establish communication contacts and procedures. JMT will conduct periodic project progress meetings at the project milestones identified in the schedule.
- D. Communication & Reporting - JMT will maintain regular communication with the County's Project Manager. Communication will include regular telephone updates, as-required email communications, written monthly progress reports to be submitted with JMT's monthly invoices, and other progress reporting as provided in the schedule.

2. CONTRACT ADMINISTRATION

- A. Subsequent Scope Preparation - JMT will assist the County in preparing and planning subsequent scope of services for additional Phases or Tasks as deemed necessary by the County.
- B. Invoice and Payment - JMT will prepare and submit invoices and change orders to the County for review and approval via email.
- C. Public Disclosure - JMT will not provide information to the public except when authorized by the County.

3. INFORMATION & FIELD ASSISTANCE

- A. The County will furnish and provide data and information at their disposal to aid in the execution of the described assignments below. The following items may require the County's support:
 - 1. Assistance with locating buried valves and valve boxes.
 - 2. Communication with SCADA operators for the shut down of pumping station while valves are being operated.
 - 3. Coordination and access to pumping station sites that are behind gates, fences, or other locked structures.
 - 4. Coordination with DelDOT, and various municipalities and cities for any required work notifications.
 - 5. Providing maintenance of traffic services as required.

4. JMT FIELD ACTIVITY

- A. JMT will notify the County if:
 - 1. Any dangers or obstacles not anticipated are observed during the field activity.
 - 2. Any residents that object to or have strong negative opinions to JMT completing our field work activities.

5. **SCOPE OF SERVICES**

The following scope of services is based upon the scoping meetings and discussions held between JMT and the County and the site visit conducted by JMT and the County in June of 2025. We understand that the project goals and objectives are to establish a valve exercising program and determine the condition of each valve located outside of a building (pumping station, treatment plant, etc.) within the County's potable water and sanitary sewer system. The descriptions of the tasks below are meant to outline our approach to the project based upon our project understanding.

A. Task 1 – Data Review and Program Development

JMT will work closely with the County's Environmental Services Division and their Geographic Information Office to develop a seamless work flow for field data gathering, uploading, and quality control while implementing the valve exercising and condition assessment program. JMT and our sub-contractor Hydromax will be using a combination of the ESRI Survey 123 environment and the County's GIS database to provide information captured in the field during the valve exercising and condition assessment program. For this to be accomplished, JMT will meet with County staff and develop workflow parameters that build off the County's existing GIS database.

Following the completion of the workflow parameters, JMT will integrate the County's GIS data into the ESRI Survey 123 environment for field data gathering. Additionally, quality control checks of the data will be completed along with the development of a sequence of inspection and map book development. The map book will be used by JMT, Hydromax and County personnel to quickly identify and locate valves and field crew positions while the program is being implemented.

B. Task 2 – Valve Exercising and Condition Assessment

Once the data review and program development task is complete, and with notification from the County, JMT will begin the valve exercising and condition assessment phase of the project. We have broken this phase out into three main deliverables as outlined further below.

- 1) Locating & Gaining Access To Valves: Utilizing the County's GIS in the ESRI Survey 123 environment, field crews will attempt to locate all valves identified for testing in the program. If field crews are unable to locate a valve after searching a reasonably large area utilizing a metal detector and our knowledge of where other valves are located and other visible assets, they will capture a sub foot GPS point at the center of their search area to be flagged for further investigation by County personnel. Valve lids that can be located but the valve is not accessible (under a car, behind a fence, on private property, etc.) will be marked with a key identifier in the program for follow up coordination required by the County. Broken lids will be replaced by the County and field crews will immediately notify County dispatch of the structure that requires a lid replacement.
- 2) Mechanically Testing Inline Water Valves: Field crews will only test inline water valves that are part of the program and approved by the County. Any valves identified in the field that are not in the program will first be submitted to the County for review before they are approved to be exercised. Field crews will attempt operation in the normal closing direction as documented by the County. If the valve does not cycle in that

direction, they will operate in the normal opening direction two turns and then immediately return it to the found position. Crews are trained to understand the difference in how a valve feels when seating it by comparison to fully opening it until the stem flange meets the packing gland; a hard stop in rotation.

When inline valves that should be open are found closed, the field crew will immediately notify the County of the valve's location and identification number. Field crews will operate all valves by hand or using a valve turning machine that manages and records torque data. Any data precipitated from field processes such as GPS coordinates, condition assessment and torque will be documented in the valve program.

- 3) Air Release Valve (ARV) Inspection and Testing: If the ARV vault is deemed safe to enter field crews will perform a confined space entry (CSE) to OSHA and JMT/Hydromax standards. If it is not deemed safe, the confined space entry and mechanical testing will not be performed. Once field crews have entered the vault the following will be performed:

- The field crew will test the isolation valve.
- Photograph the ARV, piping and other appurtenances in the vault.
- Visually inspect the piping in the vault.
- Take critical pipe and vault measurements.
- Open the ARV backflush valve to relieve pressure in the ARV.
- Open the ARV drain valve allowing water to flow out of the valve.
- Once the ARV is empty, the field crew will re-close both the backflush and drain valves on the ARV and recharge it using the isolation valve.
- The field crew will note whether air discharges from the ARV and they will note whether the ARV seals without leakage, they will note any other leaks and they will note the ARV make, model and size in addition to any other relevant information identified in the program development.

C. Task 3 – Program Implementation

Following the completion of the valve exercising and condition assessment field work, JMT will develop an implementation program for the replacement, repair, or maintenance of all the valves within the County's potable water and sanitary sewer distribution systems. This program will provide the County with costs for implementation along with a yearly schedule that can be used to assist with capital budget planning. JMT will present the program implementation as a summary memorandum and will meet with the County twice to discuss the draft program implementation and final program implementation memorandums.



6. COST

The fee for this Proposal is as follows:

Potable Water System:

Task W1: Data Review and Program Development.....	\$24,000
Task W2: Valve Exercising and Condition Assessment	\$85,425
Task W3: Program Implementation.....	<u>\$5,575</u>
Potable Water System Total:	\$115,000

Unit pricing for the work associated with Task W2 as performed by Hydromax is provided below. These rates have been negotiated with Hydromax and while the unit rate will not change during the duration of the project the quantities are expected to change as these quantities were derived from the County's GIS data. JMT will track quantities on a weekly basis and provide updates to the County so any budget overruns can be discussed, and money can be reallocated if necessary. The total cost of Task W2 includes both the estimated quantity and unit pricing provided below along with JMT's time and material cost to assist Hydromax, update the GIS, and administer the program.

Table 1: Unit Pricing for Valve Exercising – Potable Water System

Item Number	Description	Rate	Units	Quantity	Total Estimate
W1	Water Valve Assessment 2"-12"	\$65.00	Ea.	995	\$64,675.00
W2	Vacuum Roadway Box and Pressure Wash	\$19.00	Ea.	250	\$4,750.00

Sanitary Sewer System:

Task S1: Data Review and Program Development.....	\$6,000
Task S2: Valve Exercising and Condition Assessment	\$489,255
Task S3: Program Implementation.....	<u>\$3,625</u>
Sanitary Sewer System Total:	\$498,880

Unit pricing for the work associated with Task S2 as performed by Hydromax is provided below. These rates have been negotiated with Hydromax and while the unit rate will not change during the duration of the project the quantities are expected to change as these quantities were derived from the County's GIS data. JMT will track quantities on a weekly basis and provide updates to the County so any budget overruns can be discussed, and money can be reallocated if necessary. The total cost of Task S2 includes both the estimated quantity and unit pricing provided below along with JMT's time and material cost to assist Hydromax, update the GIS, and administer the program.

Table 2: Unit Pricing for Valve Exercising – Sanitary Sewer

Item Number	Description	Rate	Units	Quantity	Total Estimate
S1	Inline Sewer Valves Off Road - Walk to valve	\$237.00	Ea.	325	\$77,025.00
S2	Sewer Valves Paved Area	\$89.00	Ea.	1200	\$106,800.00
S3	Mechanical Testing of ARVs - With CSE	\$872.00	Ea.	325	\$283,400.00
S4	ARV Cannot Locate	\$218.00	Ea.	10	\$2,180.00
S5	Hourly Rate - Frozen Valves	\$285.00	Ea.	10	\$2,850.00

Project Total Cost – Potable Water and Sanitary Sewer: \$613,880

7. SCHEDULE

Our overall project schedule is anticipated to take eight months to complete beginning in September of 2025 and ending in April of 2026. We anticipate beginning Task 1 in September of 2025 and taking approximately one month to complete from notice to proceed. Following the completion of Task 1, Task 2 will take approximately 4-6 months to complete, which is dependent upon weather conditions during the winter months. Task 3 will take approximately one month to complete.

8. ASSUMPTIONS

The following assumptions were made in the development of this scope and fee estimate. Should these assumptions not be correct, JMT may request a change in scope and budget to allow for creating or locating the information.

- All valves will be accessible without the need to acquire or negotiate temporary access agreements. JMT and our sub-contractor Hydromax will utilize the public right of way or established easements to locate and perform work on the valves.
- No access improvements or vegetation clearing/cutting will be required to access the valves.
- Water pumped out of vaults is assumed to be either groundwater or rainwater that has infiltrated into the vault and as such will be discharged over land without any treatment or erosion and sedimentation controls due to limited volume.
- Valves located inside of pumping station buildings or fences will only be turned partially, not fully, unless the County provides authorization to fully close the valve.
- All lids broken by JMT or our sub-contractor during the program will be replaced by the County. Field crews can carry extra manhole lids with them (provided by the County) to replace broken lids.
- The County will provide maintenance of traffic for valves that require this service in order to perform the exercising and condition assessment. Valves that require maintenance of traffic will be grouped to maximize County resources and minimize maintenance of traffic costs.



9. EXCLUSIONS

The following is a list of exclusions for this assignment. If any of these exclusions are requested by the County or become required by the project, JMT may request additional budget to complete that work:

- Valve repair of any kind.
- Any items not specifically identified in this scope of work.
- Repairs to any infrastructure, roadways, or appurtenances that may have been damaged due to the work associated with the valve maintenance program.
- JMT and our sub-consultant Hydromax will use every precaution when exercising each and every valve. Due the quantity of valves that will be exercised and the varying age and condition of the valves we anticipate some valves will break during the exercising program. Due to this, JMT and our sub-consultant are excluding all costs, repairs, and remedies required to fix, repair, or replace any valves broken or damaged by our field crews.

