

Sussex County Council Public/Media Packet

**MEETING:
October 1, 2019**

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**Sussex County Council
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(302) 855-7743**

COUNTY COUNCIL

MICHAEL H. VINCENT, PRESIDENT
IRWIN G. BURTON III, VICE PRESIDENT
DOUGLAS B. HUDSON
JOHN L. RIELEY
SAMUEL R. WILSON JR.



Sussex County

DELAWARE
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SUSSEX COUNTY COUNCIL

AGENDA

OCTOBER 1, 2019

10:00 A.M.

Call to Order

Approval of Agenda

Approval of Minutes

Reading of Correspondence

Public Comments

Presentation – Sussex Central FFA – Parliamentarian Procedure Team

Presentation – Mark Isaacs, Director, University of Delaware Cooperative Extension

Todd Lawson, County Administrator

1. DelDOT Memorandum of Understanding (MOU) Update
2. Administrator's Report

Dwayne Kilgo, Director of Information Technology

1. Consideration of Georgetown Fiber Ring Acquisition

Jim Hickin, Airport Manager

1. Airport Leases
 - A. Georgetown Air Services Lease Amendment
 - B. Schell Aviation Lease
 - C. Cay Properties Lease



Hans Medlarz, County Engineer

1. Inland Bays Regional Wastewater Facility – Regional Biosolids and Septage Facilities, Project 18-19

A. Change Order No. 1

Old Business

Change of Zone No. 1878 filed on behalf of Captain’s Way Development, LLC

“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR-RPC (GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY) TO A GR-RPC (GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY) TO ALLOW FOR GARAGE STUDIO APARTMENTS FOR CHANGE OF ZONE NO. 1721 (ORDINANCE NO. 2295) FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 154.72 ACRES, MORE OR LESS” (Tax I.D. No. 235-13.00-2.00, 2.06, 2.07, 2.08 and 235-13.00-32.00 through 332.00) (911 Address: None Available)

Introduction of Proposed Zoning Ordinances

Council Members’ Comments

Executive Session – Land Acquisition and Collective Bargaining pursuant to 29 Del.C.§10004(b)

Possible Action on Executive Session Items

Adjourn

Sussex County Council meetings can be monitored on the internet at www.sussexcountyde.gov.

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on September 24, 2019 at 4:45 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.

###

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, SEPTEMBER 24, 2019

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, September 24, 2019, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
Irwin G. Burton III	Vice President
Douglas B. Hudson	Councilman
John L. Rieley	Councilman
Samuel R. Wilson Jr.	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. Vincent.

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 473 19
Approve
Agenda**

A Motion was made by Mr. Wilson, seconded by Mr. Burton, to approve the Agenda, as posted.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

Minutes

The minutes of September 17, 2019 were approved by consent.

**Corre-
spondence**

Mr. Moore read correspondence from Rehoboth Summer Childrens Theatre thanking Council for grant funding.

**Public
Comments**

There were no public comments.

**League of
Women
Voters of
Sussex
County/
Annual
Report**

Ms. BR Breen, Observer Corps Coordinator for the League of Women Voters of Sussex County, presented the League's Annual Report (Sunshine Report) to the Sussex County Council. As part of the League of Women Voters' support for openness in government, its Observer Corps monitors the activities of governmental bodies for issues of importance to the League and to the County. The Observer Corps has completed its tenth year of activity; observers attended County Council and Planning and Zoning Commission meetings. Ms. Breen presented copies of the report to the Council.

Personnel Board Appointment

Mr. Lawson reported that due to a recent vacancy on the County's Personnel Board, it is necessary to fill that vacancy. Mr. Lawson distributed the resume of Kathy Kiernan Newcomb; Ms. Newcomb is qualified to serve and has agreed to serve on the Personnel Board.

M 474 19 Approve Personnel Board Appointment

A Motion was made by Mr. Burton, seconded by Mr. Wilson, that the Sussex County Council approves the appointment of Mrs. Kathy Kiernan Newcomb to the Personnel Board, effective immediately for a period of three (3) years.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Wilson, Yea; Mr. Burton, Yea; Mr. Vincent, Yea

Administrator's Report

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

1. Sussex County Property Taxes Due September 30th

A final reminder for property owners in Sussex County that September 30th is the deadline to pay annual County property tax bills. Payments can be made in person, online, by phone, or by mail. Any payments mailed must be postmarked no later than September 30th. Payments made October 1st or later will be subject to penalty.

This year's tax bills once again feature an easy-to-read format to help taxpayers better understand their bills and payment options. A number of payment options are available for the public's convenience. A tutorial explaining how to view account information and to make payments is available on the County website at <https://www.sussexcountycle.gov/property-tax-portal-tutorial>.

Sussex County accepts tax payments by cash, check, money order, and debit or credit cards.

2. Delaware State Police Activity Report

The Delaware State Police year-to-date activity report for August 2019 is attached listing the number of violent crime and property crime arrests, as well as total traffic charges and corresponding arrests. In addition, DUI and total vehicle crashes investigated are listed. In total, there were 194 troopers assigned to Sussex County for the month of August.

**Administrator's
Report
(continued)**

3. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, Americana Bayside – Village C – Phase 2 – Sewer (added two Lots 1046 and 1047) received Substantial Completion and Silver Woods – Phase 5A received Partial Substantial Completion for Lots 66-85 and Lots 89-111 only, effective September 17th.

4. Keep DE Litter Free – Sussex County Employees

On Friday, September 20, 2019, five teams of Sussex County employees set out to clean the county as part of the Keep DE Litter Free campaign. In all, more than 40 employees, including two Council members, spent the afternoon picking up trash along five select roads known for their high volume of litter and debris. The roads included Bunting Road, Cordrey Road, Hastings Farm Road, Molly Field Road, and Steiner Road. Through their efforts, the County collected 169 bags of trash, as well as larger items including televisions, furniture, and coolers. I would like to thank our partners at DelDOT who provided supplies and came through and picked up the collected trash.

Finally, I want to highlight the efforts of Mr. Mike Costello, our Government Affairs Manager, who organized this entire effort. Mike worked with the Employee Benefit Committee and the team captains, including Jen Breasure, Sherman Littleton, Lindsey Stubbs, and Scott Thornton, to develop a plan which was executed flawlessly, and the end result exceeded everyone's expectations. I want to personally thank Mike and all the volunteers who made this inaugural event a tremendous success. Based on the response and the results, we hope to plan another cleanup event in 2020.

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

**CZ 1882
Close
Record**

In regard to Change of Zone No. 1882 filed on behalf of Nassau DE Acquisition Co., LLC, Janelle Cornwell, Planning and Zoning Director, reported that the Sussex County Council reopened the public record for receipt of agency responses and left the record open for the public to provide written comment (on those responses); the record closed at 4:30 p.m. on September 23, 2019. All comments were passed along to the Council members. Ms. Cornwell stated that the purpose of this agenda item is to note the closing of the record.

**CZ 1882
Withdrawal
Request**

In regard to Change of Zone No. 1882 filed on behalf of Nassau DE Acquisition Co., LLC, Janelle Cornwell, Planning and Zoning Director, reported that a letter has been received from the Applicant's engineer and attorney requesting the withdrawal of the Change of Zone application.

M 477 19 approval of a formal addendum by the County Council at a later date.
Authorize
Advance Motion Adopted: 5 Yeas.
Sewer Con-
struction Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Project/ Mr. Wilson, Yea; Mr. Burton, Yea;
Seaford Mr. Vincent, Yea

Grant Mrs. Jennings presented grant requests for the Council's consideration.
Request

M 478 19 A Motion was made by Mr. Rieley, seconded by Mr. Burton, to give
Council- \$1,000.00 from Mr. Rieley's Councilmanic Grant account to Indian River
manic High School for mock trial competition expenses.
Grant Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea

Introduction Mr. Wilson introduced the Proposed Ordinance entitled "AN
of Proposed ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN
Ordinances AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AUTO-
MOTORCYCLE REPAIR TO BE LOCATED ON A CERTAIN PARCEL
OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX
COUNTY, CONTAINING 1.8711 ACRES, MORE OR LESS"(Conditional
Use No. 2205) filed on behalf of Frank Passwaters. (Tax I.D. No. 230-6.00-
1.02) (911 Address: 8870 Railroad Avenue, Lincoln).

Mr. Hudson introduced the Proposed Ordinance entitled "AN
ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR
GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (198
UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING
AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY,
CONTAINING 48.36 ACRES, MORE OR LESS" (Conditional Use No.
2206) filed on behalf of Linder & Company, Inc. (Evans Farm) (Tax I.D.
No. 134-12.00-74.00) (911 Address: 31434 Railway Road, Ocean View).

The Proposed Ordinances will be advertised for Public Hearing.

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

Public A Public Hearing was held on the Proposed Ordinance entitled "AN
Hearing/ ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN
CU 2183 AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A STORAGE
FACILITY WITH OUTDOOR STORAGE TO BE LOCATED ON A
CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL
HUNDRED, SUSSEX COUNTY, CONTAINING 9.167 ACRES, MORE
OR LESS" (Conditional Use No. 2183) filed on behalf of Brent and Lisa

**Public
Hearing/
CU 2183
(continued)**

Hershey (Tax I.D. No. 235-15.00-26.07) (911 Address: 14374 Clyde's Drive, Milton).

It was determined that no one was present on behalf of the application.

The Council moved forward on the agenda to the next Public Hearing.

**Public
Hearing/
CU 2184**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR EQUIPMENT STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.91 ACRE, MORE OR LESS" (Conditional Use No. 2184) filed on behalf of Linda Ann Yupco-Connors (Tax I.D. No. 334-11.00-15.00) (911 Address: 32260 Jimtown Road, Lewes).

The Planning and Zoning Commission held a Public Hearing on this application on August 22, 2019 at which time action was deferred; no action has been taken at this time.

(See the minutes of the Planning and Zoning Commission dated August 22, 2019.)

Janelle Cornwell, Planning and Zoning Director, presented the application.

The Council found that Larry Fifer, Attorney, was present on behalf of the application with Sam Connors, family member of the Applicant, and Kevin Smith of the Kercher Group. Mr. Fifer stated that the Applicant proposes a business or commercial use of the property; that a pole building currently exists at the rear of the site; that the Applicant operates a business that is headquartered elsewhere (down the road) and that equipment used for that business is proposed to be stored in the pole building on the parcel of land for Conditional Use No. 2184; that there would be no outside storage; that employees would come to the property at approximately 7:00 a.m. to pick up equipment and would leave the site for various jobs elsewhere; that there would be no signage; that lights would be security lights; that there would be no substantial additional traffic as a result of the proposed use; that they ask that a Traffic Impact Study not be required; that there would be no storage of material of any kind; that no fencing is proposed; that no additional buildings are proposed; and that there will be no chipping or grinding of materials on the property.

There were no public comments in support of the application.

Public comments were heard in opposition to the application. Gerald Allen stated that the application site is next to his mother's property; that the area is residential; that the roadway is narrow due to the sidewalks and other infrastructure installed; that the proposed use would be detrimental to the area; that the proposed use would bring a lot of traffic into the area;

**Public
Hearing/
CU 2184
(continued)**

and that employees arriving as early as 7:00 a.m. will create a problem in the neighborhood.

There were no additional public comments.

The Public Hearing and public record were closed.

**M 479 19
Defer
Action/
CU 2184**

A Motion was made by Mr. Burton, seconded by Mr. Rieley, to defer action on Conditional Use No. 2184 filed on behalf of Linda Ann Yupco-Connors.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CU 2185**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 3.4516 ACRES, MORE OR LESS” (Conditional Use No. 2185) filed on behalf of Vincent Kinack (Tax I.D. No. 234-4.00-42.00) (911 Address: 21167 Short Road, Harbeson).

It was determined that no one was present on behalf of the application.

The Council moved forward on the agenda to the next Public Hearing.

**Public
Hearing/
CU 2187**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MOTOR VEHICLE SALES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 0.1657 ACRE, MORE OR LESS” (Conditional Use No. 2187) filed on behalf of Daniel Ostinvil (Tax I.D. No. 232-12.18-51.00) (911 Address: 31016 North Poplar Street, Laurel).

The Planning and Zoning Commission held a Public Hearing on this application on August 22, 2019 at which time action was deferred; no action has been taken at this time.

(See the minutes of the Planning and Zoning Commission dated August 22, 2019.)

Janelle Cornwell, Planning and Zoning Director, presented the application.

The Council found that the Applicant wishes to sell cars on his property; that there would be no more than three to five vehicles for sale on the

**Public
Hearing/
CU 2187
(continued)**

property at any one time; that there is an existing entrance and parking; and that the request is for car sales only, not repairs.

In response to questions, Mr. Ostinvil stated that he also has a BBQ truck parked on the property and he holds BBQs on the property.

Council commented that there would be two businesses on the property, car sales and BBQ sales and that there would not be much room for customers to park on the property. Council questioned if the Applicant has a Conditional Use permit for BBQ sales and it was noted that he does not.

