

August 26, 2008

**BY HAND**

Mr. Ken Bieri  
Planner  
New Castle County Department of Land Use  
87 Reads Way  
New Castle, DE 19720

Re: Deed Restriction Amendment – 20 Montchanin Road, Greenville, DE (the “Property”)

Dear Ken:

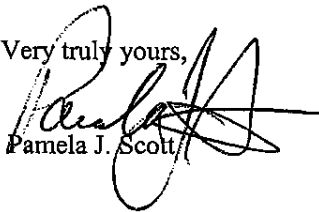
I represent 20 Montchanin Associates, LLC (“Applicant”) which is the owner of the Property. The Property currently contains a 138,193 square foot office building which once housed the headquarters for The Columbus Gas Company.

The Property is subject to deed restrictions (copies of which are enclosed) placing certain limits on the use and development of the Property. Specifically, the restrictions, recorded at Deed Book K, Volume 81, Page 219 dated September 9, 1968, and Deed Book Y, Volume 81, Page 155 dated January 17, 1969 (the “Restrictions”), limit the use to “an office building and accessory uses”. The Applicant proposes to construct a separate 36,500 square foot office building on the Property which will require an amendment to the Restrictions. All other provisions of the Restrictions will continue to apply to the Property.

I enclose the proposed form of Deed Restriction Amendment along with a form of Resolution authorizing the amendment of same, copies of the Restrictions and a check for the fee of \$3,000.00 for this request. I ask that you please proceed to process this request.

Thank you for your assistance. Should you have any questions or require any further information, please do not hesitate to contact me.

Very truly yours,

  
Pamela J. Scott

**Enclosures**

cc: The Honorable Paul G. Clark (w/enclosures)  
The Honorable Robert S. Weiner (w/enclosures) ✓  
The Honorable Betsy Gardner (w/enclosures)

Introduced by: Robert S. Weiner  
Date:

**RESOLUTION NO. 08- \_\_\_\_\_**

**TO AMEND DEED RESTRICTIONS FOR PROPERTY LOCATED  
ON THE EAST SIDE OF MONTCHANIN ROAD, SOUTH OF DELAWARE RT. 141,  
BEING A 19.85± ACRE PARCEL OF LAND  
TAX PARCEL NO. 07-030.10-015**

**WHEREAS**, 20 Montchanin Associates, LLC is the owner of Tax Parcel No. 07-030.10-015, an approximately 19.85 acre parcel of land, which currently contains a 138,193 square foot office building (the "Montchanin Parcel"); and

**WHEREAS**, the Montchanin Parcel is subject to a Declaration of Restrictions by Dorcas Van Dyke Farquhar, Donald E. Farquhar and Columbia Gas System Service Corp. dated September 9, 1968 and recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware in Deed Book K, Volume 81, Page 219, and a Declaration of Restrictions by Dorcas Van Dyke Farquhar, Donald E. Farquhar and Columbia Gas System Service Corp. dated January 17, 1969, and recorded in the Office of the Recorder of Deeds, in and for New Castle County, Delaware, at Deed Book Y, Volume 81, Page 155 (collectively, the "Declaration"); and

**WHEREAS**, the Declaration contains a restriction that states: "no use shall be permitted on the land except an office building and accessory uses thereto . . ."; and

**WHEREAS**, the owner of the Montchanin Parcel proposes to construct an additional office building thereon being approximately 36,500 square feet in size (the "Project"); and

**WHEREAS**, in order to proceed with the Project the Declaration must be amended; and

**WHEREAS**, the Declaration was imposed for the benefit of New Castle County and by its terms cannot be amended without the approval of New Castle County Council (which is the only approval required); and

**WHEREAS**, construction of an additional building on the Montchanin Parcel is consistent with its zoning and the goals and objectives of the County's Comprehensive Development Plan.

