

Tax Parcel No.: 335-8.00-37.00

Prepared By and Return To:  
Michael J. Hoffman, Esquire  
Connolly Gallagher LLP  
267 East Main Street  
Newark, Delaware 19711

**MITCHELL’S CORNER DEVELOPMENT AGREEMENT**

THIS MITCHELL’S CORNER DEVELOPMENT AGREEMENT (this “Agreement”) entered into this \_\_\_ day of \_\_\_\_\_, 2024, by and among **MITCHELL’S CORNER, LLC**, a Delaware limited liability company (hereinafter referred to as “Developer”), and the **BOARD OF PUBLIC WORKS OF THE CITY OF LEWES**, a chartered utilities board (hereinafter referred to as the “BPW”).

**RECITALS**

**WHEREAS**, Developer is the record owner of certain lands situate within Lewes & Rehoboth Hundred and the Service Area of the BPW, being +/- 43.372 acres of land, located along the easterly side of Kings Highway and the northerly side of Gills Neck Road, Tax Parcel ID No. 335-8.00-37.00, and further described on plans submitted to Sussex County and the BPW and to be recorded in the Office of the Recorder of Deeds in and for Sussex County, as the same may be amended, and titled Record Plans for Mitchell’s Corner, prepared by Davis, Bowen & Friedel, Inc., dated October 2023 and last revised April 2024 (the “Land Development Plan”). The subject matter of the Land Development Plan may be referred to as the “Project”; the “Property”; the “Development”; or the “Plan.” The Property is zoned (MR) Medium-Density Residential. The Development proposes a mix of 260 duplex and townhouse residential units and community clubhouse; and

**WHEREAS**, the Sussex County Planning & Zoning Office will need to approve the Land Development Plan subject to the standard conditions outlined in the Sussex County Code (the “Code”) prior to its recording in the Office of the Recorder of Deeds in and for Sussex County; and

**WHEREAS**, Developer has submitted detailed Improvement Construction Plans, DBF Project No. 3808A003, dated October 2023 and last revised April 2024, and is obligated to provide such additional plans for improvements as required by the BPW concerning or related to the Development, which plans may include but are not limited to design standards and specifications for sanitary sewer, sediment and erosion control, stormwater management, general grading/lines and grades, landscaping and lighting, said plans and any approved revisions thereto shall hereafter be referred to as the “Improvement Construction Plans” and shall also be incorporated herein as an integral part of this Agreement; and

**WHEREAS**, the BPW supervises, manages, controls, and operates electric, water, sewer, and stormwater systems throughout the City of Lewes and the BPW's service area (the "BPW System"); and

**WHEREAS**, Developer has requested the permanent allocation of sufficient water capacity for the Development and the BPW's services for the Property will be limited to the supply of sufficient water capacity for the Development for both potable water and fire protection; and

**WHEREAS**, the BPW desires to allocate water capacity for the Development and to provide water service, provided that Developer constructs, installs, and provides for all water infrastructure necessary to serve the Development, including those off-site infrastructure improvements necessary for the Development (collectively, the "BPW Improvements"), pursuant to the Improvement Construction Plans for the BPW Improvements (the "BPW Improvement Plans"), at no cost to the BPW, and, upon acceptance by the BPW, Developer shall dedicate applicable BPW Improvements to the BPW; and

**WHEREAS**, the BPW and Developer desire to enter into this Agreement setting forth the mutual understanding and undertakings regarding the construction and financing of the BPW Improvements and services; and

**WHEREAS**, Developer desires to complete the BPW Improvements and other obligations outlined within the Improvement Construction Plans and this Agreement and adhere to other applicable authority concerning or related to the Development; and

**NOW THEREFORE**, in consideration of the foregoing recitals, which are hereby incorporated into and made a part of this Agreement, and the mutual covenants and agreements set forth below, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Developer and the BPW hereby agree as follows:

1. **Services.**

1.1. Developer shall comply with the requirements of this Agreement and any other applicable laws, rules, and regulations, as amended from time to time.

1.2. Water service, through infrastructure installed at the sole expense of Developer, shall be available to the Development, a proposed mix of 260 duplex and townhouse residential units and community clubhouse, in accordance with the terms of this Agreement, the BPW Resolutions, rules, and regulations, and any other applicable laws, rules, and regulations, all as amended from time to time.

2. **BPW Improvements.**

2.1. **Design and Construction.** Developer shall construct, install, and provide for the BPW Improvements, and be responsible for the costs of the same, as outlined in the BPW

Improvement Plans, which have been submitted to and approved, or are to be approved, by the BPW.

2.2. **Plan Approval.** Once approved by the BPW, the BPW Improvement Plans shall control and govern unless amended by the written agreement of both Developer and the BPW, except that for any BPW Improvements not completed within one (1) year of this Agreement, said BPW Improvements shall be subject to further review and the Developer shall receive BPW approval of the subject BPW Improvements Plans prior to beginning construction for the subject BPW Improvements based upon then applicable rules, regulations, and standards. Extension of time may be granted by the BPW Board of Directors if, prior to the end of the aforementioned one (1) year period, for good cause shown, the Developer requests such extension through the BPW General Manager.

2.3. **General Standards.** All BPW Improvements shall be constructed by the Developer in accordance with the BPW-approved BPW Improvement Plans. The Developer shall cause all work on the BPW Improvements to be completed in a good and workmanlike manner.

2.4. **Prosecution of Work.** If any work on the BPW Improvements is abandoned, or performed in violation of this Agreement, then the Developer shall promptly act to cause the work to be completed properly.