ENGINEERING DEPARTMENT

ADMINISTRATION (302) 855-7718
AIRPORT & BUSINESS PARK (302) 855-7774
ENVIRONMENTAL SERVICES (302) 855-7730
RECORDS MANAGEMENT (302) 855-5033
UTILITY ENGINEERING (302) 855-7717
UTILITY PERMITS (302) 855-7719
UTILITY PLANNING (302) 855-1299
FAX (302) 855-7773



Sussex County

DELAWARE
sussexcountyde.gov

MIKE HARMER, P.E.
SUSSEX COUNTY ENGINEER

ROBERT L. BRYANT, A.A.E.
AIRPORT MANAGER

MEMORANDUM

TO: Sussex County Council
The Honorable Douglas B. Hudson, President
The Honorable John L. Rieley, Vice President
The Honorable Matt Lloyd
The Honorable Jane Gruenebaum
The Honorable Steve C. McCarron

FROM: Robert L. Bryant, A.A.E., Airport Manager 

DATE: August 19, 2025

REFERENCE: *Approval: Delta Airport Consultants Task Order Seven (7)
Emissions Inventory Study
Construct Two (2) Taxilanes and Tie-Downs – Phase 1 (Design)*

The Engineering Department, on behalf of Delaware Coastal Airport, is seeking approval from the Sussex County Council upon Delta Airport Consultants Task Order Seven (7). Task Order Seven (7) includes work associated with a Federal Aviation Administration (FAA) required Emissions Inventory Study and is a component of the overall Construct Two (2) Taxilanes and Tie-Downs – Phase 1 (Design) project.

Essentially, the Emissions Inventory Study forecasts the ultimate build-out of the Two (2) Taxilanes and Tie-Downs project specifically targeting the emissions output of the anticipated aircraft types that could be based in the eight (8) aircraft hangars that the Construct Two (2) Taxilanes and Tie-Downs project is forecasted to support. The Emission Inventory Study is a requirement as described in FAA Order 1050.1F (National Environmental Policy Act), as well as a 'federal action' as described in 40 CFR 93.152 (Clean Air Act, General Conformity Requirements).

Delta Airport Consultants Task Order Seven (7) is set at a \$21,000, Not to Exceed amount. It should also be noted that on June 17, 2025, Sussex County Council's approval to submit an FAA Airport Infrastructure Grant application in the amount of \$285,950, and authority of signature of the FAA grant offer, includes a ninety percent (90%) reimbursable share of the \$21,000, Not to Exceed amount. We (Sussex County) just need to "up-front" the \$21,000 amount and wait for a reimbursement once the FAA Airport Infrastructure Grant is received and signed by Sussex County (anticipated in late August or early September 2025).



The Engineering Department, on behalf of Delaware Coastal Airport, is seeking approval from the Sussex County Council upon Delta Airport Consultants Task Order Seven (7) at a \$21,000, Not to Exceed amount, for work associated with an FAA required Emission Inventory Study, a component of the Construct Two (2) Taxiways and Tie-Downs – Phase 1 (Design) project.

TASK ORDER NO. SEVEN (7)
PROFESSIONAL SERVICES AGREEMENT



PROJECT: Emissions Inventory (Subcontracted)

AIRPORT: Delaware Coastal Airport

DELTA PROJECT NO.: 25025

DATE OF ISSUANCE: April 21, 2025

ATTACHMENTS: 1) Subconsultant Proposal

METHOD OF PAYMENT: Reimbursables - Unit Price

TASK ORDER AMOUNT: \$21,000, Not-To-Exceed

PROJECT DESCRIPTION: • Emissions Inventory performed by HMMH

The original Agreement for Professional Services between the Sussex County, Delaware (OWNER) and Delta Airport Consultants, Inc. (CONSULTANT) for Professional Services at Delaware Coastal Airport dated April 23, 2020, shall govern all TASK ORDERS executed under this Agreement unless modified in writing and agreed to by CONSULTANT and OWNER. Pursuant to this Task Order, the base agreement between the OWNER and CONSULTANT is extended for the performance of the scope of work associated with this Task Order.

The OWNER has agreed to assume all liability and business risk associated with subcontracted services provided under this Agreement. The OWNER agrees to indemnify and hold harmless the CONSULTANT against all costs arising out of or in connection with the failure of any Subconsultant to provide its services in accordance with the terms of its subcontract. The OWNER shall be entitled to any payments received by CONSULTANT from its Subconsultants for settlement of any claims related to the Project. The OWNER assumes no liability for direct payment to the Subconsultants and CONSULTANT agrees to indemnify and hold the OWNER harmless from any and all claims by any Subconsultant which arises out of any failure of CONSULTANT to make payments to the Subconsultant provided that the OWNER has already paid CONSULTANT all amounts owed under this Agreement.

ACCEPTED BY:

Digitally signed by Douglas E
Sander
Date: 2025.04.21 16:58:42 -04'00'

Douglas E. Sander, PE
Vice President
Delta Airport Consultants, Inc.
17 West High Street
Carlisle, PA 17013

APPROVED BY:

Douglas B. Hudson
Council President
Sussex County, Delaware
2 The Circle, P.O. Box 589
Georgetown, DE 19947

ATTACHMENT 1
SUBCONSULTANT PROPOSAL



**DELTA AIRPORT
CONSULTANTS, INC.**



April 8, 2025

Mary Ashburn Pearson, AICP
Project Manager
Delta Airport Consultants, Inc.
mapearson@deltaairport.com

Re: GED Emissions Inventory
Delaware Coastal Airport (GED)
Georgetown, DE
HMMH Proposal Number 25-0123

Dear Ms. Pearson,

Harris Miller Miller & Hanson Inc. (HMMH) is pleased to provide Delta Airport Consultants, Inc. (Engineer) with this proposal to conduct an emissions inventory at Delaware Coastal Airport (GED) in Georgetown, Delaware.

The work to be completed is in support of a future National Environmental Policy Act (NEPA) Categorical Exclusion (CATEX) review and will comply with NEPA, Federal Aviation Administration (FAA) Order 1050.1F, and the FAA's Aviation Emissions and Air Quality Handbook, Version 4¹.

The Project involves the construction of eight box hangars, two new taxiways, extension of aviation avenue, and additional aircraft operations at GED.

SCOPE OF WORK

Task 1. Air Quality and Climate

Construction Emissions Inventory

HMMH will identify the current United States Environmental Protection Agency (EPA) attainment designations of the project area (e.g., Sussex County) with applicable US EPA national ambient air quality standards (NAAQS). Since the area is designated as non-attainment for some of the criteria pollutants under the NAAQS, it is assumed that a General Conformity applicability analysis will be performed to determine significant impacts. The EPA General Conformity *de minimis* thresholds will also be used for the pollutants designated as attainment to determine significant impacts under NEPA for these pollutants.

Construction-related emissions for the Proposed Action will be estimated for the for both on-road and non-road equipment along with fugitive emissions (i.e. dust and asphalt paving). Construction related emissions will be based on the estimated types of construction activities, counts and type of equipment, activity levels, construction start and end dates, and project footprints. The Airport Construction Emission Inventory Tool (ACEIT) – a companion tool to the Transportation Research Board (TRB) Airport Cooperative Research Project (ACRP) Report 102,

¹ https://www.faa.gov/regulations_policies/policy_guidance/envir_policy/airquality_handbook

HMMH

700 District Avenue, Suite 800
Burlington, MA 01803
781.229.0707
www.hmmh.com

“Guidance for Estimating Airport Construction Emissions,” will be used to estimate construction-activities for each year. The latest version of the EPA’s Motor Vehicle Emission Simulator Version 5 (MOVES5), which includes the latest version of the EPA NONROAD model, will be used to update the emission factors generated within ACEIT for both on-road and non-road equipment specific to Sussex County. The MOVES5 emission factors will be used to estimate pollutant emissions in tons per year (TPY) from on-road and non-road construction equipment for each year of construction activity. Before running the model, HMMH will prepare and submit to the Engineer a list of data needs to run the ACEIT model for each year, based on an expected construction schedule.

HMMH will summarize emissions from construction and demolition and will compare these emissions to EPA *de minimis* thresholds for General Conformity Applicability and to determine significance under NEPA.

Aircraft Operations Emissions Inventory

HMMH assumes the Proposed Action could add new aircraft operations and result in an increase in aircraft emissions compared to the No Action. HMMH will evaluate the net change in emissions from the proposed additional aircraft operations for the Proposed Action using the latest version of the Aviation Environmental Design Tool (AEDT) for the one (1) future proposed year. HMMH will evaluate just the additional operations from the proposed hangars (i.e., aircraft type and number of additional operations per day and year) to estimate the net change in aircraft operations compared to the No Action. In addition, HMMH will evaluate additional vehicle and truck trips associated with the Proposed Action based on the traffic analysis being performed by the project team and the MOVES5 emission model. The total net change in emissions from the Proposed Action (aircraft operations and associated vehicle trips) will be compared to the appropriate EPA *de minimis* thresholds for General Conformity Applicability and to determine significant impacts under NEPA.

Climate

HMMH will estimate greenhouse gas (GHG) emissions associated with the construction and additional aircraft operation activities under the current FAA Guidance. Per FAA Order 1050.1F, the discussion of potential climate impacts including GHG emissions should be documented in a separate section of the NEPA document, distinct from air quality.² The emissions should be quantified using the methodology and assumptions provided in the FAA Emissions and Air Quality Handbook, Version 4³ which is the latest guidance released by FAA for assessing GHG emissions for Federal Actions. The guidance recommends consideration of (1) the potential effects of a proposed action or its alternatives on climate change as indicated by its GHG emissions and (2) the implications of climate change for the environmental effects of a proposed action or alternatives.

In order to meet this guidance, a GHG emissions analysis will be prepared for carbon dioxide, methane, and nitrous oxides in order to estimate carbon dioxide equivalent (CO₂e) consistent with FAA Order 1050.1F using the methodologies described above for the construction activities and operational activities once known. A discussion on how climate change may affect the

³ https://www.faa.gov/regulations_policies/policy_guidance/envir_policy/airquality_handbook

Proposed Action will also be included. If necessary, the documentation will identify any mitigation measures that could be applied to reduce climate impacts.

Assumptions

- The Engineer and the Airport will provide the input data necessary to prepare the analysis.
- Construction emissions and Operational emissions are calculated separately for both criteria pollutant and greenhouse gas emissions.
- Construction emissions and additional aircraft (if applicable) and vehicle trips will be calculated for only one (1) future year and emissions will be below *de minimis* levels and air dispersion modeling will not be required.
- A full inventory of the No Action, or existing aircraft emissions, are not assumed, only the additional aircraft associated with the new hangar development.
- A contract modification will be required should air dispersion modeling be necessary.
- HMMH staff will not help prepare for or attend any public meetings.

Deliverables

- Draft Air Quality and Climate Technical Report
- Final Air Quality and Climate Technical Report after receiving one round of comments from Delta Airport Consultants.