**NOW, THEREFORE, BE IT RESOLVED** by New Castle County Council that the Declaration of Restrictions by Dorcas Van Dyke Farquhar, Donald E. Farquhar and Columbia Gas System Service Corp. dated September 9, 1968 and recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware in Deed Book K, Volume 81, Page 219 and a Declaration of Restrictions by Dorcas Van Dyke Farquhar, Donald E. Farquhar and Columbia Gas System Service Corp. dated January 17, 1969, and recorded in the Office of the Recorder of Deeds, in and for New Castle County, Delaware, at Deed Book Y, Volume 81, Page 155, be and is hereby amended as set forth in that certain Amendment to Declaration of Restrictions dated \_\_\_\_\_, 2008 and recorded in the Office of the Recorder of Deeds, in and for New Castle County, Delaware in Instrument No. \_\_\_\_\_, a copy of which is attached hereto as Exhibit "A", and the County Executive is hereby authorized and directed to execute the Amendment on behalf of New Castle County.

Adopted by County Council  
of New Castle County on:

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President of County Council  
of New Castle County

**SYNOPSIS:** This resolution authorizes the amendment of those certain Declaration of Restrictions by Dorcas Van Dyke Farquhar, Donald E. Farquhar and Columbia Gas System Service Corp. dated September 9, 1968 and recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware in Deed Book K, Volume 81, Page 219 and a Declaration of Restrictions by Dorcas Van Dyke Farquhar, Donald E. Farquhar and Columbia Gas System Service Corp. dated January 17, 1969 and recorded in the Office of the Recorder of Deeds, in and for New Castle County, Delaware, at Deed Book Y, Volume 81, Page 155 to permit the construction of an approximately 36,500 square foot medical office building.

**FISCAL NOTE:** Based upon the information provided by the Department of Land Use, no material fiscal impact will be realized upon the approval of this resolution.

Tax Parcel No. 07-030.10-015  
Prepared by and to be returned to:  
Saul Ewing LLP (PJS)  
P.O. Box 1266  
Wilmington, DE 19899

AMENDMENT  
to  
DECLARATION OF RESTRICTIONS

THIS AMENDMENT TO DECLARATION OF RESTRICTIONS ("Amendment") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by 20 Montchanin, LLC, a Delaware limited liability company, for and on behalf of itself and its respective successors and assigns, (hereinafter "Declarant") and New Castle County, a political subdivision of the State of Delaware ("County").

WHEREAS, Declarant holds legal title to that certain parcel of land being 19.85 acres of land with improvements thereon located at 20 Montchanin Road, Greenville, Delaware, Tax Parcel No. 07-030.10-015, as more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property"); and

WHEREAS, the Property is subject to certain Declaration of Restrictions recorded at Deed Record K, Volume 81, Page 219, dated September 9, 1968 and Deed Record Y, Volume 81, Page 155, dated January 17, 1969 (collectively the "Declaration"); and

WHEREAS, with the consent of New Castle County, Declarant desires to make and enter into this Amendment to Declaration of Restrictions to modify the Declaration.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that Declarant hereby covenants and declares that Declarant shall hold and stand seized of the Property under and subject to the following restrictive covenants for the benefit of New Castle County, or its successor, which covenants shall run with the land so as to be binding upon Declarant, all grantees and all others who from time to time hereafter may acquire or occupy, and for so long as they may hold, title to or any interest in all or any portion of the said Property.

1. Declaration. The Declaration is amended by permitting the construction of a separate building on the Property, approximate 36,500 square feet in size, to be used for general or medical office purposes ("the Building"). The height of the Building shall be no greater than forty (40) feet, exclusive of basement. Height shall be measured pursuant to the definition of "Height, building" as set forth in Section 40.33.000 of the New Castle County Unified Development Code as in effect at the time of execution of this Amendment to Declaration of Restrictions.

2. Amendment. The remaining covenants of the Declaration shall not be modified, amended or altered in whole or in part except with the express approval of County Council, or its successor, which shall be the only approval or consent required.

3. No Circumvention. Declarant, its successors and assigns, shall not seek to escape or circumvent the Declaration by obtaining a variance from the New Castle County Board of Adjustment.

4. Scope and Interpretation. The Amendment to Declaration of Restrictions shall be governed by Delaware law. It shall have no application to or effect upon any property other than the Property as described in Exhibit "A". No rights hereunder may be assigned by New Castle County except by operation of law to its duly constituted successor.