There were no public comments.

The Public Hearing and public record were closed.

**M 480 19
Defer
Action on
CU 2187**

A Motion was made by Mr. Wilson, seconded by Mr. Burton, to defer action on Conditional Use No. 2187 filed on behalf of Daniel Ostinvil.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

CU 2183

It was noted that the Applicant for Conditional Use No. 2183 had been contacted and would be arriving soon.

**M 481 19
Recess**

At 2:03 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Wilson, to recess until 2:15 p.m..

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 482 19
Reconvene**

At 2:15 p.m., a Motion was made by Mr. Burton, seconded by Mr. Hudson, to reconvene.

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Absent; Mr. Burton, Yea;
Mr. Vincent, Yea**

Mr. Wilson joined the meeting.

**Public
Hearing/
CU 2183**

The Public Hearing continued on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A STORAGE FACILITY WITH OUTDOOR STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 9.167 ACRES, MORE OR LESS” (Conditional Use No. 2183) filed on behalf of Brent and Lisa Hershey (Tax I.D. No. 235-15.00-26.07) (911 Address: 14374 Clyde’s Drive, Milton).

The Planning and Zoning Commission held a Public Hearing on this application on August 22, 2019 at which time action was deferred; no action has been taken at this time.

(See the minutes of the Planning and Zoning Commission dated August 22, 2019.)

Janelle Cornwell, Planning and Zoning Director, presented the application.

The Council found Brent Hershey was present on behalf of his application. He stated that they have offices and a production business in Pennsylvania; that a fire in Pennsylvania led them to purchasing the application site for their pig breeding and birthing farm; that the operation has been up and running for three years; that there are some dilapidated buildings on the site that they want to refurbish to use for storage; that they are asking for an adaptive reuse of those farm buildings for secondary storage (boats, contractors equipment, etc.); that there would be no public access to the site; that there would be no offices; that the same footprint would remain; that the height would be raised on one of the buildings; and that they are following the regulations of the Agricultural Preservation District.

There were no public comments.

The Public Hearing and public record were closed.

**M 483 19
Defer
Action/
CU 2183**

A Motion was made by Mr. Wilson, seconded by Mr. Burton, to defer action on Conditional Use No. 2183 filed on behalf of Brent and Lisa Hershey.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CU 2185**

The Public Hearing continued on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF

**Public
Hearing/
CU 2185**

LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 3.4516 ACRES, MORE OR LESS” (Conditional Use No. 2185) filed on behalf of Vincent Kinack (Tax I.D. No. 234-4.00-42.00) (911 Address: 21167 Short Road, Harbeson).

It was determined that there was still no present on behalf of the application.

It was also noted that no one was present in support of or in opposition to the application.

Mr. Moore reminded Council that no recommendation has been received from the Planning and Zoning Commission.

The Public Hearing and public record were closed (the record will remain open for the Planning and Zoning Commission’s recommendation only).

**M 484 19
Defer
Action/
CU 2185**

A Motion was made by Mr. Wilson, seconded by Mr. Burton, to defer action on Conditional Use No. 2185 filed on behalf of Vincent Kinack.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 485 19
Adjourn**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to adjourn at 2:32 p.m.

Motion Adopted: 5 Yeas.

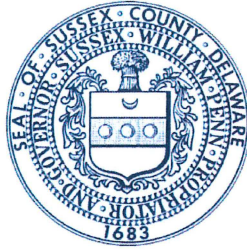
**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

Respectfully submitted,

**Robin A. Griffith
Clerk of the Council**

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

TODD F. LAWSON
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Sussex County
DELAWARE
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Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable Irwin G. Burton III, Vice President
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Samuel R. Wilson Jr.

FROM: Todd F. Lawson
County Administrator

RE: **DeIDOT MEMORANDUM OF UNDERSTANDING**

DATE: September 27, 2019

During Tuesday's Council meeting, we are scheduled to discuss the Sussex County – DeIDOT Memorandum of Understanding (MOU).

As you know, County staff is working with DeIDOT staff to update the current MOU, which has been in place since 1988.

County staff began discussing this initiative with DeIDOT staff in the spring. It was agreed that County staff would initially draft an updated MOU and subsequently share with DeIDOT. In June, County staff sent the initial draft to DeIDOT for their comments. In September, DeIDOT staff returned their comments to the County. The attached document is the product of these efforts and represents the first draft of an updated MOU.

On Tuesday, staff will highlight the changes to the document and explain their purpose. A representative from DeIDOT is also scheduled to attend and answer any questions you may have on this topic.

Tuesday's review will begin our efforts to finalize the document and seek approval from Council and DeIDOT. Subsequent to Tuesday's meeting, we will seek feedback from other stakeholders, including the Planning and Zoning Commission. Once Council and DeIDOT are comfortable with the final document, we will take action to adopt it in the next few months.

Please let me know if you have any questions.

Attachment

pc: J. Everett Moore Jr., Esq.
Vincent G. Robertson, Esq.
Janelle M. Cornwell



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

2019
SUSSEX COUNTY/DELAWARE DEPARTMENT OF TRANSPORTATION
MEMORANDUM OF UNDERSTANDING
FOR LAND DEVELOPMENT COORDINATION

WHEREAS, Title 9, Section 6952 of the *Delaware Code* “Highway Capacity” obligates Sussex County to “establish an agreement with the Department of Transportation to provide a procedure for analysis by the Department of Transportation (“DeIDOT”) of the effects on traffic of each rezoning application; and

WHEREAS, This Memorandum of Understanding is intended to comply with the foregoing requirements of Title 9, Section 6952 of the Delaware Code; and

WHEREAS, Land development has the potential to impact adjacent highways and Sussex County and DeIDOT recognize that an analysis of the effects upon traffic is important in all types of land use decisions (Residential Planned Communities, Major Subdivisions, Conditional Uses) and not just rezoning applications; and

WHEREAS, The 2018 Sussex County Comprehensive Plan promotes greater coordination between DeIDOT and Sussex County in land use decisions; and

WHEREAS, Sussex County is solely responsible for land use decisions in Sussex County; and

WHEREAS, the DeIDOT is responsible for the operation, maintenance, and construction of State-maintained roads as well as the regulation of all entrance and roadway improvements required as part of new development; and

WHEREAS, it is the desire of Sussex County and DeIDOT to coordinate land development with transportation needs.

NOW, THEREFORE,

BE IT RESOLVED that Sussex County Council and DeIDOT hereby adopt the following Memorandum of Understanding:

DEFINITIONS

FEE IN LIEU - DeIDOT regulations define an Area Wide Study Fee that, under certain conditions, DeIDOT may accept when it would otherwise require a TIS. The fees accepted are used by DeIDOT to subsidize the preparation of studies of larger areas than a TIS would normally address; they are not used to build improvements. Payment of the fee does not relieve a developer of responsibility to build or contribute toward transportation.

COMMITTED OFF-SITE IMPROVEMENTS – Road improvements for the benefit of safety and/or capacity that are generally beyond the limits of the site entrance and frontage that are required to be built by an approved land development project. Such improvements do not include auxiliary lanes that serve the site entrance, but may include roadway widening along the frontage of the site.

LEVEL OF SERVICE (LOS) - A quantitative stratification of a performance measure or measures representing how well a transportation facility or service operates from a traveler’s perspective. For each type of facility or service there are six levels of service, ranging from A to F, with A representing the best operating condition and F the worst operating conditions. Except as may be specified by DelDOT, LOS shall be determined in accordance with the current edition of the Highway Capacity Manual, a publication of the Transportation Research Board.

PRELIMINARY TRAFFIC ANALYSIS - An evaluation by DelDOT, in terms of the proposed trip generation, to determine whether a Traffic Impact Study is necessary with regard to a proposed land use approval.

TRAFFIC IMPACTS:

DIMINUTIVE - The change in land use is expected to increase the trip generation of the subject land by fewer than 50 vehicle trips per day.

NEGLIGIBLE - The change in land use is expected to increase the trip generation of the subject land by fewer than 50 vehicle trips in any hour and fewer than 500 vehicle trips per day.

MINOR - The change in land use is expected to increase the trip generation of the subject land by at least 50 but fewer than 200 vehicle trips in any hour and at least 500 vehicle trips per day.

MAJOR - The change in land use is expected to increase the trip generation of the subject land by more than 200 vehicle trips in any hour or more than 2,000 vehicle trips per day.

TRAFFIC IMPACT STUDY (TIS) – A study conducted during the development approval process, in accordance with applicable DelDOT regulations, to determine the impacts that traffic generated by the proposed development will have on the surrounding street network and the improvements needed to the transportation system in order to mitigate those impacts.

TRAFFIC OPERATIONAL ANALYSIS (TOA) – An evaluation, or series of evaluations, conducted during the review of subdivision, land development and entrance plans, in accordance with applicable DelDOT regulations, primarily intended to determine site entrance location and movements to be allowed at the site entrance. These evaluations may include; Queuing Analysis, Highway Capacity Manual Analysis, and Crash Analysis.

LAND USE COORDINATION

1. Sussex County will make the final decisions on all matters of land use.
2. The Sussex County Planning and Zoning Department will request a Preliminary Traffic Analysis from DeIDOT for each land use application to determine if the resulting traffic impact will be negligible, minor, or major. This shall not be required where the County Planning and Zoning staff, in concurrence with DeIDOT staff, finds that the proposed change in land use will have a diminutive impact upon the road system. Unless more time is required given the size or complexity of the land use application, DeIDOT shall endeavor to provide a Preliminary Traffic Analysis within twenty days after receiving the Analysis request.
3. Given the seasonal nature of high-volume traffic volume in Sussex County, and since the “season” has expanded beyond just Memorial Day through Labor Day, with very high traffic volumes on seasonal weekends, it is important for DeIDOT to take into account these high volumes in any analysis that it performs. To be effective, low-volume off season volumes should not be utilized where they will artificially lower average traffic volumes.
4. Unless waived as set forth in Paragraph 2 above, Sussex County will not consider an application until DeIDOT supplies Sussex County with the above information.
5. When it is determined that the traffic impact would be negligible, no further traffic analysis will be necessary. DeIDOT has the authority to make such a determination where (based on the full development of the property as limited by either the zoning code or other factors) the expected average daily traffic (ADT) of the site will not exceed five hundred (500) trips. When DeIDOT determines negligible impact will occur, they will provide projected traffic volumes in support. Sussex County may approve land use applications with negligible impact at its discretion.
6. When DeIDOT determines the traffic impact to be minor, the traffic analysis shall include the feasibility of providing safe access and the condition, pavement, and the geometry of the nearby roadways and intersections relative to the traffic the subject property could generate. Where any of these are deemed inadequate, DeIDOT shall comment to this effect, and identify roadway improvements that shall be required by the Developer. An Area Wide Study Fee (AWSF) letter will be generated to document the developer’s obligations

to construct identified roadway improvements or fund road improvements as required by DelDOT. In addition, DelDOT may require further study if necessary.

7. When DelDOT determines that the traffic impact will be major, the developer will be required to conduct an in-depth Traffic Impact Study (TIS) (at the developer's expense) to DelDOT standards. In addition, Sussex County, at its own initiative, may require a developer to conduct a TIS. The TIS will also consider the effects of active or proposed transportation improvements in the adopted Six (6) Year Capital Improvements Program, Current Transportation Plans, and Committed Off-Site Improvements, and the current Sussex County Comprehensive Plan and establish staging for development as needed. DelDOT will provide a technical evaluation of the TIS. Alternatively DelDOT may allow a Traffic Operational Analysis (TOA) instead of a TIS.
8. As an alternative to the TIS or TOA process set forth above, when DelDOT has determined that the area in question has been already been the subject of sufficient study, a new TIS or TOA may not be required. Instead, DelDOT may require a "Fee in Lieu" to be paid by the developer to DelDOT to recoup all or a portion of the cost of the prior studies relied upon by DelDOT in lieu of a new TIS or TOA. The "Fee in Lieu" is unrelated to the developer's subsequent obligations to construct or fund road improvements as required by DelDOT and the "Fee in Lieu" is not a waiver of those requirements. A TIS or AWSF letter will be generated to document the developer's obligations.
9. Sussex County and DelDOT shall endeavor, where possible, to maintain a Level of Service of D on roads and intersections affected by a land use application. However, Sussex County and DelDOT recognize that: (a) a Level of Service of D is not always attainable; (b) that this threshold may create an undue burden on a property owner looking to develop a property given the prior development that has occurred in an area contributing to the existing Level of Service; or (c) other relevant factors (such as the size of the property, type or importance of the development) may mitigate against maintaining a Level of Service D. If the existing Level of Service is below D prior to the impact of the proposed land use, the existing Level of Service must at least be maintained.
10. No public hearing on the land use application shall occur until: (a) Sussex County receives the approved TIS from DelDOT; (b) Sussex County receives the approved TOA from DelDOT; (c) DelDOT advises that a "Fee in Lieu" (described in Paragraph 8 above) is

appropriate instead of a TIS; or (d) the application will have a diminutive impact as described above.

