

RESOLUTION NO. 2012 - 015

**TO AMEND DEED RESTRICTIONS FOR PROPERTY LOCATED
ON THE EAST SIDE OF MONTCHANIN ROAD, SOUTH OF DELAWARE
ROUTE 141, BEING A 19.85 ACRE PARCEL OF LAND KNOWN AS
TAX PARCEL NO. 07-030.10-015 (“20 MONTCHANIN ROAD”)**

WHEREAS, 20 Montchanin Associates, LLC (the “Owner”), is the owner of Tax Parcel No. 07-030.10-015, an approximately 19.85 acre parcel of land presently improved with an approximately 138,193 square foot office building (the “Montchanin Parcel”); and

WHEREAS, the Montchanin Parcel is subject to 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 1969 restrictions are for the benefit of the County, the Kennett Pike Association and the lands and tenements of Hagley Foundation. Such restrictions may be enforced by any of the foregoing. No modification, revision or amendment may be made except with approval of the beneficial owner of the land and County Council; “provided however, nothing contained herein shall be construed to require the approval of any other party for such modification, revision or amendment.” The 1968 restrictions are “for the benefit of New Castle County and may be enforced by New Castle County. No modification, revision or amendment of any of the foregoing restrictions may be made except with approval of the beneficial owner of the land and New Castle County Council after public notice and public hearing; provided, however, nothing contained herein shall be construed to require the approval of any other party for such modification, revision or amendment.” The Original Declaration and Supplemental Declaration are hereby collectively referred to as the “Prior Declaration”; and

WHEREAS, the original and supplemental Declarations, among other things, place limitations upon the size and height of buildings on the land (total ground floor area not to exceed 1.7 acres in supplemental restrictions and not to exceed two stories or 40 feet in height in both sets of restrictions) and permitted uses of the Montchanin Parcel; and

WHEREAS, Owner desires to develop an approximately 2 acre portion of the Montchanin Parcel to facilitate the construction of a 6,000 square foot building (the “Proposed Development”), and to potentially rezone the proposed development from Office Regional to Commercial Neighborhood (OR to CN); both sets of restrictions indicate that they will become null and void if the land is rezoned from OR or its equivalent; and

WHEREAS, Owner, working in conjunction with Citizens for Responsible Growth in New Castle County, Inc. (“CRG”), has reached an agreement on an amendment to the Prior Declaration that would both permit the Proposed Development to occur as well as provide future direction with regard to the remainder of the Montchanin Parcel, as evidenced by that certain Amended and Restated Declaration of Restrictions for 20 Montchanin Road, attached hereto as Exhibit “A”; and

WHEREAS, the Prior 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; and

WHEREAS, the favorable recommendation from the Department of Land Use recommends conditional approval of amending the Prior Declaration currently encumbering the Land, consistent with the purposes stated herein, and approval of the requested amendment thereto; the conditions include...; and

WHEREAS, the favorable recommendation from the Planning Board recommends conditional approval of the deed restriction application to terminate the existing restrictions and to create a new declaration of restrictions with New Castle County as a third and interested party; the conditions include...;and

WHEREAS, *New Castle County Code* Chapter 40, Section 31.130, provides that upon receipt of a recommendation report from the Department of Land Use, County Council shall schedule a hearing and render a decision by resolution. A two-thirds vote is required if voting contrary to a Department of Land Use recommendation of disapproval.

NOW, THEREFORE, BE IT RESOLVED by and for the County Council of New Castle County that the County Council of New Castle County hereby approves the Amended and Restated Declaration of Restrictions for 20 Montchanin Road attached hereto as Exhibit “A” with the following conditions: .

Adopted by County Council
Of New Castle County on:

Thomas H. Kovach, President
New Castle County Council

Synopsis: This ordinance proposes terminating an existing set of deed restrictions on the above-referenced parcel of land, said restrictions to be replaced by new deed restrictions as detailed in this ordinance.

Fiscal Impact: There will be no discernable fiscal impact upon the approval of this resolution.