5. Effective Date. This Amendment to Declaration of Restrictions shall only take effect upon approval of County Council and recordation of a land development plan for the Building as described herein.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals, the day and year aforesaid.

WITNESS:

20 MONTCHANIN, LLC

\_\_\_\_\_

By: \_\_\_\_\_ (Seal)  
Authorized Member

WITNESS:

NEW CASTLE COUNTY

\_\_\_\_\_

By: \_\_\_\_\_ (Seal)

STATE OF DELAWARE )  
 : SS.  
COUNTY OF NEW CASTLE )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, \_\_\_\_\_, Authorized Member of 20 Montchanin, LLC, a Delaware limited liability company, party to this Indenture, personally known to me to be such, and acknowledged this Indenture to be his act and deed and the act and deed of said corporation, that the signature of the \_\_\_\_\_ President thereto is in his own proper handwriting and the seal affixed is the common and corporate seal of said corporation, and that his act of sealing, executing, acknowledging and delivering said Indenture was duly authorized by a resolution of the Board of Directors of said corporation.

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

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF DELAWARE )  
 : SS.  
COUNTY OF NEW CASTLE )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, \_\_\_\_\_, as \_\_\_\_\_ of New Castle County, party to this Indenture, personally known to me to be such, and acknowledged this Indenture to be his act and deed and the act and deed of the County, that the signature of the \_\_\_\_\_ thereto is in his own proper handwriting and the seal affixed is the common and corporate seal of said corporation, and that his act of sealing, executing, acknowledging and delivering said Indenture was duly authorized by a resolution of the County.

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

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Beginning at a concrete monument found on the easterly right-of-way line of Montchanin Road, Delaware Route 100 (at various widths), said point being a corner of lands now or formerly of Raskob Foundation for Catholic Activities (T.P. No. 07-030.10-016); thence from said point of beginning, along the easterly right-of-way line of Montchanin Road, Route 100 the five following described courses and distances: (1) North 5°34'52" East, 48.21 feet to a point; (2) North 11°28'09" East, 100.27 feet to a point; (3) North 5°36'07" East, 133.48 feet to a point; (4) North 9°24'58" East, 150.33 feet to a point; and (5) North 5°36'07" East, 100.00 feet to a point on the southwesterly end of a corner cut-off joining the said easterly right of way line of Montchanin Road with southerly right of way line of Barley Mill Road, Delaware Route 141; thence thereby North 56°37'14" East, 161.16 feet to an iron pipe found on the said southerly right of way line of Barley Mill Road; thence thereby the five following described courses and distances: (1) North 88°45'12" East, 342.35 feet to an iron pipe found; (2) South 89°45'00" East, 470.23 feet to an iron pipe found; (3) South 85°07'11" East, 187.37 feet to an iron pipe found at a point of curvature; (4) southeasterly by a curve to the right, having a radius of 475.00 feet, and arc length of 267.54 feet to a point, said point being distant by chord of South 68°59'02" East, 264.02 feet from the last described point; and; (5) South 81°47'02" East, 20.92 feet to a point, said point being a corner of lands now or formerly of Gerrett Van S. Copeland and Tatiana Copeland (T.P. No. 07-030.20-020); thence thereby South 42°51'50" West, 21.08 feet to a concrete monument found; thence along the northwesterly and southwesterly lines of other lands now or formerly of Gerrett Van S. Copeland and Tatiana Copeland (T.P. No. 07-030.20-002) the two following described courses and distances: (1) South 42°51'50" West, 206.02 feet to a concrete monument found; and (2) South 2°44'00" East, 366.59 feet to a broken concrete monument found on the northwesterly line of other lands now or formerly of Gerrett Van S. Copeland and Tatiana Copeland (T.P. No. 07-030.10-017); thence thereby South 79°39'07" West, 627.16 feet to a concrete monument found on the northeasterly line of lands now or formerly Raskob Foundation for Catholic Activities (T.P. No. 07-030.10-016); thence thereby the two following described courses and distances: (1) North 16°47'30" West, 115.40 feet to a concrete monument found; and (2) North 87°42'30" West, 686.18 feet to the point and place of beginning.

Containing within said metes and bounds, 19.857 ± acres of land, be the same, more or less.