COSTS

HMMH proposes a fixed price budget of **\$20,956** to complete the scope of work. A cost summary is provided below for each task, and a detailed cost estimate with rates and labor hours is attached.

SUMMARY

TASK	LABOR	ODC	TOTAL
Task 1: Construction Emissions Inventory	\$3,360	\$0	\$3,360
Task 2: Operational Emissions Inventory	\$4,780	\$0	\$4,780
Task 3: Climate	\$1,180	\$0	\$1,180
Task 4: Draft and Final Tech Report	\$11,636	\$0	\$11,636
GRAND TOTAL	\$20,956	\$0	\$20,956

REQUEST FOR PROPOSAL, GENERAL ITEM 6

HMMH assumes we will work off the mutually agreed terms and conditions from previous studies. From the prior Request for Proposal (RFP), General Item #6 (page 2), states:

Carefully review the insurance requirements noted in the sample subconsultant agreement and notify us if there are any concerns with your firm meeting those requirements prior to submitting your proposal. Please also confirm that your firm meets the required Federal Contract Provisions included in Delta's subconsultant agreement

HMMH

700 District Avenue, Suite 800
Burlington, MA 01803
781.229.0707
www.hmmh.com

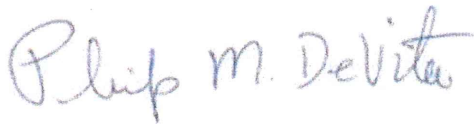
and note that these provisions apply to all sub-tier contractors.

HMMH has reviewed RFP, General Item #6, along with the Insurance Requirements (sample Subconsultant Agreement, Item #4) and Federal Contract Provisions (Exhibit 2, provisions May 24, 2023) included in the sample subconsultant agreement attached to the RFP. While the agreement is a "sample" and in draft format, as of the date of the RFP, April 8, 2025, HMMH does not foresee any concerns with meeting the Federal Contract Provisions upon contract award. It is understood that should HMMH require sub-tier contractors, these requirements will flow down to those agreements.

In an email sent on June 13, 2024, HMMH raised one issue concerning insurance limits outlined in the sample Subconsultant Agreement, Item #4. In a reply email sent on June 14, 2024, the Engineer requested HMMH send the preferred language to be added to the agreement. HMMH will provide the language in an email separate from this proposal.

Please notify HMMH prior to contract award if there are any additional changes to these requirements or additional provisions added to the final agreement to allow for further review.

Sincerely yours,
Harris Miller Miller & Hanson Inc.

A handwritten signature in blue ink that reads "Philip M. DeVita". The signature is written in a cursive, flowing style.

Philip M. DeVita
Director of Air Quality

Cc: Scott Polzin

**HARRIS MILLER MILLER & HANSON INC.**

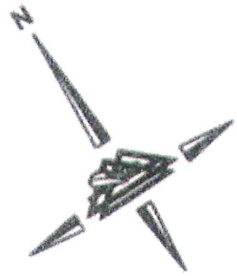
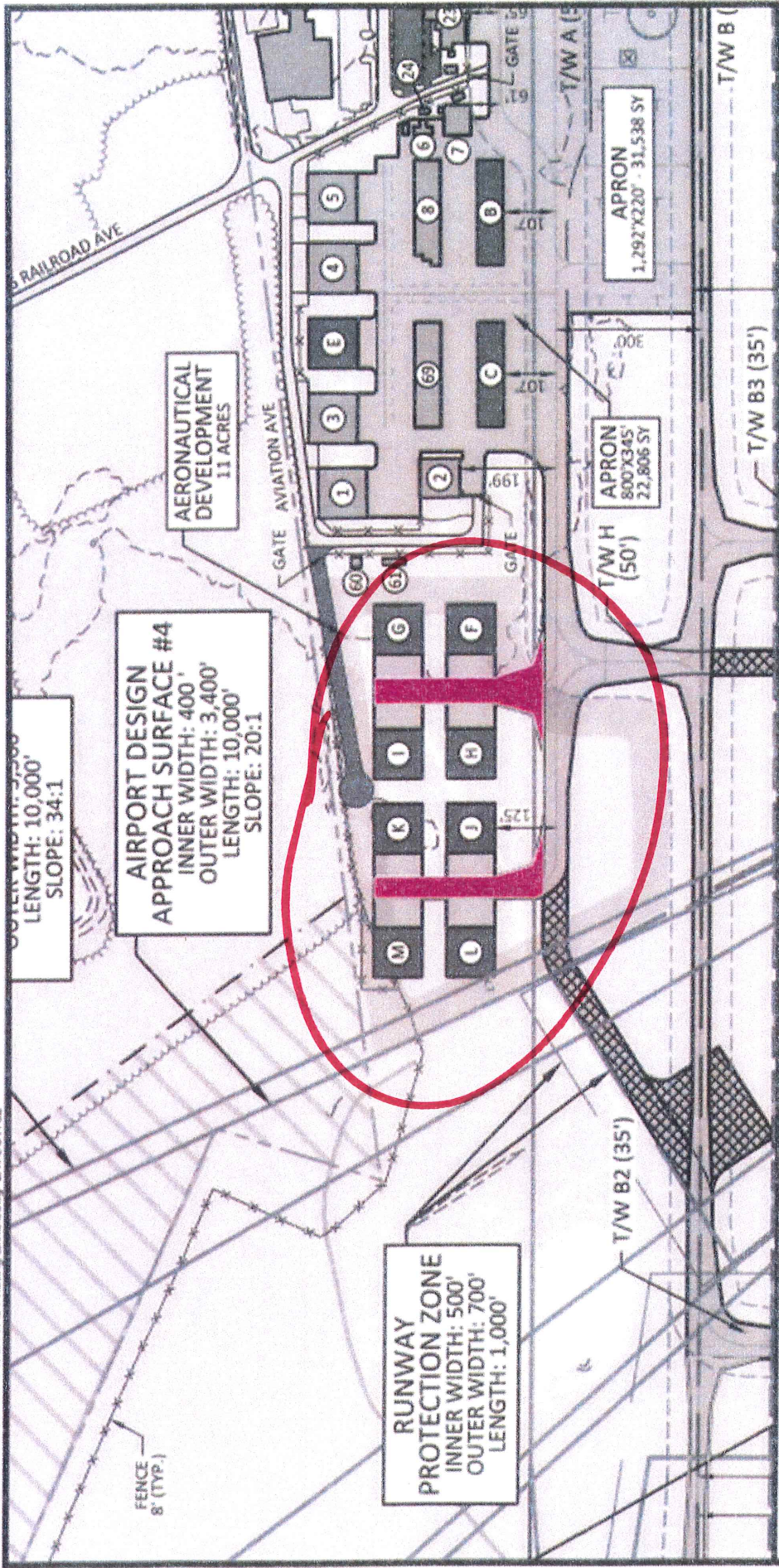
Project Title: GED Emissions Inventory
Proposal No.: 25-0123
Date: April 8, 2025
Prepared by: Phil DeVita

TASKS	LABOR							
	Scott Polzin	Phil DeVita	Trent Tougas	Erin Greenfield				
	Principal Consultant I	Principal Consultant I	Consultant III	Project Support I	Total Hours	Total Labor	Direct Expenses	Total Cost
	\$295	\$295	\$125	\$142				
Task 1. Air Quality and Climate	2	57	25	3	87	\$ 20,956	\$ -	\$ 20,956
Construction Emissions Inventory		8	8		16	\$ 3,360	\$ -	\$ 3,360
AEDT Aircraft Operations Emissions		9	17		26	\$ 4,780	\$ -	\$ 4,780
Climate		4			4	\$ 1,180	\$ -	\$ 1,180
Report Writeup and Address Comments	2	36		3	41	\$ 11,636	\$ -	\$ 11,636
TOTAL	2	57	25	3	87	\$ 20,956	\$ -	\$ 20,956

\$ 590 \$ 16,815 \$ 3,125 \$ 426 87 \$ 20,956 \$ 20,956

\$ 20,956

DRAWING: 20033 - Coastal Parallel TW B Phasing Exhibit.dwg LAYOUT: L2



LEGEND

- PHASE I - FINAL DESIGN/CONTRACT DOCUMENTS
(400'x25' x2 TWs) - AIG
- PHASE II - CONSTRUCTION (400'x25' x2 TWs) - AIG



CONSTRUCT HANGAR TAXIWAYS DELAWARE COASTAL AIRPORT

EXHIBIT
1

DRAWN BY: CAD CHECKED BY: DATE: 1" = 300' SCALE: SEPTEMBER 2023

Harrisburg Airports District Office
3905 Hartzdale, Dr. Ste 508
Camp Hill, PA 17011
Heather.F.Davis-Jenkins@faa.gov
(717) 603-4676 (office)
(717) 603-4681 (fax)

From: Robert Bryant <robert.bryant@sussexcountyde.gov>

Sent: Tuesday, April 1, 2025 11:51 AM

To: Davis-Jenkins, Heather F (FAA) <heather.f.davis-jenkins@faa.gov>; Langer, Lori (FAA) <lori.langer@faa.gov>; DeWire, Timothy P (FAA) <timothy.p.dewire@faa.gov>; Mary Ashburn Pearson <mapearson@deltaairport.com>; Mark Parker <mark.parker@sussexcountyde.gov>

Cc: David W. Jones <DJones@deltaairport.com>; William M. Eschenfelder <beschenfelder@deltaairport.com>; Brooke K. Haas <BHaas@deltaairport.com>

Subject: HEATHER GED BIL Taxilanes Question

CAUTION: This email originated from outside of the Federal Aviation Administration (FAA). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hello Heather,

Tried calling but I couldn't get through to you.

A question has come up concerning the CATEX that you need as a component for the use of BIL \$\$\$ for the design and construction of the 2 taxilanes at GED.

I know that you require the FAA's Area Equivalent Method be applied to the project/CATEX. The question, are you also going to need/require an Air Quality Emissions Analysis as an additional component???

Are you available for a quick TEAMS Meeting with Mary Ashburn-Pearson (Delta) and myself to discuss???

Bob

Robert L. Bryant, A.A.E.
Manager
Delaware Coastal Airport
21553 Rudder Lane
P.O. Box 589
Georgetown, DE 19947

Direct Line: 302-855-7775
Main Line: 302-855-7774
Email: robert.bryant@sussexcountyde.gov
Website: www.delawarecoastalairport.com



MY QUESTION ↑

From: Davis-Jenkins, Heather F (FAA) <heather.f.davis-jenkins@faa.gov>
 Sent: Tuesday, April 1, 2025 1:18 PM
 To: Robert Bryant; Langer, Lori (FAA); DeWire, Timothy P (FAA); Mary Ashburn Pearson; Mark Parker
 Cc: David W. Jones; William M. Eschenfelder; Brooke K. Haas
 Subject: RE: HEATHER GED BIL Taxilanes Question

FAA RESPONSE

CAUTION: This email originated from outside of the organization. Do not click links, open attachments, or reply unless you recognize the sender and know the content is safe. Contact the IT Helpdesk if you need assistance.