11. When DelDOT determines, on the basis of a TIS or TOA or studies previously performed as part of the “Fee in Lieu” process, that a land use decision could cause the threshold level of service to be exceeded, the County will not approve the land use application unless the developer takes appropriate measures to maintain operations at the threshold level or unless Sussex County finds that there are sufficient reasons why the developer should not be responsible for all or part of the measures necessary to maintain the threshold level of service. Sussex County, in the latter case, shall set forth in writing their reasons for approving the land use application.
12. Sussex County does not have the ability to determine what, if any, conditions of approval related to roadway improvements or traffic would be appropriate in a given land use application. Therefore, if, in DelDOT’s opinion, there are appropriate conditions of approval that should be imposed upon a land use decision, DelDOT shall offer those conditions as part of its TIS or as part of its Technical Advisory Committee review for consideration by Sussex County. Any such proposed conditions shall be clearly summarized by DelDOT in its Preliminary Traffic Analysis. After considering all relevant information regarding the land use application, Sussex County shall consider the proposed conditions but shall not be obligated to include them as part of any approval.
13. Phasing of land development with highway capacity and safety improvements to restore and maintain a level of service “D” may be required by DelDOT. To accomplish this, DelDOT should state what phasing is appropriate for the subject land use application and clearly state that phasing requirement to Sussex County so that Sussex County can clearly incorporate it into its various approvals as appropriate. Sussex County may then impose that phasing requirement as part of its approval of a land use application. Phasing of the project can include (but is not limited to) a consideration the following:
 - a. A delay of all or part of the development until specific highway improvements are made by DelDOT or others;
 - b. Whether the required highway improvements are being funded or constructed at the developer’s own expense;

- c. Whether the developer is participating in, and/or funding, transit or traffic mitigation strategies.

The phasing requirements shall be included as a Plan Sheet at the time of Final Site Plan approval. However, whenever possible, DeIDOT shall endeavor to state whether a phasing recommendation is likely (with specific details to follow) as part of the TIS process prior to the Preliminary Site Plan or other public hearing process so that Sussex County, the developer and the public can have an expectation that phasing may be considered as part of the project development. Phasing tied to other types of site plan approval is addressed in a following Section of this MOU regarding Site Plan Coordination.

14. Where measures to maintain operations are agreed upon by a developer, both DeIDOT and Sussex County shall assure that these measures are carried out.
15. When Sussex County believes that expert testimony regarding transportation issues is required to make a land use decision (such as a rezoning, major subdivision, conditional use or Residential Planned Community), DeIDOT will provide a suitable representative to attend meetings of the Planning and Zoning Commission and/or County Council. The representative should be someone with specific technical knowledge of the project in particular and also ongoing projects in the area of Sussex County where the project is to occur.
16. In addition to the project-specific information referenced in the preceding paragraph, DeIDOT shall provide regular updates to Sussex County about the status of ongoing and future roadway and transportation projects in the County, so that County Council and the Planning & Zoning Commission have an up-to-date understanding of their status. This shall include both developer-funded and DeIDOT-initiated and -funded projects. During these updates, Sussex County will also have an opportunity to discuss other transportation improvements that may be needed in the future.
17. Whenever possible during the implementation of the foregoing items, Sussex County and DeIDOT should encourage master planning for large scale developments on large parcels or groups of parcels in the Town Center, Coastal Area, Developing Area and commercial areas as set forth in the Comprehensive Land Use Plan to provide greater flexibility in design and/or the installation of additional roadways and interconnectivity.

18. The Sussex County Planning and Zoning Department is responsible for coordinating all required information with Sussex County Council and the Planning and Zoning Commission.
19. Sussex County shall be entitled to participate in any negotiations between a developer and DelDOT as to roadway improvements. Sussex County may provide input into those negotiations, but DelDOT shall be entitled to make the final determination as to all required roadway improvements and negotiated agreements with a developer. Any agreement reached between a developer and DelDOT as to roadway improvements, phasing of a development, funding of roadway improvements, etc. shall be immediately forwarded to Sussex County for its records with regard to the development. Any subsequent changes or amendments to a DelDOT/developer agreement shall likewise be immediately forwarded to Sussex County. Provided, however, that DelDOT recognizes that if a specific requirement (such as phasing) is incorporated into a land use decision (such as a major subdivision, conditional use or Residential Planned Community), this may not be enforceable by Sussex County without an amendment to the subdivision approval or the ordinance that approved a Residential Planned Community, Conditional Use or certain other rezonings where conditions can be imposed.

REZONINGS (WITHOUT SITE PLANS OR CONDITIONS OF APPROVAL)

1. Sussex County and DelDOT acknowledge that on a rezoning to a new zoning district where a specific site plan is not under consideration, and where the County cannot impose conditions as part of the rezoning approval, a TIS may not be possible (with the exception of rezonings to Residential Planned Communities and C-4, where specific site plans are considered and conditions can be imposed). This is because the various zoning districts have several permitted uses that are allowed once a rezoning occurs; as a result DelDOT cannot determine, at the time of rezoning, what the actual use will be nor what the traffic and possible roadway improvements will be as a result of it. This requires greater coordination on the part of both Sussex County and DelDOT.
2. Whenever possible, DelDOT shall endeavor to provide as much information about the general impacts of the rezoning upon area traffic and roadways as required in the preceding

Section prior to the public hearing before Sussex County Council and the Planning & Zoning Commission.

3. Whenever DelDOT is approached by a developer with a specific project in mind, DelDOT and that developer may enter into an agreement to obtain a TIS for the project as part of the rezoning process so that the information required as part of the TIS may be included in the record of the public hearings of the rezoning application. Because other possible uses of the property may be permitted under the proposed new zoning, Sussex County is not bound by this information in making its decision on the rezoning. However, if the use that the TIS is based upon changes after the rezoning occurs, another TIS shall be required and Sussex County shall not approve any Preliminary or Final Site Plan for the property until the new TIS is completed with all necessary traffic and roadway improvements determined by DelDOT. Alternatively, if no TIS is performed on a specific project, DelDOT or Sussex County shall have the ability to request a TIS based upon the most impactful permitted use available under the new zoning classification that is sought.

SITE PLAN COORDINATION

1. Section 115-220D of the Sussex County Zoning Code allows Sussex County to approve certain site plans “subject to conditions”. In any site plan reviewed pursuant to Section 115-220 of the Sussex Zoning Code, Sussex County, with the assistance of DelDOT, may impose conditions regarding phasing and the timing of building permits in conjunction with completion of necessary roadway improvements.
2. In all site plan reviews, DelDOT will review the site plans in accordance with its rules and regulations for access and roadway improvements. Sussex County will withhold any site plan approval until DelDOT has approved all necessary roadway improvements and entrance design requirements. Provided, however, that this requirement may be waived by Sussex County for minor amendments to existing site plans that changes the trip generation by less than 50 trips per day.
3. Sussex County shall withhold the issuance of any building permit until DelDOT has issued the entrance construction permit associated with the project.

4. DelDOT will withhold an entrance permit until the developer has agreed to construct the access point(s) to Department standards and to provide off-site improvements as may be required to maintain acceptable traffic operation on highways.
5. Sussex County will withhold issuance of the Certificate of Compliance until DelDOT has accepted the entrance construction and issued the notice to the owner that the entrance construction permit has been satisfied.

TRANSPORTATION IMPROVEMENT DISTRICTS

1. In the event that a land use application falls within a Transportation Improvement District (“TID”), the requirements of the TID, as set forth in the TID Agreement, shall supersede the requirements set forth in this MOU.

IT IS FURTHER RESOLVED that the Secretary of the Delaware Department of Transportation and The County Administrator will affirm this agreement by affixing their signature to the Resolution.

Adopted by the County Council of Sussex County on _____, 2019.

 President of the County Council of Sussex County

The following signatures concurring herein:

For Sussex County:

 Todd Lawson, Sussex County Administrator

 Robert Wheatley, Chairman, Sussex County
 Planning & Zoning Commission

 Janelle Cornwell, Director of Planning & Zoning

**For the Department of
 Transportation:**

 Jennifer Cohan, Secretary

INFORMATION TECHNOLOGY

DWAYNE KILGO
DIRECTOR
(302) 855-7898 T
(302) 853-5898 F



Sussex County
DELAWARE
sussexcountyde.gov

Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable I.G. Burton III, Vice President
The Honorable Samuel R. Wilson, Jr.
The Honorable Douglas B. Hudson
The Honorable John L. Rieley

FROM: Dwayne Kilgo, Information Technology Director

RE: Agreement for the Acquisition of Georgetown Fiber Ring

DATE: September 26, 2019

As you may recall, in August 2015, Sussex County partnered with Broad Valley for the installation of 144 strands of fiber to host services such as high-speed broadband Internet and enterprise private network services. The fiber ring allowed the County to connect its Georgetown facilities and IT infrastructure on six (6) dedicated strands of single mode dark fiber, which provides seamless, speed-of-light connectivity and redundancy that previous solutions could not provide.

In September 2019, through the combined efforts of County Administration, the Information Technology Department and Pete Aquino, President of Broad Valley Micro Fiber Networks, Inc., Sussex County framed an agreement of terms to acquire the Georgetown Fiber Ring.

This agreement allows Sussex County exclusive ownership and control with the ability to market and solicit other broadband service providers in the future. This would serve as a potential income stream for the County and would represent another step and public offering in the County's larger broadband expansion initiative.

In the agreement, the County would pay Broad Valley Micro Fiber Networks Inc. \$510,000 for this acquisition. The County currently leases six (6) strands of fiber for \$8,500 per month. By acquiring this infrastructure, the County would shift from a lease arrangement to an owned-and-operated model, giving the County full system and financial control, and represent an annual savings of \$102,000 within five (5) years.

I will make a presentation before Council on Oct. 1 seeking your approval to execute the draft agreement.

SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT to a Lease Agreement is made and executed on this _____ day of _____, A.D., 2019 by and between:

SUSSEX COUNTY, DELAWARE, a political subdivision of the State of Delaware, with an address of 2 The Circle, Georgetown, Delaware 19947, hereinafter referred to as “**Lessor**”

AND

GEORGETOWN AIR SERVICES, a Delaware Limited Liability Company, with an address of 21553 Rudder Lane, Georgetown, Delaware 19947, hereinafter referred to as “**Lessee**”

WITNESSETH

WHEREAS, on April 29, 2014, **Lessor** and **Lessee** entered into a certain Lease Agreement (hereinafter referred to as “the Agreement”), at Delaware Coastal Airport, Georgetown, Delaware 19947 (hereinafter referred to as “the Subject Property”);

WHEREAS, **Lessor** and **Lessee** entered into a First Amendment to the Lease Agreement dated July 26, 2016; and

WHEREAS, **Lessor** and **Lessee** mutually desire to delete Lot A3-2 from the Agreement; and

WHEREAS, on July 26, 2016, **Lessor** and **Lessee** entered into an Airport Ground Lease agreement for Lot C-1 at Delaware Coastal Airport (hereinafter referred to as the “2016 Lease”); and

WHEREAS, **Lessor** and **Lessee** mutually desire to reduce the amount of “basic rent” in the Agreement; and

WHEREAS, **Lessor** and **Lessee** mutually desire to extend the initial term and option terms of the Agreement to coincide with the terms of the 2016 Lease; and

WHEREAS, the parties hereto desire to further amend the terms of the Agreement as set forth herein,

WITNESSETH:

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, **Lessor** and **Lessee** hereby agree to amend the Agreement as follows:

1. Paragraph 1(a) of the Agreement is hereby removed and replaced with the following language:
"Parcel 1 – Lot A3-4, as set forth and described in the drawing attached hereto as Exhibit "A" and made a part hereof."
2. Paragraph 3(a)(i) of the Agreement is hereby removed and replaced with the following language:
"**Lessee** shall have the right to use Parcel 1 for the purpose of storing and providing fuel for aircraft refueling. Services shall be provided in accordance with Delaware Coastal Airport's Minimum Standards for Commercial Aeronautical Services policy."
3. Paragraph 4 of the Agreement is hereby removed and replaced with the following language:
"**Lease Term**. The initial Term of this Lease Agreement shall begin on the Effective Date of this Agreement and shall end on the 31st day of July, 2046, unless sooner terminated pursuant to the terms herein. A Lease Year will begin on August 1 and end on July 31 of each year. In the event the rights and privileges hereunder are suspended by reason of war or other national emergency, the term of this lease shall be extended by the amount of the period of time of such suspension."
4. Paragraph 5 of the Agreement is hereby removed and replaced with the following language:

Renewal of Lease. Provided **Lessee** is not currently in Default of its obligations under this Lease, the Lease may be extended for two (2) additional ten (10) year periods at **Lessor's** discretion. Each renewal term shall be treated as a separate renewal option. If **Lessee** intends to request an extension of the Term, it shall send a written request to **Lessor** no less than ninety (90) days prior to the end of the Term set forth above and **Lessor** will have thirty (30) days to approve or reject such request for an extension of the Term. If **Lessor** rejects the extension of the Term, Lease shall terminate on its expiration date. Consent of **Lessor** shall not be unreasonably withheld. In the event that **Lessor** rejects **Lessee's** request to extend the lease, arbitration may be used in accordance with Paragraph 20."

