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March 31, 2011

**VIA HAND DELIVERY**

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 (the “Property”)**

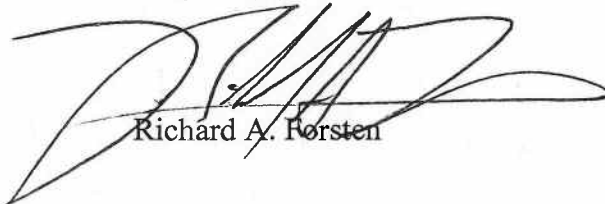
Dear Ken:

I represent 20 Montchanin Associates, LLC (“Applicant”) which is the owner of the above-referenced property. The Property is the subject of a plan which was filed with the Land Use Department on March 24, 2011 proposing the addition of a 6,000 square foot building and the rezoning of two (2) acres of the Property to “CN” to accommodate the new building.

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 of the Property to “an office building and accessory uses”. Over the past several months, the Applicant has been working with the community and has negotiated an agreement with Citizens for Responsible Growth in New Castle County, Inc. that will accommodate this request. In that regard, I enclose the proposed form of Amended and Restated Restrictions, the specific terms of which have been negotiated with CRG, a form of Resolution authorizing the amendment of same, copies of the Restrictions and a check for the fee of \$3,500 for this request.

Please proceed to process this request. In doing so, I would ask that this Application be placed on the same Planning Board agenda as the rezoning application. Thank you for your assistance. Should you have any questions or require further information please do not hesitate to contact me.

Very truly yours,



Richard A. Forsten

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A DELAWARE LIMITED LIABILITY PARTNERSHIP

Mr. Ken Bieri, Planner  
New Castle County Dept. of Land Use  
March 29, 2011  
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RAF/uvb  
Enclosures

cc: The Honorable Thomas H. Kovach (w/enclosures)  
The Honorable Robert S. Weiner (w/enclosures)  
The Honorable Betsy Gardner (w/enclosures)  
Richard P. Beck, Esquire (w/enclosures)

Introduced by: Robert S. Weiner  
Date:

**RESOLUTION NO. 11- \_\_\_\_\_**

**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 zoned "OR", 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 restrictions that state: "no use shall be permitted on the land except an office building and accessory uses thereto . . ." and "the total ground floor area of the building shall not exceed 1.7 acres"; and

**WHEREAS**, the owner of the Montchanin Parcel proposes to construct an additional office building thereon being approximately 6,000 square feet in size and to rezone the Montchanin Parcel to "CN" to accommodate the additional building (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**, the owners of the Montchanin Parcel have worked with the community and adjoining property owners through Citizens for Responsible Growth in New Castle County, Inc. to negotiate the terms and conditions of an Amended and Restated Declaration that would permit the proposed use of the property; and

**WHEREAS**, the Project is consistent with 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 Amended and Restated Declaration of Restrictions dated \_\_\_\_\_, 2011 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:

\_\_\_\_\_  
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  
Return to: Richard P. Beck, Esquire  
Morris James LLP  
500 Delaware Avenue, Suite 1500  
P.O. Box 2306  
Wilmington DE 19899-2306

**AMENDED AND RESTATED**

**DECLARATION OF RESTRICTIONS**

**FOR 20 MONTCHANIN ROAD**

This Amended and Restated Declaration of Restrictions (this "Declaration") is made under Seal as of the 24<sup>th</sup> day of February, 2011, by 20 Montchanin Associates, LLC,, a Delaware limited liability company, as "Declarant"), for the benefit of Citizens For Responsible Growth in New Castle County, Inc., a non-profit Delaware corporation ("CRG").

**BACKGROUND**

A. Declarant is the owner and Developer of certain parcels of land situate in Christiana Hundred, New Castle County, State of Delaware, consisting of approximately 19.857 acres of land commonly known as the former Columbia Gas Campus located at the intersection of Montchanin Road (Route 100) and Barley Mill Road (Route 141), and being New Castle County Tax Parcel No. 07-030.10-015 (the "Property"), as more particularly shown on the reduced plans appended hereto as Exhibit A (the "Compromise Plan").

B. CRG is a non-profit membership organization formed for the purpose of supporting responsible development in New Castle County, and aligned with various other civic, community and non-profit membership organizations including, but not limited to, The Kennett Pike Association, Inc. and Delaware Greenways, Inc., both non-profit corporations dedicated to preserving and enhancing Delaware's natural, scenic, historic, cultural and recreational resources.