Good afternoon-

Air Quality is a resource category as identified in the FAA Order 1050.1 F and in the FAA Desk Reference. Yes, Air Quality impacts will need to be analyzed.

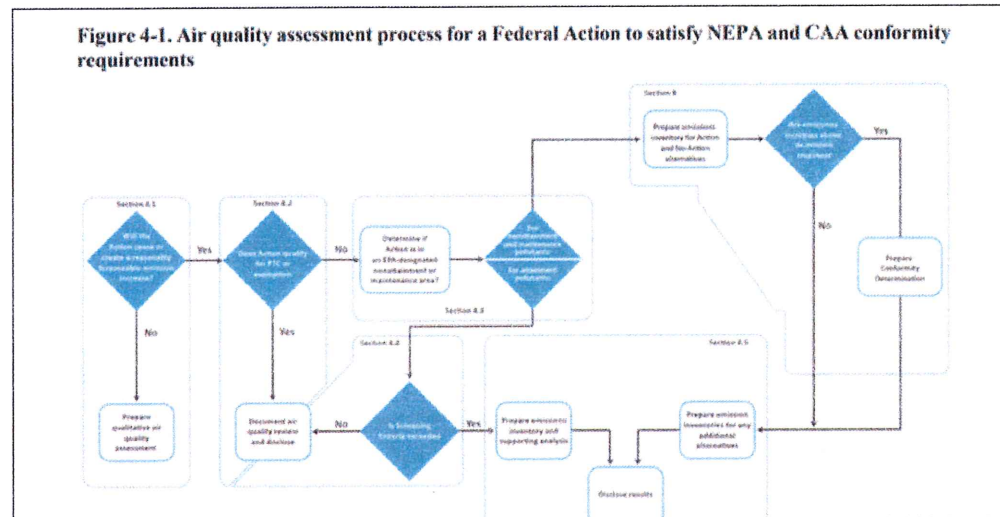
Additionally, if you are adding operations then you would need to model with AEDT. (In other words, if you are increasing based aircraft and in turn operations.) AEDT is the only model appropriate for modeling aircraft emissions.

The Air Quality Handbook Version 4 aids in the analysis process. It was updated last year to assist with the following:

- To provide guidance, procedures, and methodologies appropriate for use in carrying out air quality assessments prepared in association with FAA Federal Actions;
- To help ensure that these air quality assessments meet the requirements of the National Environmental Policy Act (NEPA), the federal Clean Air Act (CAA), and other applicable laws and regulations; and
- To provide a process for users to determine when an air quality assessment is considered necessary, the type of analysis that is appropriate, and the level of effort that is warranted.

Below is a link to the Handbook and the supplemental technical support document.

[Aviation Emissions and Air Quality Handbook](#) | [Federal Aviation Administration](#)



Below is the attainment status per the EPA Greenbook.

New Castle County	PM-2.5 (2006)	Philadelphia-Wilmington, PA-NJ-DE	09 10 11 12 13												
Sussex County	1-Hour Ozone (1979)-NAAQS revoked	Sussex County, DE	92 93 94 95 96 97 98 99 00 01 02 03 04												
Sussex County	8-Hour Ozone (1997)-NAAQS revoked	Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE	04 05 06 07 08 09 10 11 12 13 14												
Sussex County	8-Hour Ozone (2008)	Seaford, DE	12 13 14 15 16												

Let me know if you have any further questions.

Take care,

Heather Davis-Jenkins, CFM
 Environmental Protection Specialist

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JUNE 17, 2025

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, June 17, 2025, at 10:00 a.m., in Council Chambers, with the following present:

Douglas B. Hudson	President
John L. Rieley	Vice President
Jane Gruenebaum	Councilwoman
Matt Lloyd	Councilman
Steve C. McCarron	Councilman
Todd F. Lawson	County Administrator
Gina A. Jennings	Finance Director
J. Everett Moore, Jr.	County Attorney

The Invocation and Pledge of Allegiance were led by Mr. Hudson.

**Call to
Order**

Mr. Hudson called the meeting to order.

**M 261 25
Approve
Agenda**

A Motion was made by Ms. Gruenebaum, seconded by Mr. Rieley, to approve the Agenda as presented.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Ms. Gruenebaum, Yea; Mr. McCarron, Yea;
Mr. Lloyd, Yea; Mr. Rieley, Yea;
Mr. Hudson, Yea**

Minutes

The minutes from June 10, 2025 were approved by consensus.

**Correspond-
ence**

There was no correspondence.

There were no public comments.

**Public
Comment**

**Presentation
/SCLT**

Mr. Ring Lardner, Chairman of the Sussex County Land Trust presented Council with an update and presentation. Mr. Lardner shared pictures and updates on properties purchased by the Land Trust. Mr. Lardner reviewed what has been completed and the work that is scheduled to be completed in the future.

**Appoint-
ment
Library
Board**

Mr. Lawson reported that there is a vacancy in District 5 for the Library Advisory Board, and it is recommended to appoint Ms. Mary Holloway. In addition, a reappointment is needed in District 3 for Candace Collette Vessella for the Library Advisory Board.

**M 262 25
Approve
Library**

A Motion was made by Mr. Rieley, seconded by Mr. McCarron, be it moved that the Sussex County Council approve the appointment of Ms. Mary Holloway to the Library Advisory Board effective immediately until June

Aloft Lease Agreement **Pats Aircraft, LLC d/b/a Aloft AeroArchitects, in the Delaware Coastal Business Park, to be located at 21583 Baltimore Avenue, Georgetown, DE for the purpose of providing engineering services, design services, and the manufacturing of component parts for the aviation industry, as well as to house the Aloft Academy.**

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

Vote by Roll Call: **Ms. Gruenebaum, Yea; Mr. McCarron, Absent;
Mr. Lloyd, Yea; Mr. Rieley, Yea;
Mr. Hudson, Yea**

Two Taxilanes & Tie-Downs **Bob Bryant, Airport Manager presented an approval to submit FAA airport infrastructure grant applicant and authority of signature of FAA grant offer for Council's consideration.**

M 269 25 Approve Two Taxilanes & Tie-Downs Project **A Motion was made by Mr. Lloyd, seconded by Ms. Gruenebaum, that be it moved based on the recommendation of the Sussex County Engineering Department that the Sussex County Council approve the submittal of one Federal Aviation Administration (FAA) Airport Infrastructure Grant (AIG) application in the amount of \$285,950 which will pay 95% of the total project cost of \$301,000 for work association with construction of two taxi lanes and tie-downs – phase 1 design project.**

Motion Adopted: **5 Yeas**

Vote by Roll Call: **Ms. Gruenebaum, Yea; Mr. McCarron, Yea;
Mr. Lloyd, Yea; Mr. Rieley, Yea;
Mr. Hudson, Yea**

M 270 25 Approve Authority to Sign **A Motion was made by Mr. Lloyd, seconded by Ms. Gruenebaum, that be it moved based on the recommendation of the Sussex County Engineering Department that the Sussex County Council give approval to the Sussex County Administration and authority of signature for one federal aviation administration (FAA) airport infrastructure grant offer in the amount of \$285,950 which will pay 95% of the total project cost of \$301,000 for work associated with the new construction two taxilanes and tie-downs phase 1 design project.**

Motion Adopted: **5 Yeas**

Vote by Roll Call: **Ms. Gruenebaum, Yea; Mr. McCarron, Yea;
Mr. Lloyd, Yea; Mr. Rieley, Yea;
Mr. Hudson, Yea**

Construct Parallel Taxiway **Bob Bryant, Airport Manager presented task order 6 – construction administration services for construct parallel taxiway B for Council's consideration.**

Application for Federal Assistance SF-424

*1. Type of Submission:

- ☐ Preapplication
☒ Application
☐ Changed/Corrected Application

*2. Type of Application

- ☒ New
☐ Continuation
☐ Revision

* If Revision, select appropriate letter(s):

* Other (Specify)

*3. Date Received:

4. Applicant Identifier:

GED

5a. Federal Entity Identifier:

3-10-0007

*5b. Federal Award Identifier:

State Use Only:

6. Date Received by State:

7. State Application Identifier:

8. APPLICANT INFORMATION:

*a. Legal Name: Sussex County, Delaware

*b. Employer/Taxpayer Identification Number (EIN/TIN):

51-6001054

*c. UEI:

QNNDLPD39L4

d. Address:

*Street 1: P.O. Box 589

Street 2: 2 The Circle

*City: Georgetown

County/Parish: Sussex

*State: DE

*Province:

*Country: USA: United States

*Zip / Postal Code: 19947-0589

e. Organizational Unit:

Department Name:

Division Name:

f. Name and contact information of person to be contacted on matters involving this application:

Prefix: Mr. ☐ *First Name: Robert

Middle Name: L.

*Last Name: Bryant

Suffix:

Title: Airport Manager

Organizational Affiliation:

*Telephone Number: (302) 855-7775

Fax Number:

*Email: robert.bryant@sussexcountysde.gov

Application for Federal Assistance SF-424

***9. Type of Applicant 1: Select Applicant Type:**

B: County Government



Type of Applicant 2: Select Applicant Type:

Pick an applicant type

Type of Applicant 3: Select Applicant Type:

Pick an applicant type

*Other (Specify)

***10. Name of Federal Agency:**

Federal Aviation Administration

11. Catalog of Federal Domestic Assistance Number:

20.106

CFDA Title:

Airport Improvement Program

***12. Funding Opportunity Number:**

*Title:

13. Competition Identification Number:

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

Georgetown, Sussex County, Delaware

***15. Descriptive Title of Applicant's Project:**

Construct Taxilanes and Tie-Downs, Phase I (Design)

Attach supporting documents as specified in agency instructions.

Application for Federal Assistance SF-424**16. Congressional Districts Of:**

*a. Applicant: DE-ALL

*b. Program/Project: DE-ALL

Attach an additional list of Program/Project Congressional Districts if needed.

17. Proposed Project

*a. Start Date: 09/01/2025

*b. End Date: 09/30/2026

18. Estimated Funding (\$):

*a. Federal	\$ 285,950
*b. Applicant	\$ 15,050
*c. State	\$ 0
*d. Local	\$ 0
*e. Other	\$ 0
*f. Program Income	\$ 0
*g. TOTAL	\$ 301,000

***19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

- ☒ a. This application was made available to the State under the Executive Order 12372 Process for review on 05/29/2025
- ☐ b. Program is subject to E.O. 12372 but has not been selected by the State for review.
- ☐ c. Program is not covered by E.O. 12372.