5. Paragraph 6(a) of the Agreement is hereby removed and replaced with the following language:

"Basic Rent", computed at the rate of two cents (\$0.02) per gallon of fuel sold by **Lessee** at Delaware Coastal Airport during the prior month; and"

6. Paragraph 16(a) of the Agreement is hereby removed and replaced with the following language:

"a. **Termination.** This lease shall terminate at the end of the full term hereof or any extension thereof, but not to exceed July 31, 2066, and **Lessee** shall have no further right or interest in any of the lands or improvements hereby demised. However, at the demand of the **Lessor**, to be made at least one hundred and eighty (180) days prior to the termination of this lease, or any extension thereof, **Lessee** shall remove any or all improvements erected or constructed by **Lessee** on the Leased Premises. If no demand is made, all improvements revert to **Lessor** as aforesaid."

7. **Delaware Coastal Airport.** Throughout the Agreement, the term "Sussex County Airport" shall be removed and replaced with the term "Delaware Coastal Airport".
8. **Interpretation of Addendum.** All other terms and conditions of the Agreement dated the 29th day of April, 2014, as amended, shall remain intact and in full force and effect. Wherever there exists a conflict between this Second Amendment and the Agreement or the First Amendment, the provisions of this Second Amendment shall control. Unless otherwise indicated, capitalized terms shall be defined in the manner set forth in the Agreement.
9. **Counterparts.** This Second Amendment may be signed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one (1) instrument.

(REST OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, this ____ day of _____, A.D. 2019.

Attest:

LESSOR: SUSSEX COUNTY COUNCIL

Name: _____
Title: Clerk of County Council

Name: _____ (SEAL)
Title: _____

APPROVED AS TO FORM:

J. Everett Moore, Jr., County Attorney

Witness:

LESSEE: GEORGETOWN AIR SERVICES, LLC

Susan A. Wise
Name: Susan A. Wise

Garrett Derruga (SEAL)
Name: Garrett Derruga
Title: Owner

ENGINEERING DEPARTMENT

ADMINISTRATION	(302) 855-7718
AIRPORT & INDUSTRIAL PARK	(302) 855-7774
ENVIRONMENTAL SERVICES	(302) 855-7730
PUBLIC WORKS	(302) 855-7703
RECORDS MANAGEMENT	(302) 854-5033
UTILITY ENGINEERING	(302) 855-7717
UTILITY PERMITS	(302) 855-7719
UTILITY PLANNING	(302) 855-1299
FAX	(302) 855-7773



Sussex County

DELAWARE

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HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JAMES A. HICKIN, A.A.E.
AIRPORT MANAGER

MEMORANDUM

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable Irwin G. Burton III, Vice President
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Samuel R. Wilson, Jr.

FROM: Jim Hickin, A. A. E., Director, Delaware Coastal Airport and Business Park

RE: *Lot A3-2 Lease Agreements*

DATE: October 1, 2019

On May 21, 2019 Council approved a Memorandum of Understanding (MOU) with Georgetown Air Services, LLC as well as the release of Request for Proposals (RFP) for the ground lease and hangar development on Lot A3-2 (Old Terminal Building lot). An RFP was advertised soliciting competitive redevelopment proposals with emphasis on the overall long-term benefit to Delaware Coastal Airport by considering other than monetary factors. The RFP was released May 21, 2019 and a single proposal was received on June 28, 2019. The sole respondent was Schell Brothers LLC.

Under the terms of the approved MOU, the Engineering Department is seeking Council's approval of the Second Amendment to Georgetown Air Services' 2016 lease. The amendment releases Lot A3-2 from the leased premises. It also establishes a rental rate of \$0.02 per gallon of fuel sold by Georgetown Air Services and aligns the lease term with Georgetown Air Services' lease of Lot C-1.

The Engineering Department is also seeking Council's approval of a new lease with Schell Aviation LLC. They propose to build a 22,000 ± square foot hangar facility with a lease term of 30 years and two, 10-year renewal options. Rent will begin at 40¢ per square foot per year and increase every five years by the CPI-U. 40¢ per square foot per year was established during the RFP process as a competitive starting point for market value rent at Delaware Coastal Airport.

Cc: Hans Medlarz, P.E., County Engineer

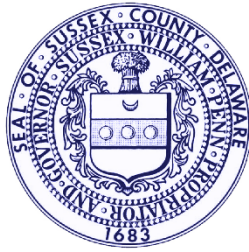


SCHELL AVIATION LEASE TERMS

- Leased Premises: Lot A3-2
- Term
 - 30 years commencing 1 Oct 2019
 - Two additional 10 year terms
- Rent
 - 40¢/sf/yr
 - CPI-U adjustment every 5 years not to exceed 15% in any 5-year period
- Use
 - Commercial and non-commercial storage of aircraft, including Tenant-owned
 - Comply with NFA standards and all applicable laws and airport policies
 - Improvements revert to County at end of lease
- Utilities
 - County provides utilities to premises
 - Tenant responsible for connections and charges
- Taxes
 - Tenant responsible for all taxes on improvements
- Improvements
 - Tenant shall demolish and remove Old Terminal Building at its expense within 1 year
 - Tenant shall construct 20,000 sf (minimum) hangar within 2 years
 - Tenant to provide performance bond to cover cost of demolition/construction
- Assignment of Lease
 - Requires written Landlord approval
- Insurance
 - Aircraft Liability Insurance to cover Tenant-owned aircraft (\$1M)
 - Commercial General Liability Insurance (\$1M)
 - Demolition and Construction Insurance
 - Must meet Minimum Standards Policy insurance requirements
 - Must provide certificates and list County as Additional Insureds
- FAA Required Clauses
 - Airport Protection
 - Non-discrimination, including economic non-discrimination
- Other “standard” clauses
 - Payment provisions
 - Right to contest taxes
 - Hold Harmless
 - Default conditions and remedies
 - Others

ENGINEERING DEPARTMENT

ADMINISTRATION	(302) 855-7718
AIRPORT & INDUSTRIAL PARK	(302) 855-7774
ENVIRONMENTAL SERVICES	(302) 855-7730
PUBLIC WORKS	(302) 855-7703
RECORDS MANAGEMENT	(302) 854-5033
UTILITY ENGINEERING	(302) 855-7717
UTILITY PERMITS	(302) 855-7719
UTILITY PLANNING	(302) 855-1299
FAX	(302) 855-7773



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HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JAMES A. HICKIN, A.A.E.
AIRPORT MANAGER

MEMORANDUM

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable Irwin G. Burton III, Vice President
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Samuel R. Wilson, Jr.

FROM: Jim Hickin, A. A. E., Director, Delaware Coastal Airport and Business Park

RE: *Cay Properties Lease Agreement*

DATE: October 1, 2019

Cay Properties, LLC has leased Lots 17 and 18 in the Sussex County Industrial Park (now Delaware Coastal Business Park) since 1996 and does business as TPI Partners, Inc. TPI Partners is a plastic extrusion manufacturer that produces plastic tubing, rods, and profiles for various industries. They currently employ 38 people.

Cay Properties' initial term is due to expire in 2026. However, Cay Properties has requested a new lease be negotiated to provide increased certainty for future expansion. Airport and County officials have been working with Cay Properties for over a year on a lease acceptable to both parties.

The initial term of the lease will be 30 years, with the option to extend another 20 years. Rent will begin at \$7,008.00/year (the current rate) and steadily increase to \$33,075.50/year in Year 18. Beginning in Year 19, rent will be set at appraised Fair Market Value, with CPI increases every five years.

Please feel free to call me at 855-7774 with any questions.

cc: Hans Medlarz, P.E., County Engineer



LEASE AGREEMENT

THIS LEASE AGREEMENT, dated this _____ day of October 2019, is made by and between:

SUSSEX COUNTY, a political subdivision of the State of Delaware, P.O. Box 589, 2 The Circle, Georgetown, Delaware 19947, hereinafter referred to as "Landlord",

AND

CAY PROPERTIES, LLC, a Delaware limited liability company, of P.O. Box 822, Georgetown, Delaware 19947 as "Tenant".

RECITALS:

WHEREAS, Landlord is the owner of certain real property located at 21649 Cedar Creek Avenue, being Lots 17 & 18, in the Delaware Coastal Business Park, Georgetown, Delaware as further described herein ("the Leased Premises");

WHEREAS, Tenant is a tenant of the Leased Premises pursuant to a lease agreement dated March 18, 1996;

WHEREAS, situate on the Leased Premises is the Tenant's commercial/industrial building where it conducts its business (the "Building");

WHEREAS, Tenant desires to continue leasing the Leased Premises and to enter into a new lease agreement for the Leased Premises; and

WHEREAS, Landlord and Tenant hereby agree to enter into a lease pursuant to the terms and conditions outlined herein.

WITNESSETH:

IN CONSIDERATION of the mutual covenants hereinafter expressed, the parties hereto agree as follows:

1. **PREMISES:** Landlord does hereby lease to Tenant and Tenant does hereby rent from Landlord, the following described premises ("the Leased Premises"):

All that certain parcel of land being 5.84 acres, more or less, at the Delaware Coastal Business Park, Sussex County, Delaware, more particularly described in Exhibit A annexed hereto and made a part hereof and further identified as real property located at 21649 Cedar Creek Avenue, Lots 17 & 18, Delaware Coastal Business Park, Georgetown, Delaware

2. **TERM:** The term of this Lease Agreement shall be thirty (30) years, commencing at 12:00 a.m. on the ____ day of _____, 2019 and ending at 11:59 p.m. on the ____ day of _____, 2049. At the end of the lease term and the option term, if exercised, the parties agree that this Lease Agreement shall terminate and that Tenant shall have no right to continue to occupy the Leased Premises absent a new lease being executed.

3. **RENT:**

a. Tenant covenants and agrees to pay Landlord annual rent in the amounts as set forth hereinafter:

<u>YEARS</u>	<u>ANNUAL RENT</u>
1-3	\$1,200.00 per acre / \$7,008.00 total
4-8	\$1,400.00 per acre / \$8,176.00 total
9	\$1,610.00 per acre / \$9,402.40 total
10	\$1,851.50 per acre / \$10,812.76 total
11	\$2,129.23 per acre / \$12,434.67 total
12	\$2,448.61 per acre / \$14,299.91 total
13	\$2,815.90 per acre / \$16,444.86 total
14	\$3,238.29 per acre / \$18,911.58 total
15	\$3,724.03 per acre / \$21,748.34 total
16	\$4,282.64 per acre / \$25,010.61 total
17	\$4,925.03 per acre / \$28,762.21 total
18	\$5,663.78 per acre / \$33,076.50 total
19 -30	New Market Base Rent with CPI-U adjustments as noted in Paragraph 3(b)

b. In Year 17 of the Lease, Landlord through its designated appraiser, shall conduct a market rent analysis to establish the rental value of unimproved (land only) acreage in the Delaware Coastal Business Park. Upon receipt of that analysis, Landlord shall provide a written copy of the same to Tenant and so long as Tenant does not object to such analysis within twenty (20) days following the receipt of the same as provided in Section 3(d) below, then the value of acreage in the Delaware Coastal Business Park as determined by said analysis shall be the rent payable by Tenant for Years 19-23 of the Lease Term. The annual rent shall be adjusted for Year 24 and every five (5) years of the Lease term thereafter to reflect any change in the cost of living. The adjustment, if any, will be calculated on the basis of the percentage increase equal to the most recent Consumer Price Index for All Items, All Urban Consumers, U.S. City Average (CPI-U Table A, unadjusted as published monthly by the United States Department of Labor, Bureau of Labor Statistics). If publication of the above index shall be discontinued, then another index generally recognized as authoritative, shall be substituted as selected by Landlord. The rent for each subsequent

five (5) year period will be adjusted by the percentage increase from the last preceding five (5) year period, if any. The percentage increase shall not exceed ten percent (10%) for any five (5) year period.

- c. Within thirty (30) days after Landlord gives Tenant notice of the adjusted rent, and Tenant does not object to the same as provided above, then Tenant 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 rent for the balance of the then current five (5) year lease period. Landlord will give Tenant written notice indicating how the adjusted rent amount was computed.