C. Declarant initially sought a deed restriction amendment for the Property and land use approval for the construction of a three story office building that was of concern to CRG. Declarant and CRG subsequently negotiated a Compromise Plan in accordance with which Declarant has applied to subdivide and rezone approximately two (2) acres of the Property and obtain land development plan approvals for a new building on the Property, as more particularly shown on the Compromise Plan, which require an amendment to the existing deed restrictions. To induce CRG's support of such rezoning, subdivision, deed restriction amendment and land development plan approvals and in appreciation of such support, Declarant has made and has offered these voluntary assurances as to the manner in which the Property would be improved and used if the requested rezoning, subdivision, deed restriction amendment and land development approvals are granted, obtained, approved and not overturned on appeal.

D. This Amended and Restated Declaration of Restrictions is intended to replace that certain Agreement Declaring Restrictions by Dorcas Van Dyke Farquhar and Donald R. Farquhar and Columbia Gas System Service Corporation, dated September 1, 1968 and recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware, at Deed Book K, Volume 81, Page 219 (the "Original Declaration") and supplemented by that certain Agreement Declaring Restrictions by Dorcas Van Dyke Farquhar and Donald R. Farquhar and Columbia Gas System Service Corporation, 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 (the "Supplemental Declaration"). The Original Declaration and Supplemental Declaration are hereby collectively referred to as the "Prior Declaration". Upon recordation of this Amended and Restated Declaration of Restrictions, the Prior Declaration shall be void and no longer in effect, except that if this Amended and Restated Declaration of Restrictions does not become effective as set forth in Paragraph 8 hereof or is extinguished as provided in Paragraph 9 hereof, the Prior Declaration shall

revive ab initio with the same effect as if never amended.

## COVENANTS

Now, therefore, know all men by these presents, that Declarant hereby covenants and declares under Seal for itself, its successors, assigns, grantees and all others claiming an interest in the Property under or through Declarant (all of whom or which shall be bound hereby the same as Declarant), that upon recordation of this Declaration, and unless and until such Declaration shall after recordation be rescinded (if ever) on appeal as hereinafter provided, Declarant holds and stands seized of the Property under and subject to the following covenants and agreements, which shall be covenants running with the land and which shall be binding upon Declarant, its respective successors, assigns, grantees and all other subsequent owners or holders of any right, title to or interest in all or any portion of the Property, for the general benefit of the adjoining community and for the specific benefit of The Kennett Pike Association, Inc. ("KPA") and Delaware Greenways, Inc. ("Greenways"), which two organizations shall alone have the sole right to enforce this Declaration.

1. Building Height. The height of the 6,000 square foot building proposed along Montchanin Road ("New Building") shall not be greater than twenty five (25) feet, plus rooftop mechanical equipment not exceeding an additional ten (10) feet in height, which shall be fully screened to the extent visible from Montchanin Road. The height of any future expansion, in whole or in part, of the present 138,193 square foot building located at 20 Montchanin Road (which for this purpose shall be deemed to include the existing cooling tower) (the "Existing Building") shall not materially exceed the present height of that portion of the Existing Building being expanded. The height of any future additional building constructed on the Property (other than the New Building), if separate from the Existing Building, or any replacement in whole or in part of the Existing Building, shall exceed neither two stories nor forty (40) feet (exclusive of basement) plus rooftop mechanical equipment not exceeding an additional ten (10) feet in height which shall be screened to the extent

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visible from Montchanin Road. As used herein, and throughout this Declaration, the term "height" shall have the meaning as set forth in Section 40.33.300 of the New Castle County Unified Development Code ("UDC") in effect as of the time of execution of this Declaration. Declarant shall not make grade changes to the Property which have the effect of increasing the present average grade of the Property at the site(s) of the proposed new construction and thereby materially increasing the height of the building(s) to be constructed at such site(s); provided, however, that grade changes needed to fill in low areas on the Property to achieve proper grade transitions in accordance with sound engineering principles and in compliance with applicable law, and grade changes necessary to provide for proper drainage and to comply with applicable stormwater regulations will not be construed so as to violate the provisions hereof pertaining to prohibitive grade changes. Decorative spires, cupolas, architectural chimneys and flag poles shall not be subject to the height limitations of this Declaration.

2. Building Density. The New Building shall not exceed 6,000 square feet of GFA, exclusive of the physical area constituting any drive through space. The total building footprint of all buildings at 20 Montchanin Road, including the New Building (exclusive of the physical area constituting any drive through space), the Existing Building and any future expansion of the Existing Building, or future additional building, shall not exceed 1.792 acres. Based on a footprint for the Existing Building of 1.418 acres, any future expansion of the Existing Building and/or future additional building, together with the New Building, shall not have a total building footprint in the aggregate in excess of 0.374 acres. By way of illustration only, for the elimination of doubt, if the New Building has a footprint of 6,000 square feet (0.13774 acres), then the combined footprint of any future additional building would not exceed 10,283.92 square feet (0.23626 acres) (with due allowance for minor good faith construction variations occurring in the field). As used herein and throughout this Declaration, the term "gross floor area or GFA" shall have the meaning as set forth in