***20. Is the Applicant Delinquent On Any Federal Debt?**☐ Yes ☒ No

If "Yes", explain:

21. *By signing this application, I certify (1) to the statements contained in the list of certifications** and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U. S. Code, Title 218, Section 1001)

☒ ** I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix: Mr. ☐ *First Name: Todd

Middle Name: F

*Last Name: Lawson

Suffix: _____

*Title: Sussex County Administrator

*Telephone Number: (302) 855-7742

Fax Number: (302) 855-7749

* Email: tlawson@sussexcountymd.gov*Signature of Authorized Representative: Todd J. Lawson*Date Signed: June 20, 25

ENGINEERING DEPARTMENT

MIKE HARMER, P.E.
SUSSEX COUNTY ENGINEER

(302) 855-7370 T
(302) 854-5391 F
mike.harmer@sussexcountysde.gov



Sussex County
DELAWARE
sussexcountysde.gov

Memorandum

TO: Sussex County Council
The Honorable Douglas B. Hudson, President
The Honorable John L. Rieley, Vice President
The Honorable Jane Gruenebaum
The Honorable Matthew R. Lloyd
The Honorable Steven C. McCarron

FROM: Hans Medlarz, P.E., Director of Special Projects

DATE: August 19, 2025

RE: ***Lochwood Community Area, Sewer Expansion Project S22-17***
A. Final Balancing Change Order No.5 & Substantial Completion

In October of 2018, the Lochwood Property Owners Association requested the County distribute a polling letter. With majority of the responses favorable a public hearing was conducted on September 7, 2019. The hearing results were presented to County Council who voted to extend the Sewer District on September 17, 2019.

On May 14, 2020, the Preliminary Engineering Report and the Environmental Information Documents combined with the \$8,440,000.00 USDA/Rural Development funding application prepared by the Finance Department were filed. On May 21, 2021, County Council accepted the letter of conditions and on May 24, 2021, approved the obligating documents associated in the loan amount of \$4,723,000 and \$3,717,000 of grant funding.

On June 15, 2021, Council approved the USDA Loan Resolution and introduction of the debt ordinance authorizing the issuance of general obligation bonds which was approved on July 13, 2021. On September 19, 2023, the Engineering & Finance Department submitted a supplemental funding request to USDA/Rural Development for \$844,000.00.

On May 14, 2019, County Council awarded a five (5) year base contract for miscellaneous engineering services to Davis, Bowen & Friedel, Inc. (DBF) and on October 26, 2021, Council approved the Lochwood sewer area expansion design project in the not to exceed amount of \$179,850.00. In the spring of 2023, the Department requested DBF to revise the agreement to include construction phase services. On July 25, 2023, with the construction awarded, Council approved the revised, all-inclusive agreement in the not to exceed amount of \$554,000.00.



Invitations to Bid were advertised and on April 19, 2023, four (4) bids were received. All bids were significantly higher than the available funding. The Engineering Department debriefed the contractors and concluded that several value engineering options could be incorporated in a rebid. One of the recommendations was to break out the scope in two contracts with the piping under contract A and the vacuum station under contract B. On May 16, 2023, Council rejected all bids and approved the value engineering and rebid.

Invitations for the Re-Bid were advertised and on July 7, 2023, four (4) bids were received. Lindstrom Excavating submitted the lowest bid of \$5,749,640.00 for Construction Contract A and on July 25, 2023, Council awarded Contract A to Lindstrom Excavating, Inc.

The only bidder for Contract B was Chesapeake Turf in the amount of \$1,809,470.00 and their bid was higher than the average bids for this scope item from the original bid. Therefore, Council rejected Chesapeake Turf's bid and authorized the pursuit of a pre-purchase agreement for the equipment. After the \$417,000.00 direct purchase order for the AirVac equipment was issued on August 15, 2023, the Engineering Department requested a change order for the building and equipment installation from Lindstrom Excavating.

The vacuum station was included in the first round of Lochwood bidding and resulted in a four-bid average of \$1,631,682.25 (bid item 3) not including a portion of the mobilization (bid item 1). The rebid amount was \$1,809,470.00 and Lindstrom change order proposal was \$1,221,350.00. This approach allowed the County (i) to provide competitive pricing below the average cost during the first round of bidding and (ii) advance the supplemental funding request in federal FY 23 for <10% of original budget.

Change Order No. 1 for Lindstrom Excavating, Inc. in the amount of \$1,221,350.00, for award of the building portion of the Lochwood Project was approved on September 26, 2023.

In Mid-August 2024, Lindstrom Excavating, Inc. performed test pits in preparation for the excavation of the most challenging section of vacuum mains on Lake Shore Drive next to Burton Pond. The ground water table elevations encountered were one to two feet higher than anticipated, based on the 2022 Geotechnical Report. The approved design called for 8-foot deep set sectional vacuum pits along Lake Shore Drive requiring dewatering under a DNREC permit. The entire project area is in the groundwater management zone of the County's legacy landfill prohibiting groundwater extraction.

The contractor and the Department developed a solution returning fifteen (15) 8-foot deep set sectional vacuum pits and purchase 15 of the 6-foot one-piece units allowing installation without dewatering. Lindstrom Excavating, Inc. agreed, in the spirit of cooperation, to waive any of the contractually allowed mark-ups and on September 17, 2024 Council approved Lindstrom Excavating, Inc.'s Change Order No. 2 for \$8,907.18.

In the course of construction Lindstrom Excavating, Inc. lost production time due to numerous "hits" of unmarked utilities triggering work stoppages. In addition, several vacuum pit locations required the relocation of the potable water service connection resulting in more lost production days. The associated cost issues were to be covered under contingency unit cost items which will be adjusted accordingly in the final balancing change order. However, an

initial time extension had to be granted for USDA to approve partial payment applications and on January 7, 2025 Council approved Lindstrom Excavating, Inc.'s Change Order No. 3 extending the contract by eighty-nine (89) days.

Over the course of the construction period DBF and the USDA Community Program Specialist were tracking the following out of contract scope items in cooperation with Lindstrom Excavating, Inc.'s:

- Advanced Shop Drawing Coordination (PCO3): AirVac's shop drawings required a certain layout configuration for each pump station component. Some of them came into conflict with DBF's building steel design, which required adjustment of the steel framing.
- Differing Site Conditions (PCOs5&6): The installation of a central sewer system in a mature utility environment inevitably leads to conflicts due to inaccurate or missing information provided by some of the utilities. Furthermore, the lack of field mark outs and the resulting underground conflicts were confirmed by DBF's field personnel and impacted time and costs until rectified by the other utility.
- Maintenance Improvements PCOs7&8): Environmental Services requested the addition of on-site lifting equipment for performing service and ultimately replacement functions on the pump station equipment more safely while at the same time reducing personnel expense.

On March 11, 2025, Council approved Lindstrom Excavating, Inc.'s Change Order No. 4 extending the contract by ninety-nine (99) days and increasing the contract by \$44,777.99 to address the issues listed above.

In the spring of 2025 Lindstrom Excavating completed all the restoration items including final paving. The line item with the highest overrun on the balancing change order were the sewer lateral extensions in an attempt to make the private sewer lateral runs more economical. In addition, the main vacuum station was commissioned, and Lindstrom Excavation addressed all the punch list items.

Therefore, the Engineering Department recommends acceptance of Lindstrom Excavating, Inc.'s balancing Change Order No. 5 in the reduction amount of (\$380,049.50), contingent upon USDA concurrence and granting of substantial effective June 10, 2025.

CHANGE ORDER NO.: 5

Owner: Sussex County Engineering
Engineer: Davis, Bowen & Friedel, Inc.
Contractor: Lindstrom Excavating Inc.
Project: Lochwood Sewer Expansion Project
Contract Name:
Date Issued: August 11, 2025 Effective Date of Change Order:
Owner's Project No.: S22-07
Engineer's Project No.: 1897B023.A01
Contractor's Project No.:

The Contract is modified as follows upon execution of this Change Order:

Description:

Structural steel and floor grating to be revised due to conflict with vertical pipe connection between vacuum pump and vacuum tank, lost time and days due to unmarked utilities, installation of tank drain line as requested by the County, installation of a hoist base plate, and delays by DEC to install power thus delaying start-up.

Attachments:

Final Application for Payment dated 8/11/25.

Change in Contract Price		Change in Contract Times [State Contract Times as either a specific date or a number of days]	
Original Contract Price:		Original Contract Times:	
\$ 5,749,640.00		Substantial Completion:	330
		Ready for final payment:	360
Increase from previously approved Change Orders No. 1 to No.4:		Increase from previously approved Change Orders No.1 to No. 3:	
\$ 1,275,035.17		Substantial Completion:	179
		Ready for final payment:	179
Contract Price prior to this Change Order:		Contract Times prior to this Change Order:	
\$ 7,024,675.17		Substantial Completion:	509
		Ready for final payment:	539
Reduce this Change Order:		Increase this Change Order:	
\$ 380,049.50		Substantial Completion:	99
		Ready for final payment:	99
Contract Price incorporating this Change Order:		Contract Times with all approved Change Orders:	
\$ 6,644,625.67		Substantial Completion:	608
		Ready for final payment:	638

	Recommended by Engineer (if required)	Authorized by Owner
By:	<u>Q. W. Llan</u>	<u></u>
Title:	<u>President</u>	<u></u>
Date:	<u>8/11/2025</u>	<u></u>
	Authorized by Contractor	Approved by Funding Agency (if applicable)
By:	<u>K. L. Llan</u>	<u></u>
Title:	<u>Office Mgr. / Corp Sec.</u>	<u></u>
Date:	<u>8/14/2025</u>	<u></u>

SUSSEX COUNTY COUNCIL

SEDIMENT & EROSION CONTROL AUTHORIZATION TO DRAFT ORDINANCE

AUGUST 19, 2025

**INITIALLY PRESENTED - JULY 15, 2025
&
JULY 25, 2025 @ SCD BOARD MEETING**

PROPOSED COUNTY CODE REVISION

§ 115-193 RESOURCE PROTECTION

- Remove 50% Zone B resource buffer averaging limitation to maximize Zone B buffer protection in runoff concentration area(s)
- Require a Zone B mandatory, Engineering Department controlled, zone layout guidance process similar to the already codified “Sewer Concept Evaluation”.