- d. If Tenant objects to the analysis as provided in Section 3(b) above, then Tenant shall be free to engage its own commercial appraiser, having no less than five (5) years' fulltime commercial appraisal experience in the State of Delaware and an MAI designation to perform at Tenant'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 Tenant's appraiser shall provide its written analysis to Landlord within forty-five (45) days of engagement by the Tenant but no less than sixty (60) days from the date of Tenant's objection to the analysis as provided in Section 3(b) above. If the Landlord accepts the Tenant's appraiser's analysis, then it shall constitute the accepted adjustment. If the Landlord objects to the Tenant's appraiser's analysis within thirty (30) days of its receipt of the same and Tenant's appraiser's analysis is within twenty percent (20%) of the Landlord's appraiser's analysis, the results of both appraisals shall be averaged to determine the New Market Base Rent. If the Landlord objects to the Tenant's appraiser's analysis within thirty (30) days of its receipt of the same and the Tenant's appraiser's analysis differs from the Landlord's appraiser's analysis by greater than twenty percent (20%), then Landlord and Tenant 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 Landlord's appraiser and the Tenant's appraiser are unable to agree upon the third appraiser, the Landlord shall appoint a third appraiser. The third appraiser shall review the results of both appraisals conducted by the Landlord's appraiser and the Tenant's appraiser and may request a hearing at which both the Landlord's appraiser and the Tenant'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 Landlord's appraiser and Tenant'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. All fees and expenses associated with the work of the third appraiser shall be paid equally by the Landlord and the Tenant. During any period of disagreement between Landlord and Tenant regarding the rent adjustment, Tenant shall be responsible for the payment of the adjusted rent as recommended by Landlord's appraiser. Once the disagreement is resolved, any difference between the rent paid and the accepted adjustment shall be refunded or credited to Tenant (as appropriate).

4. **RENEWAL TERM OPTION:**

- a. Tenant shall have the option to renew the Lease for one (1) additional twenty (20) year consecutive term ("Option Term"). To exercise the option, Tenant must give written notice to Landlord at least one hundred eighty (180) days prior to the termination date of the original lease term and of any option period of Tenant's intent to exercise the option. Tenant shall not have the right to exercise any option to renew the Lease if Tenant is otherwise in default of this Lease, as provided in Section 21.
- b. Upon Tenant's exercise of the renewal option, Landlord shall conduct a market rent analysis to establish the rental value of acreage in the Delaware Coastal Business Park. Upon receipt of that analysis, Landlord shall provide a copy of the same to Tenant and the value of acreage in the Delaware Coastal Business Park as determined by said analysis shall be the rent payable by Tenant for the first five (5) years of the Option Term. The annual rent shall be adjusted every five (5) years of the Option Term thereafter to reflect any change in the cost of living. The adjustment, if any, will be calculated on the basis of the percentage increase equal to the most recent Consumer Price Index for All Items, All Urban Consumers, U.S. City Average (CPI-U Table A, unadjusted as published monthly by the United States Department of Labor, Bureau of Labor Statistics). If publication of the above index shall be discontinued, then another index generally recognized as authoritative, shall be substituted as selected by Landlord. The rent for each subsequent five (5) year period will be adjusted by the percentage increase from the last preceding five (5) year period, if any, not to exceed ten percent (10%) in any one Lease Year.
- c. Within thirty (30) days after Landlord gives Tenant notice of the adjusted rent and Tenant does not object to the same as provided above, then Tenant 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 rent for the balance of the then current five (5) year lease period. Landlord will give Tenant written notice indicating how the adjusted rent amount was computed.

- d. The provisions of Section 3(d) above are hereby restated in their entirety if Tenant objects to the adjusted rent in Section 4(c) above.
5. **PAYMENT PROVISIONS:** Rent due hereunder is payable in advance at the signing of the Lease and on the annual anniversary date during the initial term of the Lease and any extension thereof. Payments made after the fifteenth (15) day of the month in which due shall be subject to a late fee of five percent (5%) of the total amount outstanding. All payments should be made to Sussex County Council, Sussex County Accounting Office, P.O. Box 589, Georgetown, Delaware 19947, or such other place or places as may from time to time be designated in writing by Landlord.
6. **REPAIR AND CARE:** Tenant has examined the Leased Premises and has entered into this Lease without any representation on the part of Landlord as to the conditions thereof. Tenant shall take good care of the Leased Premises and any improvements which may be located thereon at Tenant's own cost and expense, and shall maintain the Leased Premises and any improvements which may be located thereon in good condition and state of repair and at the end of the term hereof or any extension thereof, shall deliver the Leased Premises and any improvements which may be located thereon in good order and condition, wear and tear from a reasonable use thereof, and damage by the elements not resulting from the neglect or fault of Tenant, excepted. Tenant 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. Tenant shall be responsible for all grass cutting and snow removal. Grass shall be mowed regularly so as to prevent grass from growing beyond six (6) inches in height. Snow removal from the access road to Tenant's building shall be the sole responsibility of Tenant.
7. **UTILITIES.** Tenant shall pay for all utilities of whatsoever kind which are furnished to the Leased Premises. Landlord shall provide to the Leased Premises a connection to the central sewer system, electricity, and water utilities, but Tenant shall be responsible for all other utility connections. Tenant shall be responsible for all connection costs, fees, and expenses associated with utilities provided to the Leased Premises. Tenant shall be responsible for the installation of a water meter servicing the Leased Premises. Landlord shall be responsible for the maintenance of the water meter servicing the Leased Premises. Tenant shall be solely responsible for water charges, and Landlord shall have no obligation for the same. In the event, Landlord charges Tenant for water provided to the Leased Premises, Tenant shall pay the same rate for water as paid by other tenants in the Delaware Coastal Business Park.
8. **USE OF PREMISES:**
- a. Tenant 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: operation of a facility to manufacture thermoplastic products or any other use which may be consented to by Landlord, which consent shall not be unreasonably withheld or delayed.

- 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. Landlord reserves the right to lease other real property at the Delaware Coastal Business Park or the Delaware Coastal Airport for identical or similar uses.

9. **NO LIENS OR ENCUMBRANCES:**

- a. Any liens placed on personal property or equipment (other than removable trade fixtures) owned by Tenant which are located on the Leased Premises must first be approved by Landlord, which approval shall not be unreasonably withheld or delayed.
- b. Except as otherwise provided herein, Tenant has no authority whatsoever to encumber the Leased Premises.

10. **AIRPORT PROTECTION:**

- a. It shall be a condition of this Lease, that Landlord 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. Tenant 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. Tenant 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.

11. **TAXES:** Tenant shall pay all ad valorem taxes or any other taxes, including taxes levied by Sussex County, on any improvements erected on the Leased Premises and all equipment installed therein.
12. **RIGHT TO CONTEST:** Tenant shall have the right in good faith to contest by legal proceedings or otherwise, the taxable assessment upon the Leased Premises by any governmental authority levying or attempting to levy taxes thereon. Landlord shall cooperate with Tenant, but at no expense to Landlord, in any such protest as Tenant shall make. In the event Tenant shall determine to contest such taxes, Tenant shall, within the time herein set forth for the payment of such taxes, post with the proper governmental authorities such sum of money or take such other action satisfactory to Landlord, as will protect the property from nonpayment during such contest. Further, Tenant shall obtain the participation of the Landlord in any tax appeal, if required.
13. **STATUTORY LIEN:** Landlord hereby claims any and all statutory or other liens which it may have upon the equipment, furniture, fixtures, and personal property of any Tenant or Sub-Tenant placed upon the improvements, and Tenant agrees that Landlord has such a lien to the extent provided by statute or otherwise. Landlord may, at Landlord's sole discretion, subordinate its lien right to the lien of any mortgage, deed of trust, or security instrument given by Tenant for the construction of improvements and purchase of the equipment, furniture, fixtures and personal property placed upon the Leased Premises. Tenant shall furnish the Landlord copies of all such security instruments. Tenant's current security instruments existing at the effective date of this Lease are attached hereto as Exhibit B.
14. **INSURANCE:**
 - a. **Property and Business Income Insurance** - Tenant shall secure and maintain, at its own expense, all risk (special form) property insurance that insures against direct physical loss of or damage to Tenant's real and personal property including improvements, fixtures and equipment located 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. Tenant 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 real and personal property, improvements, fixtures and equipment located on the Leased Premises. Landlord shall be an insured on Tenant's property and business income insurance as its interests may appear, in amounts sufficient to protect Landlord's interests.
 - b. **Waiver of Subrogation** - To the fullest extent permitted by law, Tenant waives any right of recovery from Landlord, and its appointed and elected officials, employees, agents, and volunteers, for any loss, damage or injury

to Tenant's real and personal property including fixtures and equipment 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 Agreement. To the fullest extent permitted by law, Tenant's property insurer shall not hold any right of subrogation against Landlord, and its appointed and elected officials, employees, agents, and volunteers. Tenant 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 Tenant. Any deductible amount(s) selected by Tenant shall be the sole responsibility of Tenant.

- c. **Commercial General Liability Insurance** - Tenant 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 Tenant's occupancy of the Leased Premises or operations incidental thereto, with the combined single limit of \$1,000,000.00 per occurrence and a general aggregate limit of \$2,000,000.00. This insurance shall name Landlord and its appointed and elected officials, employees, agents and volunteers as insureds on a primary and non-contributory basis, with respect to liability arising out of or in connection with Tenant's occupancy of the Leased Premises or operations incidental thereto under this Lease Agreement. A copy of the additional insured endorsement(s) that evidence the required additional insured status must accompany any certificate of insurance provided to Landlord. To the fullest extent permitted by law, Tenant's commercial general liability insurer shall not hold any right of subrogation against Landlord, and its appointed and elected officials, employees, agents, and volunteers. Tenant shall advise its insurer(s) of the foregoing and such waiver shall be permitted under any commercial general liability insurance policies maintained by Tenant.
- d. **Workers' Compensation & Employers' Liability** - Tenant shall secure and maintain, at its own expense, workers' compensation insurance and employers' liability insurance. The workers' compensation insurance must satisfy Tenant's workers' compensation obligation to its employees in Delaware. 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, Tenant's workers' compensation and employers' liability insurer shall not hold any right of subrogation against Landlord, and its appointed and elected officials, employees, agents, and volunteers. Tenant 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 Tenant.

- e. **Evidence of Insurance / Insurers** - Tenant shall furnish certificates of insurance, acceptable to Landlord, to the Director, Airport and Industrial 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 Landlord. 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 Landlord. Therefore, a copy of the endorsements to the required policies that confirm additional insured status and the insurer is obligated to send notice to Landlord 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 Landlord. If Tenant shall fail, refuse or neglect to secure and maintain any insurance required of Tenant or to furnish satisfactory evidence of insurance, premiums paid by Landlord shall be recoverable by Landlord from Tenant, together with interest thereon, as additional rent promptly upon being billed therefore.
- f. 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 Landlord.

15. **RIGHTS AND OBLIGATIONS OF TENANT:**

- a. Tenant shall have the right to ingress and egress to the Leased Premises.
- b. Tenant may install signage on the Leased Premises but signage is subject to Landlord's prior written approval.
- c. Tenant shall comply with all federal, state, and county laws, rules, regulations pertaining to the Leased Premises including but not limited to environmental laws, regulations, statutes, ordinances, and rules. Tenant shall also comply with all rules and regulations of the Delaware Coastal Airport and the Delaware Coastal Business Park which may be altered from time-to-time.

16. **RIGHTS AND OBLIGATIONS OF LANDLORD:**

- a. Landlord or its authorized representative may enter the Leased Premises at any time without the consent of Tenant in case of emergency, and Landlord or its authorized representative may enter the Leased Premises upon the giving of reasonable notice to Tenant for inspections or to make repairs, additions or alterations as may be necessary for the safety,

improvement or preservation of the Leased Premises. Reasonable notice shall mean no less than forty-eight (48) hours prior to the entry, unless Landlord is entering to make repairs specifically requested by Tenant. Tenant shall not unreasonably withhold consent to Landlord or its authorized representative to enter into the Leased Premises to inspect it or make necessary or agreed upon repairs or improvements.

- b. Landlord shall provide access to the Leased Premises and shall keep all roads thereto clear of snow and other debris.
 - c. Landlord has the exclusive control and responsibility of the roadways presently existing at the Delaware Coastal Business Park, but Tenant shall have the right in common with all others to use aforesaid roadways, Landlord acknowledging its sole and exclusive obligation to clear and maintain the aforesaid roadways.
17. **SUBLETTING AND ASSIGNING**: Tenant shall not have the right to assign this Lease Agreement or sublet the Leased Premises unless the written consent of Landlord is acquired, which consent shall not be unreasonably withheld or delayed. Unless otherwise agreed, such assignment or subletting shall in no way relieve Tenant of any responsibility for the payment of rent or for the performance of any of the other covenants or conditions hereof. The prospective assignee or Sub-Tenant shall be subject to inquiries concerning the nature of business and employment goals. Such assignee or Sub-Tenant shall in writing assume all of the obligations to be performed by Tenant hereunder. Tenant agrees to pay for any attorney's fees reasonably incurred by Landlord resulting from any sublease or assignment.
18. **NOTICE**: All notices required to be given under this Lease Agreement either by Landlord to Tenant or by Tenant to Landlord shall be in writing. The same shall be deemed given in the case of Landlord when it shall have deposited such notice by certified mail in the post office addressed to Tenant at Tenant's last known address or to such other address as Tenant shall from time to time furnish Landlord. Personal service of any such notice shall be deemed as a substitute for the mail notice.
19. **CONDEMNATION**: If at any time during the term hereof the whole of the demised 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, the Lease Agreement hereby granted and all rights of Tenant 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, Tenant shall have made any improvements upon the Leased Premises, Landlord shall be entitled to all of the condemnation proceeds which may be granted with respect to the land herein

described as such land is distinguished from the improvements; and Tenant shall be entitled to the proceeds of any condemnation awarded on account of the value of the Building or any improvements made by Tenant.