PROPOSED COUNTY CODE REVISION

§ 90 “ENHANCED SEDIMENT CAPTURE”

- Implement Sussex County selected type of stormwater management practice for enhanced sediment based on the following criteria:
 - Pre-development site topography
 - Size of upstream drainage area
 - Proximity of site to tidally influenced resources
- Require use of 48-hour extended detention, dry ponds or wet ponds w/o liners constructed and stabilized prior to ground disturbance based on overall criteria matrix score
- Prohibit use of infiltration type stormwater management practices as sediment traps in all cases

POSSIBLE COUNTY CODE REVISION

§ 99-7 PRELIMINARY CONFERENCE

- Chapter § 99-7 Preliminary conference *The subdivider shall also consult with the County Engineer and, where applicable, the State Department of Natural Resources and Environmental Control on matters relating to proposed facilities for sanitary sewage disposal, **storm drainage** and water supply intended to serve the proposed subdivision.*
- Expand requirements for Preliminary Conference consultation items to include Zone B Resource Buffer layout and Enhanced Sediment Capture selection.

PROPOSED COUNTY CODE REVISION

§ 90 MAXIMUM LIMIT OF DISTURBANCE (LOD)

Restrict area of disturbance (LOD) <20 acres based on the following criteria:

- o Topography i. e. bare earth slopes in LOD based on bulk and/or detailed grading plans
- o Size of upstream drainage area either offsite or onsite discharging stormwater into the LOD
- o Limitation values set in a codified sliding range matrix correlating both criteria to a percentage reduction of the current across the board 20 acres limit

PROPOSED § 90 COUNTY CODE REVISION TO REGULATE STORMWATER DISCHARGES AT PROPERTY LINES

- Pre-development volume control requirement in the stormwater management design
- Downstream post development discharge requirement into passive open space of existing residential development(s) or a shared receiving channel / storm sewer system
- Prohibition of discharges into existing adjoining residential building lots and associated perimeter buffers

BAYLIS ESTATES

PRE-DEVELOPMENT
VOLUME DISCHARGE
OFFSITE : 80,673 CF



Google Earth

Image © 2025 Maxar Technologies

1000 ft

BAYLIS ESTATES

POST-DEVELOPMENT
VOLUME DISCHARGE
OFFSITE : 174,501 CF

Google Earth

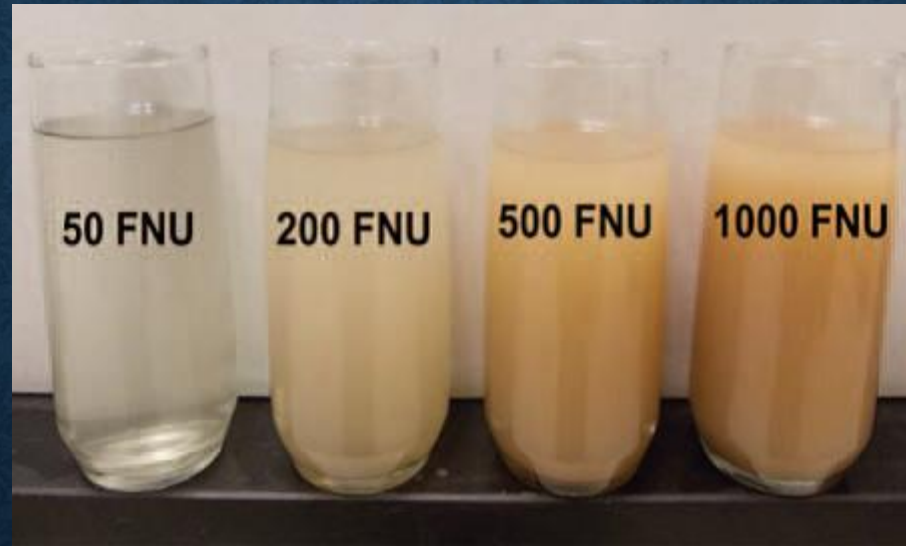
Image © 2025 Airbus

1000 ft

JOINT SUSSEX COUNTY & SUSSEX CONSERVATION DISTRICT ENFORCEMENT

- Staggered enforcement based on turbidity levels > 150 NTUs at discharge point(s) as measured and officially documented by Sussex Conservation District
- Temporary halting of all building inspections in the “out of compliance phase” as part of the Planning & Zoning Department’s building inspection process
 - NTU 150-300: issuance of warning
 - NTU 300-1,000: One (1) month hold or two (2) consecutive weekly retests by third party laboratory documenting compliance whatever is longer
 - NTU >1,000: Indefinite hold until receipt of three (3) consecutive weekly retests by third party laboratory documenting compliance

NTU LEVELS



REGULATORY STEP

- County Code § 90-2 Authority; references Chapter 40, Title 7, Delaware Code
- *§ 4007. Local sediment and stormwater programs*
 - *(a) Pursuant to regulations promulgated by the Department, each conservation district, county, municipality or state agency may adopt, and submit to the Department for approval, 1 or more components of a sediment and stormwater program for the area within its jurisdiction.*
 - *(d) A district, county, municipality or state agency may develop the program in cooperation with any other governmental subdivisions*
- Develop a Memorandum of Understanding with Sussex Conservation District regarding enforcement coordination per § 4007 (d)

SUSSEX COUNTY COUNCIL

**SEDIMENT & STORMWATER
REGULATIONS**

NEXT STEPS



Memorandum

To: Sussex County Council
The Honorable Douglas B. Hudson
The Honorable Jane Gruenebaum
The Honorable Matt Lloyd
The Honorable Steve McCarron
The Honorable John L. Rieley

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: August 13, 2025

RE: County Council Report for C/U 2584 filed on behalf of Martin Pacheco & Agustin Lee Pacheco-Quillen

The Planning and Zoning Department received an application (C/U 2584 filed on behalf of Martin Pacheco & Agustin Lee Pacheco-Quillen) for an outdoor athletic field and concession trailer/food truck to be located in an AR-1 Agricultural Residential Zoning District at Tax Parcel 331-2.00-18.19 & 18.20. The property is located at 20924 Camp Road, Bridgeville. The parcel size is 8.07 ac. +/-

The Planning & Zoning Commission held a Public Hearing on the application on June 18, 2025. At the meeting of July 2, 2025, the Planning & Zoning Commission recommended approval of the application for the 6 reasons stated and subject to the 9 recommended conditions as outlined within the motion (copied below).

The County Council held a Public Hearing on the application at its meeting on July 29, 2025. At the conclusion of the Public Hearing, action on the application was deferred for further consideration. Below is a link to the County Council meeting minutes of July 29, 2025

[Link to the Minutes of the July 29, 2025, County Council Meeting](#)

Below are the minutes from the Planning & Zoning Commission meeting on June 18, 2025, and July 2, 2025.

[Minutes of the June 18, 2025, Planning & Zoning Commission Meeting](#)

C/U 2584 Martin Pacheco & Agustin Lee Pacheco-Quillen

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN OUTDOOR ATHLETIC FIELD



AND CONCESSION TRAILER/FOOD TRUCK TO BE LOCATED ON CERTAIN PARCELS OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 8.07 ACRES, MORE OR LESS. The properties are lying on the west side of Camp Road (S.C.R. 532), approximately 915 ft. north of Eskridge Road (S.C.R. 531). 911 Address: 20924 Camp Road, Bridgeville. Tax Map Parcels: 331-2.00-18.19 & 18.20

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Applicant's Preliminary Site Plan, the property deed, the DelDOT Service Level Evaluation Response letter, a written response from the Sussex County Engineering Department Utility Planning Division, and the Staff Analysis letter. Mr. Whitehouse advised the Commission that no public comments had been received for the Application.

Mr. Whitehouse advised the Commission that the application was submitted as a result of an issued violation, and should the Commission have any questions, Mr. Mark Rogers, Sussex County Chief Constable, and Mr. Christopher Layton, Sussex County Constable were present.

The Commission found that Ms. Maria Monsanto, spoke on behalf of the property owner, Mr. Raul Alvarez, and the Applicants. Ms. Monsanto stated there is an existing soccer field that is utilized for practices and for seasonal games; that they also inherited a food truck; that this person has a license and all permits required for the food truck to be located on the property; that the food truck would provide light items, such as drinks and chips for the convenience of the players; that there are approximately 50 vehicles in the parking lot at a time, and these vehicles rotate throughout the time, as people are arriving and leaving from games.

Mr. Collins questioned the general number of vehicles that access the site, and proposed parking.

Mrs. Monsanto stated they stated approximately 50 vehicles, however, she believed it to be less than that; that there had been previous claims of 100 vehicles being on the site at one time; that there is no way 100 vehicles were on the site; that vehicles do switch from one particular game to another, which only occurs during a transition period; that the operations are proposed for seasonal use; that there is a period of start and end, and dates were provided of when operations are proposed to occur.

Ms. Wingate stated she saw the 50 parking spaces reflected on the plan; that she questioned if the plan was submitted to DelDOT and requested to hear from the Sussex County Constables that were present.

Ms. Monsanto stated she has all the paperwork for DelDOT, and she had submitted everything DelDOT requested.

The Commission found that Mr. Mark Rogers, Chief Constable, spoke upon the application at Ms. Wingate's request. Mr. Rogers stated the Constable's Department had received a complaint prior to his employment with Sussex County, in January 2024; that at that time, there was a large pole barn where soccer games were being held inside; that once a Constable visited the site, notifying the property owner of the violation, a Conditional Use application was filed; that subsequently, the Conditional Use application was withdrawn once made aware of what went into a Conditional Use application; that approximately two months later, after he was hired by Sussex County, another complaint was filed regarding large soccer games being held on the property; that a constable visited

the site, at which time he was able to verify that soccer games were being held on the site on weekends; that it was the constable's understanding at that time, that no games were being held inside the building; that the Applicant and property owner were under the impression they were not permitted to host games inside the building, but were permitted to host games outside of the building; that at that time the Constable was able to make them aware that due to the number of people, the food truck, and the advertising, a Conditional Use approval would be required; that the Ms. Monsanto did attend a meeting with the Constables Department, to discuss the complaints filed, and the required process; that following this meeting, the Applicant agreed to limit the vehicles onsite to a maximum of 50 vehicles; that the department has received a few complaints; that since meeting with Ms. Monsanto in April 2025, they appear to be following the Constables guidelines and there have been arguments regarding the number of cars at the site, however, the event was held on a Sunday, at which time the Constables were unable to visit the site.

Ms. Wingate questioned what type of meetings and events are proposed for the pole building.

Ms. Monsanto stated originally, she had discussions with the Applicant regarding requesting a Conditional Use for the pole barn; that after they began looking into the expenses and permits of the process, they decided it was not affordable at the moment; that this resulted in the withdrawal of the original Conditional Use application; that there was a small room that was used for an inside soccer field; that at the time they did not realize they were in violation of the Code; that once they were made aware, they followed everything they were required to do, and they stopped all activities that were required to be stopped; that this is what they have continued to do; that they are no longer proposing events; that if it is raining outside, they do hold practices inside; that the use is not commercial, it is all for personal use, and the only commercial use on the site is the food truck.