20. **PARTIAL CONDEMNATION**: If after commencement of this Lease Agreement only a part of the demised premises shall be taken or condemned, Landlord shall be entitled to any award made with respect to the land herein described as same is distinguished from any improvements made by Tenant; and Tenant shall be entitled to any award made for the Building or any improvements condemned. In the event such condemnation shall leave a portion of the demised premises which in Tenant's sole judgment is usable by Tenant, the Lease Agreement shall remain in full force and effect, but the rents herein reserved to Landlord shall be adjusted so that Tenant 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 Landlord and the rental hereunder shall not be abated. Provided however, that Tenant shall have the right to terminate this Lease Agreement if in its sole judgment the premises have been rendered unsuitable for its purpose.

21. **DEFAULT**:

a. **Events of Default Defined**. The following shall be "events of default" under this Lease Agreement and the terms "event of default" or "default" shall mean, whenever they are used in this Lease Agreement any one or more of the following events:

- i. Failure by Tenant to pay the rents required to be paid at the times specified herein and continuing for a period of thirty (30) days after notice by mail is given to Tenant that the rental payment referred to in such notice has not been received;
- ii. Failure by Tenant to observe and perform any covenant, condition or agreement of this Lease Agreement on its part to be observed or performed, other than as referred to in subsection (i) of this Section, for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, given to Tenant by Landlord, unless the Landlord shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Landlord will not unreasonably withhold its consent to an extension of such time if it is possible to correct such failure and corrective action is instituted by Tenant within the applicable period and diligently pursued until the default is corrected; or

- iii. The dissolution or liquidation of Tenant or the filing by Tenant of a voluntary petition in bankruptcy, or failure by Tenant 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 Tenant of any act of bankruptcy, or adjudication of Tenant as bankrupt or assignment by Tenant for the benefit of its creditors, or the entry by Tenant into an agreement of composition with its creditors, or the approval by a Court of competent jurisdiction of a petition applicable to Tenant 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 Tenant", as used in this subsection, shall not be construed to include the cessation of the corporate existence of Tenant resulting from a merger or consolidation of Tenant into or with another corporation or of a dissolution or liquidation of Tenant following a transfer of all or substantially all its assets as an entirety; or
 - iv. Failure by Tenant to abide by any laws, statutes, rules, or regulations relating to the Leased Premises or the Delaware Coastal Airport and Delaware Coastal Business Park and continuing for a period of thirty (30) days after notice by mail is given to Tenant that the violation referred to in such notice has not been corrected.
- b. **Remedies of Default.** Whenever any event of default referred to in subsection (a) above shall have happened and be subsisting, Landlord may take any one or more of the following remedial steps:
- i. Apply any money or property of Tenant's in Landlord's possession to discharge in whole or in part any obligation or covenant to be observed or performed by Tenant hereunder.
 - ii. Perform any obligation or covenant to be performed by Tenant hereunder and charge Tenant therefore.
 - iii. Terminate the Lease Agreement.
 - iv. Enter the Leased Premises and take possession of the same and hold Tenant liable for the rent thereafter accruing and due until such time as Landlord can obtain another suitable tenant of the Leased Premises under the same terms hereof.
- c. No remedy herein conferred upon or reserved to Landlord or Tenant shall exclude any other remedy herein or by law provided, but each shall be

cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

22. **NON WAIVER OF SUBSEQUENT BREACH:** Tenant agrees that any waiver by Landlord of the performance of any one of the conditions of this Lease Agreement shall not be deemed to constitute a waiver of the right of Landlord to proceed against Tenant upon any subsequent breach of the same or other conditions of this Lease Agreement.
23. **SEVERABILITY:** If any provisions of this Lease Agreement shall be held invalid or unenforceable by any Court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.
24. **SHORT FORM LEASE:** Upon the request of either of them, the parties shall execute and exchange copies of a short form lease or memorandum thereof outlining the pertinent terms herein contained, which short form lease may be recorded in lieu of recording this instrument, but the terms of this instrument shall control in all aspects in regard to matters omitted from such short form lease or in respect to conflicts therewith.
25. **COMPLIANCE WITH LAWS:** Tenant 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 Tenant's own cost and expense.
26. **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 Landlord 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 the Lease of said lands from Landlord, 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 Landlord 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.
27. **LANDLORD NOT LIABLE FOR DEBTS, ACTS OR OMISSIONS OF TENANT.** Tenant shall not be the agent or partner of Landlord and Tenant shall have no

authority to make any contract or do any act so as to bind Landlord or as to render Landlord or Landlord's interest in the Leased Premises liable therefore. Tenant will save Landlord and the Leased Premises harmless from any penalty, damages, neglect, or negligence of Tenant, property damage, illegal act or otherwise. Any improvements by Tenant on the Leased Premises shall be constructed at the sole expense of Tenant, and Landlord 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, Tenant shall have recorded on the public records of Sussex County, Delaware, such legal notice as may be necessary wherein the public is advised that Landlord 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 Tenant 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 Tenant at the Leased Premises or against Landlord as the owner thereof, Tenant shall within ninety (90) days after written notice from Landlord thereof, either pay or bond the same or procure the discharge thereof in such manner as may be provided by law. Tenant will indemnify Landlord 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 Tenant shall pay any damages and any judgment entered thereon and save harmless and indemnify Landlord and its appointed and elected officials, employees, agents, and volunteers from any claims of damages resulting there from. Failure to do so shall entitle Landlord to resort to remedies as are provided herein in the case of any default of this Lease Agreement, in addition to such as are permitted by law.

28. **SUCCESSORS AND ASSIGNS:** All of the terms, covenants, conditions and agreements herein contained shall in every case be binding upon the successors and assigns of the parties hereto.
29. **NON-PERFORMANCE BY LANDLORD.** This Lease and the obligation of Tenant to pay the rent hereunder and to comply with the covenants and conditions hereof, shall not be affected, curtailed, impaired or excused because of Landlord'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 Landlord.
30. **DAMAGE AND CASUALTY:** If more than fifty percent (50%) of Tenant improvements located on the Leased Premises are damaged by fire or other casualty, Tenant may terminate this Lease Agreement, provided Tenant first removes all structures on the land at its expense and restores the surface of the

land to its condition at the date of the initial term of this Lease Agreement. The rent is to be paid to the date of termination. Landlord shall be an insured on Tenant's property and business income insurance in an amount sufficient to protect its interest therein.

31. **QUIET ENJOYMENT:** Landlord covenants and represents that Landlord is the fee owner of the premises herein leased and has the right and authority to enter into, execute and deliver this Lease Agreement; and does further covenant that Tenant, on paying the rent and performing the conditions and covenants herein contained, shall and may peaceably and quietly have, hold and enjoy the Leased Premises for the term aforementioned.
32. **ENTIRE CONTRACT:** This Lease Agreement contains the entire contract between the parties. No representative, agent or employee of Landlord has been authorized to make any representation or promises with reference to the within letting or to vary, alter or modify the terms hereof. No additions, changes or modifications, renewals or extensions hereof, shall be binding unless reduced to writing and signed by Landlord and Tenant.
33. **IMPROVEMENTS:** Tenant shall be responsible for all maintenance and repair to the Building and any improvements located on the Leased Premises. Such improvements shall be at Tenant's sole cost and expense, including all necessary fees and permits. Construction of any and all improvements on the Leased Premises shall be subject to approval by the County Engineer and shall be in compliance with all governmental requirements, including requirements of the Federal Aviation Administration. The construction and use of the Leased Premises and improvements to be constructed thereon shall at all times comply with all laws, orders, ordinances, regulations, and requirements of any governmental authority having jurisdiction. At the termination of this Lease, the improvements erected on the Leased Premises and any fixtures which are a part thereof, shall remain a part to the Leased Premises and shall become the property of Landlord. Any trade fixtures which were installed on the Leased Premises by Tenant and which are removable without substantial damage to the improvements and the Leased Premises shall remain the property of the Tenant, provided that Tenant shall promptly repair any damage to the improvements on the Leased Premises caused by their removal and that Tenant is not in default of any covenant or agreement contained in this Lease Agreement; otherwise such trade fixtures shall not be removed and Landlord shall have a lien thereon to secure itself on account of its claims.
34. **NON-DISCRIMINATION:**
 - a. Tenant 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 Tenant 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, Landlord 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.

- 35. **COSTS AND EXPENSES OF LANDLORD:** Tenant shall pay upon demand all of Landlord's costs, charges, attorney's fees and expenses, incurred in enforcing Tenant's obligations hereunder or incurred by Landlord in any litigation in which Landlord, without Landlord's fault, becomes involved or concerned by reason of the existence of the Lease Agreement or the relationship hereunder of Landlord and Tenant.
- 36. **MISCELLANEOUS:** In all references herein to any parties, persons, entities or corporations the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require. All the terms, covenants and conditions herein contained shall be for and shall inure to the benefit of and shall bind the respective parties hereto and their successors and assigns.
- 37. **INDEMNIFICATION:** To the extent permitted by law, Tenant shall indemnify, defend and hold Landlord and its appointed and elected officials, employees, agents, and volunteers harmless from any and all third party claims arising from Tenant's use of the Leased Premises, the conduct of its business, or from any activity, work or things which may be permitted or suffered by Tenant in or about the Leased Premises, and shall further indemnify, defend and hold Landlord and its appointed and elected officials, employees, agents, and volunteers harmless from and against any and all third party claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the provisions of this Lease Agreement or arising from any negligence of Tenant or any of its agents, contractors, employees or invitees and from any and all costs, attorney's fees, expenses and liabilities incurred in the defense of any such third party claim or any action or proceeding brought thereon. Tenant hereby assumes

all risk of damage to property or injury to persons in or about the Leased Premises from any cause, and Tenant hereby waives all claims in respect thereof against Landlord and its appointed and elected officials, employees, agents, and volunteers, except as prohibited by law. Tenant hereby agrees that, except as prohibited by law, Landlord and its appointed and elected officials, employees, agents, and volunteers shall not be liable for injury to Tenant's business or any loss of income there from or for damage to the equipment, wares, merchandise, or other property of Tenant, Tenant's employees, invitees, customers, or any other person in or about the Leased Premises; nor shall Landlord and its appointed and elected officials, employees, agents, and volunteers be liable for injury to the person of Tenant, Tenant's employees, agents or contractors and invitees, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water, rain or other elements, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether the said damage or injury results from conditions arising upon the Leased Premises.

38. **PROHIBITED WASTE LIABILITY**. In the event prohibited wastes and / or illegally dumped materials are discovered in, under, or upon the Leased Premises, Landlord warrants that it will not require Tenant to remove or otherwise dispose of such prohibited wastes and / or illegally-dumped materials, or assume the cost of such removal or disposal, to the extent such prohibited wastes and / or illegally dumped materials predated March 18, 1996.

(REST OF PAGE LEFT INTENTIONALLY BLANK)

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, or caused these presents to be signed by their proper corporate officers and their proper corporate seals to be affixed, the day and year first above written. The written resolution of any applicable Board of Directors being attended hereto as evidence of the authority of the undersigned corporate officers to execute the Lease Agreement.

**SUSSEX COUNTY
LANDLORD**

DATED: _____

By: _____
Michael Vincent, President
Sussex County Council

Attest: _____

APPROVED AS TO FORM:

By: _____
County Attorney

**CAY PROPERTIES, LLC
TENANT**

DATED: _____

By: _____
D. Brooke Kinney
Authorized Member

STATE OF DELAWARE :
: ss.
COUNTY OF SUSSEX :

BE IT REMEMBERED, That on this _____ day of _____, A. D. 2019, personally appeared before me, the Subscriber, a Notary Public for the State and County aforesaid, D. Brooke Kinney, Authorized Member of Cay Properties, LLC, a Delaware limited liability company, known to me personally to be such, and he does depose and say that the facts set forth in the foregoing Lease Agreement are true and correct to the best of his knowledge, information and belief.

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

NOTARY PUBLIC

EXHIBIT "A"
DESCRIPTION OF LEASED PREMISES

Description: Lot Numbers 17 and 18, Delaware Coastal Airport & Delaware Coastal Business Park

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 lot numbers 17 and 18, Delaware Coastal Airport , Delaware Coastal Business Park , more particularly described as per survey dated Nov. 2, 2018 and prepared by Adams-Kemp Associates, Inc., Professional land surveyors, as follows to wit:

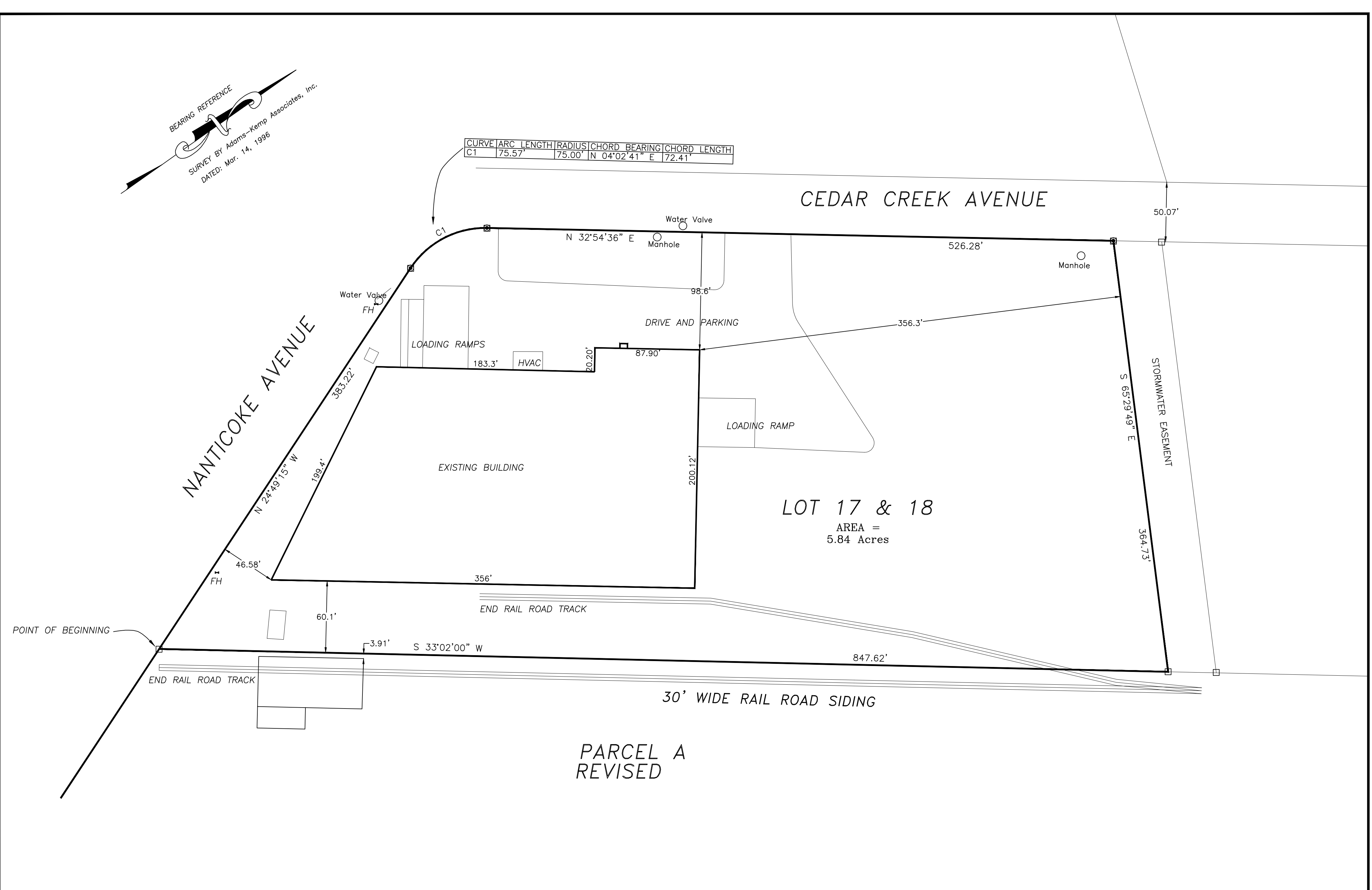
Beginning at a found concrete monument along the easterly line of Nanticoke Avenue (at 25 feet from the centerline thereof), said concrete monument being 15 feet in a northwesterly direction from the centerline of a railroad track; thence along the easterly line of Nanticoke avenue,

- 1) N 24°49'15" W a distance of 383.22' to an iron bar ,point of curvature; thence
- 2) with the arc of a circle to the right of 75.57' , having a radius of 75.00 feet, and a chord of
N 04°02'41" E, 72.41' to an iron bar along the southeasterly line of Cedar Creek Avenue (at 50 feet wide), thence with the southeasterly line of same,
- 3) N 32°54'36" E a distance of 526.28'; to an iron bar, point along the southerly line of a 40 foot wide drainage easement, thence with the southerly line of the 40 foot wide drainage easement,
- 4) N 65°29'49" E a distance of 364.73'; to a concrete monument found along the northwesterly line of a railroad track (at 15 feet from the centerline thereof); thence with the northwesterly line of the railroad track,
- 5) S 33°02'00" W a distance of 847.62'; to the point and place of beginning.

containing within described metes and bounds 5.84 acres of land be the same more or less.

BEARING REFERENCE
 SURVEY BY Adams-Kemp Associates, Inc.
 DATED: Mar. 14, 1996

CURVE	ARC LENGTH	RADIUS	CHORD BEARING	CHORD LENGTH
C1	75.57'	75.00'	N 04°02'41" E	72.41'



LOT 17 & 18
 AREA =
 5.84 Acres

PARCEL A
 REVISED



LEGEND:

- FOUND IRON PIPE
- ◼ SET IRON BAR/CAP
- FOUND CONC. MON.

Prepared By
 ADAMS-KEMP ASSOCIATES, INC.
 PROFESSIONAL LAND SURVEYORS
 AND PLANNERS
 217 SOUTH RACE STREET
 GEORGETOWN, DELAWARE 19947
 PHONE: (302) 856-6699

CHARLES E. ADAMS, JR., P.L.S. 506

LEASE AREA SURVEY
 PORTION LOT 17 & 18
 Delaware Coastal Airport
 Delaware Coastal Business Park
 GEORGETOWN HUNDRED, SUSSEX COUNTY, DELAWARE
 SCALE: 1" = 50'
 DATE: NOV. 2, 2018

EXHIBIT B
TENANT'S SECURITY INSTRUMENTS

1. Mortgage and Security Agreement from Cay Properties, LLC to Wilmington Savings Fund Society, FSB dated June 2, 2008 securing the sum of \$2,750,000.00 and recorded June 4, 2008 in the Office of the Recorder of Deeds, in and for Sussex County, in Mortgage Book 10471, page 1.
2. Assignment of Rents, Leases and Security Deposits from Cay Properties, LLC to Wilmington Savings Fund Society, FSB dated June 2, 2008 and recorded June 4, 2008 in the Office aforesaid in Mortgage Book 10471, Page 29.
3. UCC-1 Financing Statement from Cay Properties, LLC as co-debtor, et al. in favor of Wilmington Savings Fund Society FSB, as Creditor, as filed June 4, 2008 in the Office aforesaid in UCC Book 96, Page 111, as continued to date.
4. UCC-1 Financing statement from Cay Properties, LLC as co-debtor, et al. in favor of Wilmington Savings Fund Society FSB, as Creditor, as filed in the Office of the Delaware Secretary of State on June 4, 2008 leaving UCC File # 20081907019, as continued to date.

ENGINEERING DEPARTMENT

ADMINISTRATION	(302) 855-7718
AIRPORT & INDUSTRIAL PARK	(302) 855-7774
ENVIRONMENTAL SERVICES	(302) 855-7730
PUBLIC WORKS	(302) 855-7703
RECORDS MANAGEMENT	(302) 854-5033
UTILITY ENGINEERING	(302) 855-7717
UTILITY PERMITS	(302) 855-7719
UTILITY PLANNING	(302) 855-1299
FAX	(302) 855-7799



Sussex County

DELAWARE
sussexcountyde.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable Irwin G. Burton III, Vice President
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Samuel R. Wilson, Jr.

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

RE: ***IBRWF – REGIONAL BIOSOLIDS AND SEPTAGE FACILITIES,
Project 18-19 Change Order No. 1***

DATE: October 1, 2019

On June 2, 2015, County Council initially considered a comprehensive biosolids approach at the Inland Bays Regional Wastewater Facility (IBRWF) by approving Whitman, Requardt & Associates' (WRA) Amendment 5 to the base contract for the evaluation of Class A sludge drying options. During the May 2, 2016 FY17 budget workshop, the Engineering Department presented drying alternatives and a list of potential municipal partners. At the same workshop, Council was briefed on the regional septage facility under a self-supporting rate which has been implemented.

On August 30, 2016, County Council approved WRA's Amendment 7 for design of the IBRWF's Phase 2 Regional Biosolids Upgrades. Subsequently, facility design changes associated with the dryer were required and approved by Council through Amendment 7A on April 24, 2018. The completed design package was publicly advertised with twelve contractors attending the pre-bid meeting. Ultimately two bids were received and on June 26, 2018, Council awarded the contract to Bearing Construction, Inc. in the amount of \$13,668,346.00.

As the Phase 2 contract was moving forward WRA continued with the design of Phase 3 covering the treatment expansion and the effluent distribution to alternative outlets. With DNREC's support of providing alternative outlets the design could be modified eliminating the expanded storage lagoon. This positive change allowed for a modification in the plant's gravity discharge piping netting a credit of \$73,697.95. During the submittal process all parties realized that larger sludge handling pumps and wet well would be beneficial to the long-term operation and maintenance. The resulting proposed cost increase to the project is \$73,376.48. The Engineering Department requests approval of a combined change order no. 1 in the deduct amount of \$321.47.



The parties are also working on the presentation of change order no. 2 to Council associated with the stormwater management component of the project. IBRWF is one of the sites where the County is pursuing regional stormwater quality improvements. However, the banking program is in still development and the associated enhancements are in design hence not yet available for use. Tying the project into County owned stormwater quality credits would have preferable since IBRWF is a challenging site to meet individual stormwater requirements. The plans as bid, envisioned a certain innovative low-cost solution which ultimately was rejected by DNREC. The regulatory compliant approach later approved by the Sussex Conservation District, was more involved but less expensive than paying the State's "fee in lieu". Therefore, the permitted solution was pursued in a time & material approach to be summarized in change order no.2 in the near future.

Change Order

No. 1

Date of Issuance: October 1st, 2019 Effective Date: October 1st, 2019

Project: Inland Bays Regional Wastewater Facility	Owner: Sussex County	Owner's Contract No.: 18-19
Contract: Regional Biosolids & Septage Facilities		Date of Contract: July 17 th , 2018
Contractor: Bearing Construction, Inc.		Engineer's Project No.: 14256-028

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

Description: Credit for the elimination of a portion of the 36" effluent line due to an improved future design. Also the increase of the size of the sludge cake pump station to allow for larger pump and improved future maintenance..

Attachments: BCI PCO 18117-008 with backup and BCI PCO 18117-005 with backup.

CHANGE IN CONTRACT PRICE:

CHANGE IN CONTRACT TIMES:

Original Contract Price:

\$ 13,668,346.00

[Unchanged] from previously approved Change Orders No. 0 to No. 0:

\$ 0.00

Contract Price prior to this Change Order:

\$ 13,668,346.00

Increase of this Change Order:

\$ (321.47)

Contract Price incorporating this Change Order:

\$ 13,668,024.53

Original Contract Times:

474 Calendar Days

Substantial Completion (days or date): 474 days

Ready for final payment (days or date): _____

[Unchanged] from previously approved Change Orders No. 0 to No. 0:

Substantial Completion (days): 0 days

Ready for final payment (days): _____

Contract Times prior to this Change Order:

Substantial Completion (days or date): 474 days

Ready for final payment (days or date): _____

Increased on this Change Order:

0 days

Substantial Completion (days or date): 474 days

Ready for final payment (days or date): _____

Contract Times with all approved Change Orders:

Substantial Completion (days or date): 474 days

Ready for final payment (days or date): _____

RECOMMENDED:

By: _____
Engineer (Whitman, Requardt & Assoc.)

Date: _____

ACCEPTED:

By: _____
Owner (Sussex County)

Date: _____

ACCEPTED:

By: _____
Contractor (Bearing Construction, Inc.)

Date: _____

JANELLE M. CORNWELL, AICP
PLANNING & ZONING DIRECTOR
(302) 855-7878 T
(302) 854-5079 F
janelle.cornwell@sussexcountyde.gov



Sussex County
DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Council Members
The Honorable Michael H. Vincent, President
The Honorable I.G. Burton III, Vice President
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Samuel R. Wilson Jr.

From: Janelle Cornwell, AICP, Planning & Zoning Director

CC: Everett Moore, County Attorney

Date: September 26, 2019

RE: County Council Old Business Report for CZ 1878 Captain's Way Development

The County Council held a public hearing on July 16, 2019. County Council deferred action for the Planning Commission recommendation and left the record open for 5 days for written comments regarding the Planning Commission recommendation. The Planning Commission made a recommendation at their meeting of July 18, 2019. A letter from the applicant regarding the Planning Commission's recommendation was submitted to the Planning Office.