Mr. Mears questioned staff if the existing building is located over the setback line, shown at 20 feet, and if the Applicant would need approval by the Sussex County Board of Adjustment.

Mr. Whitehouse stated that if the existing building is located within the setback, it will require a variance; that this issue would be a separate matter; that staff will additionally need to resolve permitting for the building, and the thought process was to handle the use first, with everything else flowing from there, and staff will need to circle back on the setback issue.

Mr. Robertson questioned if the proposed use would have a negative impact on the nearby community, what days and hours of operation are proposed, and if the Applicant desires a sign.

Ms. Monsanto stated they are not looking to impact the community, however she felt the community felt a bit more impacted, as there are more retired people within the community; that there is a trucking business located behind the site; that they hear more noise from the trucking company than from their proposed use; that she is at the site at 6:00 am every morning, at which time she hears beeping and multiple other noises; that everyone has their own property; that they are only trying to have fun, by uplifting the community, through participating and enjoying the games; that the Applicant proposes to host games only on Sundays, and there will be practices held throughout the day.

The Commission found that Mr. Martin Pacheco spoke on behalf of his application. Mr. Pacheco stated that they would like to host practices in the afternoons for approximately one to two hours; that it all depends on what time people get off of work; that practices are typically held between 7:00 pm until 9:00 pm; that there are lights on the field that are operated by a generator; that on Sundays

operations run from 8:00 am until 7:00 pm; that there are 10 to 15 people coming and going from the site; that there are not a bunch of people who remain at the site all day; that the season runs from October to May; that there has been a previous issue with players arriving at the wrong address, because they do not currently have a sign; that he does not necessarily want to place a sign, and he stated people arriving to the wrong location was only an issue in the beginning.

Ms. Monsanto stated that they do place a notice on Facebook to allow game players to know who will be playing against who.

Mr. Whitehouse questioned the lighting provided by the generator.

Ms. Monsanto stated that lighting is provided by a generator.

Mr. Pacheco stated it is a generator that gets placed on a light pole, and the generator turns the lights on.

The Commission found that there was no one present who wished to speak in support of the Application, and three people present who wished to speak in opposition of the Application.

Mr. William Reynolds spoke in opposition to the application. Mr. Reynolds stated he resides adjacent to the property; that there is traffic coming and going from the site, sometimes up to 3:00 am; that traffic to the site goes through his lane; that he previously complained; that they would not put up a sign to show where the correct entrance was located; that he currently has people on his property at night, at which time he chases them off with his flashlight, and the people do not pay attention; that they play games; that they use bright lights at night; that you can hear them from his property; that he would like them to place a sign for their business; that he believed they were running a business for horses, but he was unsure what they are doing on the property, and that there is traffic to the site seven days a week.

Ms. Wingate questioned whether additional businesses were being performed on the property.

Ms. Monsanto stated that they do have a painting business, known as GJK Painting, from the existing houses, with a small office located next to the houses, and their business provides painting and drywall services.

Chairman Wheatley questioned if the painting business had employees, and if there was an existing Conditional Use for the painting business.

Ms. Monsanto stated the painting business does have employees, and she would assume that there was a Conditional Use approved for the painting business on the property.

Mr. Whitehouse stated there is no Conditional Use approved for Tax Map Parcel No. 331-2.00-18.13, unless the use was in operation prior to 1970.

Mr. Robertson stated that the approval may have been granted as a Home Occupation, and confirmation would require additional research.

Mr. Rogers stated there has not been a violation issued for the painting business, however, it was part of one of the previous complaints; that when the Constable visited the site, there were no work vehicles located on the site, and Ms. Monsanto who often translates for the property owner was not present to translate, therefore, there was no evidence of a business at that time.

Ms. Monsanto stated that with the painting business, one to two contractors will come to the site to retrieve their schedule for the day, and will then leave the site; that the contractors do not drop off anything to the site; that they are sub-contractors, and they have their own work vehicles.

Chairman Wheatley stated the reason the Conditional Use is required is because the zoning of the area is agricultural residential; that there is an expectation that there will not be places of assembly; that there will not be food trucks; that there will not be businesses operating unless they received permission to do so, and that is the reasoning for the Conditional Use process.

The Commission found that Mr. Jason Hignutt and Mrs. Keri Hignutt spoke in opposition to the Application. Mrs. Hignutt stated that they are also neighbors within the community; that if the plan proposes 50 vehicles, potentially allowing four people per vehicle, it would equal to a minimum of 200 potential people at the property; that there was a fire at the residence previously; that they had concerns regarding a fire hydrant; that their home is located in front of the proposed site; that they had concerns regarding potential septic requirements, or are portable toilets proposed; that they would be a proponent for signage; that they have had a number of people in their driveway daily; that they hosted an event the night prior, where vehicles were entering the site at 9:00 pm; that they had previously had State troopers at their property looking for the site; that even the State police have trouble locating the property; that they have three children who love to play outside; that when people are pulling in and not knowing where they are going, turning around in their driveway, it creates a safety concern; that they have also had people previously trespass onto their property, attempting to get into their pole barn on their property; that the lane on the site is not wide enough to provide for two way traffic; that current business hours appear to be seven days a week, all hours of the day; that they are not fans of bright outdoor lighting; that the lights are a current issue on their property; that she questioned if the food trucks will draw crowds or will it be limited to servicing the players only; that they previously had seen septic trucks accessing the property, and if the use is approved, they request that there be guidelines placed.

Mr. Hignutt stated that they have three children who love to play outside; that Camp Road becomes a race track at night, when the site traffic is racing back to Cannon Road; that the loud trucks and Honda Civics need to be respectful for the existing residents of the community; that they are not against the use; that they are going through the same process for their own business; that they would request that the Applicant be held to the same requirements that they are being held to; that the back building is clearly past the required setback; that rules are rules; that there is not a fire hydrant close to the site and there is no public water anywhere near the site.

Mr. Collins questioned if the Hignutts were requesting screening to be placed for the site.

Ms. Hignutt stated that yes, they would appreciate a fence or some type of screening.

Ms. Wingate questioned if portable toilets and trash enclosures are located on the site.

Ms. Monsanto stated there are two portable toilets located on the site; that the toilets are services regularly; that there is one commercial four foot dumpster located to the back of the site; that there are no other businesses, but there is a farm with horses, chickens and goats; that they are not affiliated with any business use; that they are willing to place a fence if it is required; that the lights can be turned away from other properties; that they are willing to do whatever it takes; that for the benefit of the neighbors, the property owner has a large family; that it is not only people coming for the soccer fields every day; that at times it is the property owners family members; that they are not trying to be rebellious; that they did not know the process and now that they know the process they are willing to do whatever it takes to fix the issues.

Mr. Robertson stated that the property is located right off Rt. 113; that the site is surrounded by C-1 (General Commercial) zoning on two sides, somewhat wrapping around to the front, containing commercial uses.

Upon there being no further questions, Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to C/U 2584 Martin Pacheco & Agustin Lee Pacheco-Quillen. Motion by Mr. Collins to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

Minutes of the July 2, 2025, Planning & Zoning Commission Meeting

The Commission discussed the application, which had been deferred since June 18th, 2025.

Mr. Collins moved that the Commission recommend approval of Conditional Use No. 2584 Martin Pacheco & Agustin Lee Pacheco-Quillen for an outdoor athletic field and a concession trailer/food truck based upon the record made during the public hearing and for the following reasons:

1. The use will be an outdoor field used for athletic activities like soccer games. The concession trailer or food truck will be limited to providing food and beverages to the participants in the games on the field.
2. The property is 8.07 acres in size. The outdoor soccer field will be located several hundred feet from Camp Road and the backs of the residential lots located on that road. It is also in an area of the property that is adjacent to land that is commercially zoned, and it is adjacent to the commercial corridor of Route 13.
3. The Applicants stated that they only desire one outdoor field. With this limitation, the property will not become a large-scale sports facility.
4. The Applicants have stated that there is a need in this area of Sussex County for soccer fields for use by residents of Sussex County.
5. While there were concerns expressed by residents of the area, these concerns can largely be resolved through appropriate conditions imposed on the use, including hours of operation, signage, limitations on lighting, and other factors.
6. With the conditions imposed as part of this recommendation, the use will not have an adverse impact upon traffic, area roadways, or the community.
7. This recommendation is subject to the following conditions:

- A. The use shall be limited to a single outdoor athletic field. One food truck or concession trailer shall also be permitted exclusively for people using the field or watching the games there. The food truck or trailer shall not be used when the field is not in use.
- B. The Final Site Plan shall clearly show the location of the outdoor field, and all parking areas shall be clearly marked on the site. In addition, the driveway shall be paved to control dust.
- C. The Applicants shall comply with all DelDOT entrance and roadway improvement requirements.
- D. One unlighted sign shall be permitted to clearly designate the entrance to the field from Camp Road. It shall not exceed 32 square feet in size. The location of the sign shall take into account how it may affect neighboring properties. The location and details of the sign shall be shown on the Final Site Plan.
- E. The hours of operation shall be limited to 8:00 a.m. through 10:00 p.m., 7 days per week. The entrance to the site shall be gated to prevent access when the field is not in use.
- F. The outdoor field may be lighted for nighttime use. The lights shall not be mounted higher than 12 feet, and they shall not shine on neighboring properties. The lights must be turned off no later than 10:00 p.m. The location of the lights shall be shown on the Final Site Plan.
- G. The entrance drive and the perimeter of the property where the parking and field is located shall be fenced with a solid fence to screen the noise, light, and sporting events from neighboring properties. The location and type of fencing to be installed shall be shown on the Final Site Plan.
- H. Any violation of these conditions may be grounds for termination of the conditional use.
- I. Because this case is the result of a zoning violation investigation, the Final Site Plan must be submitted to the Office of Planning & Zoning within 6 months of the date that this Conditional Use is approved by Sussex County Council. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Collins, seconded by Ms. Wingate, and carried unanimously to recommend approval of C/U 2584 Martin Pacheco & Agustin Lee Pacheco-Quillen for the reasons and conditions stated in the motion. Motion carried 4-0.

Vote by roll call: Mr. Collins – yea, Ms. Wingate – yea, Mr. Mears – yea, Chairman Wheatley – yea.

Mr. Collins motioned yes, for the reasons and conditions stated in the motion.

Ms. Wingate motioned yes, for the reasons and conditions stated in the motion.

Mr. Mears motioned yes, for the reasons and conditions stated in the motion.

Chairman Wheatley motioned yes, for the reasons and stipulations stated in the motion.