The Planning and Zoning Department received an application (CZ 1878 Captain's Way Development) for a Change of Zone for parcels 235-13.00-2.00, 2.06, 2.07, 2.08 & 32.00-332.00 to allow for an amendment to conditions of approval to allow for garage studio apartments to be located at 20689 Milton Ellendale Hwy. The Planning and Zoning Commission held a public hearing on June 13, 2019. The following are the minutes for the Change of Zone from the Planning and Zoning Commission meetings.

Ms. Cornwell advised the Commission that submitted into the record were comments from the Sussex Conservation District, comments from the Sussex County Engineering Department Utility Planning Division, and results from a DelDOT Service Level Evaluation.

Chairman Wheatly asked Ms. Cornwell if the application was confined to garage/studio apartments. Ms. Cornwell explained that the Applicant is looking to amend the RPC (Residential Planned Community) to allow for garage/studio apartments; that garage/studio apartments are typically a Special Use Exception through the Board of Adjustment; and that since this an RPC it would require an amendment to the conditions of approval to allow for the additional dwellings to be considered part of the RPC.

The Commission found that Mr. Preston Dyer, representing the developer, Mr. Mark Davidson with Pennoni Associates, and Mason Dyer, for the developer were present on behalf of the application;



COUNTY ADMINISTRATIVE OFFICES
2 THE CIRCLE | PO BOX 417
GEORGETOWN, DELAWARE

that Mr. Dyer stated the process for the garage/studio apartments would be heard and held a Special Use Exception with the Board of Adjustment but because the property is zoned GR-RPC it is an amendment to the RPC approval: that Ordinance 1959 provides for a garage/studio apartment; that the definition states “*a building or use designed and used as a single apartment unit not more than 800 square feet and an accessory to the single-family dwelling*”; that he submitted supporting statements and an example plot plan into the record. Mr. Dyer summarized a number of points contained within a written summary provided to the Commission; that Sussex County Council desires to provide an additional type of affordable housing; that this is an additional means by which people who work in the local area may afford housing near their work place; that Sussex County Council desires to provide homeowners’ with the potential to derive additional income from their residences; that the intention is that the homeowners’ may use income generated from the rental of the garage/studio apartments to pay for upgrades to their residences; that he believes that the expansive nature of the request would allow for income generation and would provide for additional affordable housing; that Section 115-32.C of the Sussex County Code, requires that the garage/studio apartment provide at least one additional parking space for the exclusive use of the tenant and be located on the premises; that the standards for a Special Use Exception is the burden to prove that such exception would not adversely effect the use of the adjacent neighboring properties; that this entire property which is approximately 152-acres has at least a 50-foot border surrounding the property; that if this proposed amendment is approved, they would provide advance notice in the Covenants about the garage/studio apartments; that the current project is an active lifestyle community; that they are seeking to provide moderately priced housing; that they would like to capture the first-time homebuyers and incorporate them into the community; that the project is not age-restricted and it is age-targeted; that they are trying to have an inclusive community with all ages living there; that they would be offering a lot/home package; that the lots are approved for sale or ground rent; that the target price would be \$199,900; that the Delaware Division of Services for Aging have provided a population projection from 2015 to 2035 that there is an expected increase in people living in Delaware that are aged 85 and over and that this number has increased to 185% in 20 years;. Mr. Dyer outlined that has personally had caregivers in his house for family members; that there is difficulty in the cost for providing care for the elderly; that the current design concept throughout the United States is to foster aging in place in what is known as ‘Universal Design’; that the Applicant’s have provided a list of restrictions that would also be mirrored in the Restrictive Covenants; that if Sussex County grants the requested amendment; that the owner of the individual property would be required to occupy the single-family dwelling unit in order to then be permitted to rent the accessory use, garage/studio apartment; that alternatively, the owner of the property must occupy the accessory use, garage/studio apartment in order to be permitted to rent the single-family dwelling; that the units would be detached from the dwellings; that Mr. Davidson stated and gave an overview of examples of a garage/studio apartments; that there would be only one connection for the water and sewer; and that there would only be one electrical meter for each unit.

Ms. Stevenson asked whether the individual homeowner would have to ask for a garage/studio apartment, which Mr. Dyer stated the garage/studio apartment would be an option for each homeowner. Ms. Stevenson asked whether this would be included in the Restrictive Covenants, which Mr. Dyer stated that it would and that the Restrictive Covenants would be recorded with the Recorder of Deeds.

Ms. Cornwell stated if the request is approved, the Applicant would have to rerecord the record plan, and this would be a condition of approval; that it would be recorded as conditions of approval; that not all the details would have to be included but the overall use would have to be on the plan.

Ms. Stevenson asked if the Covenants could be changed; and that Ms. Cornwell stated the Applicant would have to come back through two public hearings to amend or remove the condition if it is granted.

Mr. Hopkins asked if the owner of the home would live in either the dwelling or the garage/ studio apartment, which Mr. Dyer stated yes that the homeowner would have to live in either the dwelling or the garage/studio apartment.

Ms. Wingate asked if the accessory use studio/apartment shall not include duplexes, tourist homes, servant corridor or guest homes; that the garage/studio apartment would not be an Airbnb type guest home, which Mr. Dyer stated that the only thing that would be permitted would be the garage/studio apartment.

Ms. Cornwell stated that per Code, those require a different policy and process; that unless they make it a Covenants that the Sussex County could enforce; that anyone would do an Airbnb but they would have to go through the proper process; that the duplexes would be prohibited because the RPC would not allow for duplexes; and that the Code allows for a tourist/bed-and-breakfast through a Special Use Exception.

Mr. Mears asked if someone chooses not to provide a garage/studio apartment, would they still offset the location of the main house, which Mr. Dyer stated it is up to homeowner; that Mr. Mears asked if there would ever be a breeze way or a roof connecting the dwelling and the garage/studio apartment, which Mr. Dyer stated they may not be connected by a breeze way or a roof and that the garage/studio apartment must be physically separate; that Mr. Mears asked how they would regulate the age for the renters, which Mr. Dyer stated that the management company would have the ability to and there would be a requirement to review all the leases; that Mr. Mears asked what would the cost be for the garage/studio apartment, which Mr. Dyer stated the cost of the garage/studio apartment would vary; that they would want to make the accessory complementary to and consistent with the appearance of main dwelling but smaller in size; that Mr. Mears had concerns about the cost of the garage/studio apartment since it could be used and create income to pay for the house, which Mr. Dyer stated the cost would vary if the garage/studio apartment is modularized and the size of the garage/studio apartment.

Ms. Cornwell asked if every one of the landowners does choose to have a garage/studio apartment would sewer and water capacity available for the additional dwelling units, which Mr. Davidson stated there are sewer and water available to cover the units.

The Commission found that no one spoke in favor or in opposition to the application.

At the conclusion of the public hearings, the Commission discussed this application. Ms. Stevenson outlined that she was supportive of the application but would wish to take some additional time to craft a motion.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 5-0.

At their meeting of June 27, 2019, the Planning Commission discussed the application which has been deferred since June 13, 2019.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to defer action for further consideration. Motion carried 4-0.

At their meeting off July 18 2019, the Planning Commission discussed the application which has been deferred since June 13, 2019.

Ms. Stevenson moved that we recommend approval of Change in Zone 1878 to amend Ordinance No. 2295 as later amended by Ordinance No. 2636 for the Captain's Way GR-RPC based upon the record made during the public hearing, and for the following reasons:

1. Captain's Way is a GR-RPC development with 301 lots on 154.90 acres. It was first approved as Ordinance # 2295, and it was amended by Ordinance No. 2636.
2. The applicant is seeking to amend these prior approvals to allow a single garage studio apartment to be permitted on each lot.
3. With the additional garage studio apartments, the overall density is still within the permitted density of the GR District.
4. The applicant has stated that the garage studio apartments will offer an additional type of affordable housing within the development.
5. The proposed garage studio apartments promote the purposes of the Residential Planned Community District as set forth in the Zoning Code.
6. There was testimony that there is adequate water and wastewater facilities for the addition of the garage studio apartments.
7. For these reasons, I recommend that Condition A of Ordinance # 2295 be amended to state as follows:

“A. The maximum number of lots shall not exceed 301. *In addition to the main single-family dwelling on each lot, one (1) garage studio apartment shall be permitted. No garage studio apartment shall exceed 800 square feet in size and shall comply with the regulations of the Sussex County Zoning Code. The garage studio apartments shall be owned in common with the main single-family dwelling on the lot, and the owner of the residence shall occupy one of the units on the property.*”

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to forward this application to the Sussex County Council with a recommendation the application be approved. Motion carried 5-0.

The following is the response from the applicant regarding the Planning Commission's recommendation:

Dear Ms. Cornwell

In response to Planning and Zoning Commission's Recommendation of Approval for CZ 1878, we the applicant have the following response:

The request in CZ 1878 and Planning and Zoning Commission's Recommendation of Approval was for a Special Use Exceptions for a Garage/Studio Apartment on 301 lots within Captain's Way. We hereby request that the number of lots for the Special Use Exception under Section 115-23(C)6 be reduced from 301 lots to one (1) lot.

The reason for this request for reduction from 301 lots to one (1) lot is that the approval and construction of one (1) Garage/Studio Apartment will not require, trigger or create the need for any additional, revised or modified agency approvals. It was stated during the public hearing that the approval for 301 lots with the accessory use would create the need for additional agency approvals. Acquiring those additional agency approvals would be extremely detrimental to the progression and timing of this project and cannot be entertained at this time.

It is our intention to build a model home with the accessory use Garage/Studio Apartment and allow the market to determine the receptibility of this option. If buyers desire such Garage/Studio Apartment accessory use then the applications for approval before the Board of Adjustment will be made at that time.

Thank you for the opportunity to respond to the Planning and Zoning Commission's recommendation.

Pret Dyer
Member

To Be Introduced 02/26/19

Council District No. 3 - Burton

Tax I.D. No. 235-13.00-2.00, 2.06, 2.07, 2.08 and 235-13.00-32.00 through 332.00

911 Address: None Available

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR-RPC (GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY) TO A GR-RPC (GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY) TO ALLOW FOR GARAGE STUDIO APARTMENTS FOR CHANGE OF ZONE NO. 1721 (ORDINANCE NO. 2295) FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 154.72 ACRES, MORE OR LESS

WHEREAS, on the 6th day of February 2019, a zoning application, denominated Change of Zone No. 1878 was filed on behalf of Captain’s Way Development, LLC; and

WHEREAS, on the ____ day of _____ 2019, 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. 1878 be _____; and

WHEREAS, on the ____ day of _____ 2019, 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 [GR-RPC (General Residential District - Residential Planned Community)] and adding in lieu thereof the designation of GR-RPC (General Residential District – Residential Planned Community) to allow for garage studio apartments for Change of Zone No. 1721 (Ordinance No. 2295) 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 Broadkill Hundred, Sussex County, Delaware, and lying on the northeast side of Milton Ellendale Highway (Route 16) approximately 0.34 mile east of Hollytree Road and being more particularly described in the attached legal description prepared by Parkowski, Guerke &

Swayze, P.A., Griffin & Hackett, P.A., and Griffin & Robertson, P.A., said parcel containing 154.72 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.

PROPOSED

To Be Introduced 10/01/19

**Council District No. 3 - Burton
Tax I.D. No. 234-7.00-100.00
911 Address: 20797 Sunset Lane, Lewes**

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM-DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED AND LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.927 ACRES, MORE OR LESS

WHEREAS, on the 12th day of August 2019, a zoning application, denominated Change of Zone No. 1901, was filed on behalf of Mary and Victor Rico; and

WHEREAS, on the ____ day of _____ 2020, 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. 1901 be _____; and

WHEREAS, on the ____ day of _____ 2020, 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 of MR Medium-Density 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 Indian River Hundred and Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying on the east side of Sunset Lane on the north side of John J. Williams Highway (Route 24) approximately 0.28 mile northeast of Camp Arrowhead Road and being more

particularly described in the attached legal description prepared by Haller & Hudson, said parcel containing 0.927 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 10/01/19

**Council District No. 3 – Burton
Tax I.D. No. 234-7.00-100.00
911 Address: 20797 Sussex Lane, Lewes**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM-DENSITY RESIDENTIAL DISTRICT) FOR MULTI-FAMILY (7 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED AND LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY CONTAINING 0.927 ACRES, MORE OR LESS

WHEREAS, on the 12th day of August 2019, a conditional use application, denominated Conditional Use No. 2200, was filed on behalf of Mary and Victor Rico; and

WHEREAS, on the ____ day of _____ 2020, 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. 2200 be _____; and

WHEREAS, on the ____ day of _____ 2020, 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 V, Subsection 115-31, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2200 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 Indian River Hundred and Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying on the east side of Sunset Lane on the north side of John J. Williams Highway (Route 24) approximately 0.28 mile northeast of Camp Arrowhead Road and being more particularly described in the attached legal description prepared by Haller & Hudson, said parcel containing 0.927 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.