Introduced: 5/20/25

Council District 2: Mr. McCarron

Tax I.D. No.: 331-2.00-18.19 & 18.20

911 Address: 20924 Camp Road, Bridgeville & N/A

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN OUTDOOR ATHLETIC FIELD AND CONCESSION TRAILER/FOOD TRUCK TO BE LOCATED ON A CERTAIN PARCELS OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 8.07 ACRES, MORE OR LESS

WHEREAS, on the 20th day of March 2025, a Conditional Use application, denominated Conditional Use No. 2584 was filed on behalf of Martin Pacheco and Agustin Lee Pacheco-Quillen; and

WHEREAS, on the ____ day of _____ 2025, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2584 be _____; and

WHEREAS, on the ____ day of _____ 2025, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use 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, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsections 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2584 as it applies to the property 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 Seaford Hundred, Sussex County, Delaware, and lying on the west side of Camp Road (S.C.R. 532) approximately 915 ft. north of Eskridge Road (S.C.R. 531), and being more particularly described in the attached legal description prepared by Tunnell & Raysor, P.A. said parcel containing 8.07 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.

Casey Hall

Lloyd.

From: notifications@d3forms.com@mg.d3forms.com on behalf of Sussex County DE
<notifications@d3forms.com>
Sent: Monday, July 28, 2025 1:43 PM
To: Casey Hall
Subject: Form submission from: Council Grant Form

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Council Grant Form

**Legal Name of
Agency/Organization**

Western Sussex Chamber of Commerce Inc. ✓

Project Name

Broad Creek Bash

Federal Tax ID

51-0109649 ✓

Non-Profit

Yes

**Does your
organization or its
parent organization
have a religious
affiliation? (If yes, fill
out Section 3B.)**

No

**Organization's
Mission**

The Western Sussex Chamber acts as an advocate for business and economic development, connects resources to encourage positive community impact and promotes visitorship to our communities beyond the beaches. We serve all of Western Sussex County –including the towns of Laurel, Bethel, Blades, Seaford, Bridgeville and Greenwood.

Address

PO Box 26

City

Seaford

State

Delaware

Zip Code	19973
Contact Person	Suzanne Barger
Contact Phone Number	704-792-5702
Contact Email Address	admin@westernsussexcoc.com
Total Funding Request	1000.00
Has your organization received other grant funds from Sussex County Government in the last year?	Yes
If YES, how much was received in the last 12 months?	1000
Are you seeking other sources of funding other than Sussex County Council?	Yes
If YES, approximately what percentage of the project's funding does the Council grant represent?	10
Program Category (choose all that apply)	Health and Human Services
Primary Beneficiary Category	Other

Beneficiary Category Local Non-profits
Other

Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program

15

Scope

This year we are having the Broad Creek BASH! (formerly known as the Broad Creek Bike and Brew) We have made a few changes from the years past to offer a fresh and "new" event! We will offer 3 different bike rides, 25 mile, 50 mile, and metric ride! We are also excited to announce our partnership with SeaShore Striders and offering a 5K walk/run!! An after party is being held at Tidewater Park in Laurel Delaware for live music, beers from Dogfish Head. Food trucks and vendors will be available. Half of all proceeds will go to local non-profits!

Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)

12,000.00

Description

Bathrooms

Amount

1,445.00

Description

dumpsters

Amount

495.00

Description

table, chair and stage rental

Amount	1,966.53
Description	supplies for event
Amount	1,500.00
Description	band
Amount	1,200.00
Description	event shirts
Amount	3,995.00
TOTAL EXPENDITURES	10,601.53
TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	1,398.47
Name of Organization	Western Sussex Chamber of Commerce
Applicant/Authorized Official	Suzanne Barger
Date	07/28/2025
Affidavit Acknowledgement	Yes

If you feel this is not a valid submission please log into D3Forms to update this submissions status.
Please feel free to email clientservices@d3corp.com with any questions.

From: notifications=d3forms.com@mg.d3forms.com on behalf of Sussex County DE
<notifications@d3forms.com>
Sent: Friday, July 25, 2025 4:04 PM
To: Casey Hall
Subject: Form submission from: Council Grant Form

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Council Grant Form

Legal Name of Agency/Organization	American Cancer Society, Inc. ✓
Project Name	Relay For Life of Sussex County
Federal Tax ID	13-1788491 ✓
Non-Profit	Yes
Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)	No
Organization's Mission	The mission of the American Cancer Society is to improve the lives of people with cancer and their families through advocacy, research, and patient support, to ensure everyone has an opportunity to prevent, detect, treat, and survive cancer.
Address	PO Box 1877
City	Salisbury
State	Maryland

Zip Code	21802
Contact Person	Debbie White
Contact Title	Sr. Development Manager
Contact Phone Number	4108453049
Contact Email Address	debbie.white@cancer.org
Total Funding Request	1,500.00
Has your organization received other grant funds from Sussex County Government in the last year?	No
If YES, how much was received in the last 12 months?	N/A
Are you seeking other sources of funding other than Sussex County Council?	Yes
If YES, approximately what percentage of the project's funding does the Council grant represent?	2.2
Program Category (choose all that apply)	Educational Health and Human Services

Primary Beneficiary Category	Other
Beneficiary Category Other	all Sussex countians
Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program	1500
Scope	Approximately 1500 Sussex countians are diagnosed with cancer each year. The American Cancer Society is here to end cancer as we know it for everyone, fighting every cancer, every day...with Relay For Life, our signature fundraising activity, directly funding our research, free patient services, and prevention & detection education for anyone who requests help. Last year 163 Sussex Countians requested help for rides to treatment, free lodging at Hope Lodge, and other support through our 800# help line.
Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)	68,000.00
Description	Operating
Amount	1,800.00
Description	Personnel
Amount	1,000.00

Description	Fundraising
Amount	2,800.00
Description	Education & Marketing
Amount	1,000.00
Amount	0.00
TOTAL EXPENDITURES	6,600.00
TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	61,400.00
Name of Organization	American Cancer Society, Inc.
Applicant/Authorized Official	Debbie White
Date	07/25/2025
Affidavit Acknowledgement	Yes

If you feel this is not a valid submission please log into D3Forms to update this submissions status.
Please feel free to email clientservices@d3corp.com with any questions.

To Be Introduced: 8/19/25

Council District: Mr. Rieley

Tax I.D. No.: 135-20.00-81.00

911 Address: 22318 Cedar Lane, Georgetown

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A DISTRIBUTION WAREHOUSE TO BE LOCATED ON A 10.896 ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 71.127 ACRES, MORE OR LESS

WHEREAS, on the 30th day of August 2022, a conditional use application, denominated Conditional Use No. 2395, was filed on behalf of Breeze-A-Bella Land Group, LLC; and

WHEREAS, on the ____ day of _____ 2025, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2395 be _____; and

WHEREAS, on the ____ day of _____ 2025, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use 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, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2395 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Georgetown Hundred, Sussex County, Delaware, and lying on the south side of Park Avenue (S.C.R. 318) at the intersection of Park Avenue (S.C.R. 318) and Cedar Lane (S.C.R. 321A) and being more particularly described in the attached legal description prepared by Atwell, LLC, said portion of the parcel containing 10.896 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.

To Be Introduced: 8/19/25

Council District 4: Mr. Hudson

Tax I.D. No.: 533-19.00-7.00, 8.01 & 9.00

911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN MR-RPC MEDIUM DENSITY RESIDENTIAL – RESIDENTIAL PLANNED COMMUNITY DISTRICT (210 UNITS) FOR CERTAIN PARCELS OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 60.84 ACRES, MORE OR LESS

WHEREAS, on the 9th day of May 2025, a zoning application, denominated Change of Zone No. 2052, was filed on behalf of Marlin Cove, LLC; and

WHEREAS, on the ____ day of _____ 2025, 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. 2052 be _____; and

WHEREAS, on the ____ day of _____ 2025, 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 District] and adding in lieu thereof the designation MR-RPC Medium Density Residential – Residential Planned Community District as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Sussex County, Delaware, and lying on the west side of New Road (S.C.R. 391), approximately 80 feet north of Lighthouse Road (Rt. 54) and being more particularly described in the attached legal description prepared by Hudson, Jones, Jaywork & Fisher, LLC, said parcels containing 60.84 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.

To Be Introduced: 8/19/25

Council District 3: Ms. Gruenebaum
Tax I.D. No.: 334-12.00-46.00 & 47.00
911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-4 PLANNED COMMERCIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 73.5 ACRES, MORE OR LESS

WHEREAS, on the 6th day of September, 2024, a zoning application, denominated Change of Zone No. 2037, was filed on behalf of Mulberry Knoll Associates, LLC; and

WHEREAS, on the ____ day of _____ 2025, 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. 2037 be _____; and

WHEREAS, on the ____ day of _____ 2025, 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 District] and adding in lieu thereof the designation C-4 Planned Commercial District as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Sussex County, Delaware, and lying on the northwest side of John J. Williams Highway (Rt. 24), at the northwest corner of the intersection with Mulberry Knoll Road (SCR 284) and being more particularly described in the attached survey prepared by Bohler Engineering, said parcels containing 73.5 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.

To Be Introduced: 8/19/25

Council District 4: Mr. Hudson

Tax I.D. No.: 134-6.00-175.00

911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A GR GENERAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 0.75 ACRES, MORE OR LESS

WHEREAS, on the 5th day of August 2025, a zoning application, denominated Change of Zone No. 2055, was filed on behalf of David Roe; and

WHEREAS, on the ____ day of _____ 2025, 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. 2055 be _____; and

WHEREAS, on the ____ day of _____ 2025, 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 District] and adding in lieu thereof the designation GR General Residential District as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Sussex County, Delaware, and lying on the south side of Ballast Point Road (S.C.R. 341A), approximately 215 feet west of Sandy Landing Road (S.C.R. 342), and being more particularly described in the attached legal description prepared by D. Stephen Parsons, P.A., said parcels containing 0.75 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.

To Be Introduced: 8/19/25

Council District 2: Mr. McCarron

Tax I.D. No.: 235-8.00-35.02 & 35.03 (P/O)

911 Address: 12984 Coastal Highway & 13177 Eagles Nest Trail, Milton

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AMEND CONDITIONAL USE NO. 705 TO ALLOW FOR AN EXPANSION OF AN EXISTING CAMPGROUND TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY CONTAINING 21.93 ACRES, MORE OR LESS

WHEREAS, on the 9th day of April 2025, a Conditional Use application, denominated Conditional Use No. 2586, was filed on behalf of Preston & Mason Dyer; and

WHEREAS, on the ____ day of _____ 2025, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2586 be _____; and

WHEREAS, on the ____ day of _____ 2025, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use 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, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsections 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2586 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece, or parcel of land, lying and being situate in Sussex County Delaware, and lying on the southwest side of Coastal Highway (Rt. 1), approximately 0.70 mile north of Broadkill Road (Rt. 16), and being more particularly described in the attached legal description prepared by Pennoni said parcel containing 21.93 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.