2.5. **BPW Review and Acceptance.** All work on the BPW Improvements shall be subject to review and approval, per the BPW-approved BPW Improvement Plans, by representatives of the BPW at all times. Developer shall reimburse the BPW for the actual costs of necessary review. Developer must provide the BPW with any surveys, plans, and specifications (architectural, engineering, landscaping, etc.), construction documents, site plans, and similar documents in possession of Developer. Developer shall also pay to the BPW an administrative fee equal to fifteen percent (15%) of invoices from consultants and professionals assisting with the review, approval, inspection, and acceptance of the BPW Improvements in order to offset the expenses incurred by the Lewes BPW in reviewing, approving, inspecting, and accepting the BPW Improvements. The BPW shall provide Developer with a summary of all costs of any review, including the above referenced administrative fee, charged to the Developer. The BPW shall not accept any dedication of the BPW Improvements until written approval of the condition of the BPW Improvements is provided and easements, as applicable, are provided to the BPW, according to the provisions of this Agreement or other applicable rule or regulation.

2.6. **Developer Obligation.** Developer accepts responsibility for the costs and expenses of design, permitting, installation, and inspection of all BPW Improvements.

2.7. **BPW Obligation.** The BPW agrees, through infrastructure installed at Developer's sole cost and expense, and dedicated to the BPW, to provide water service to Developer for the Development that is intended to be subject to the Resolutions, Policies, Rules and Regulations applicable to the BPW System.

2.8. **Easements.** Developer hereby grants to the BPW, its successors and assigns, a perpetual easement in, over, and upon the Property, with the right to erect, construct, install and lay, and thereafter use, operate, inspect, repair, maintain, replace, and remove the water utility, including infrastructure and appurtenant facilities. The BPW Improvements shall be placed in accordance with the BPW Improvement Plan, within recorded easements or dedicated street rights of way. Developer, at its sole expense, shall prepare and deliver to the BPW necessary documentation evincing necessary easements prior to final acceptance under Section 2.10 herein.

2.8(a). Developer agrees to grant to the BPW, its successors and assigns, a perpetual easement in, over, and upon the Property in the area identified on Exhibit A attached hereto as “approximate easement area” and “approximate saltwater well location,” for the BPW to install and utilize a monitoring well as part of its DNREC-issued well allocation permit. This easement will be prepared and recorded prior to final acceptance under Section 2.10 herein.

2.9. **Deposit.** Developer must deposit with the BPW, within fifteen (15) days of the Effective Date of this Agreement, an amount, as established separately by the BPW based upon the size of the subject development, in the BPW’s sole and absolute discretion, to cover inspections and legal work and other actual costs associated with the Development. The deposit will be no less than \$50,000 and will be replenished when requested by the BPW in \$25,000 increments when the fund balance reaches \$25,000. Developer must replenish such funds within thirty (30) days’ notice from the BPW. If the fund balance falls below \$25,000, the Developer shall cause all work on the BPW Improvements to cease until the balance is replenished. Moreover, if the fund balance falls below \$25,000, any work completed prior to the balance replenishment is conducted at the Developer’s risk and the BPW reserves the right, in the BPW’s sole and absolute discretion, at Developer’s sole cost, to require any work necessary to remove or correct the condition. Further, any such work completed prior to the balance replenishment must be reviewed and approved by the BPW after replenishment of the balance. Any amounts not paid within such thirty (30) day period shall incur interest at the lessor of: (i) eight percent (8%) per annum; and (ii) the maximum annual interest rate permitted by law. Any unused funds shall be returned to Developer within thirty (30) days of BPW acceptance of the BPW Improvements under Section 2.10 herein.

**2.10. Completion of BPW Improvements.**

2.10(a). The BPW shall allow connection to the BPW System for the Development, in whole or in part, upon Developer’s compliance with this Agreement, including payment of applicable fees, reimbursement of actual BPW expenses pursuant to this Agreement, or both, as appropriate.

2.10(b). Developer shall disconnect the Property from its present water system, if any, prior to connecting to the BPW System. Any existing infrastructure located on the Property shall be abandoned pursuant to State, Sussex County, and BPW requirements.

2.10(c). To the extent the BPW Improvements are completed in an incremental or phased manner, the BPW shall allocate capacity from the BPW as appropriate and as available

by such incremental or phased BPW Improvements. If Developer intends to construct the Development in phases, Sussex County approval of the entire Land Development Plan shall be required before the BPW shall allocate capacity for any portion of the Development.

2.10(d). Upon completion and final inspection, and consistent with this Section, the BPW Improvements shall be dedicated to, and accepted by, BPW in accordance with the procedures specified in this Agreement and the BPW Resolutions, rules, and regulations.

2.10(e). Upon completion of applicable BPW Improvements, Developer shall forward a written request to the BPW for final approval and acceptance of the subject BPW Improvements. Prior to acceptance of the BPW Improvements, Developer shall provide all plans and as-built drawings to the BPW in electronic AutoCad format and PDF format, along with any release of liens associated with installation of the BPW Improvements and other documents requested by the BPW and as required by BPW Resolution and other applicable laws, rules, and regulations to conduct the final inspection. Additionally, all required inspection fees must be paid prior to the final acceptance. The inspector for the BPW shall conduct a final inspection of the BPW Improvements and notify Developer and the BPW of the condition of the subject BPW Improvements.

2.10(f). The BPW, in its sole discretion, may agree to conduct a final inspection and conditionally accept portions of the BPW Improvements subject to final acceptance of the complete BPW Improvements.

2.10(g). Once all required reviews, inspections, documents, and other related material, including the required maintenance bond, are completed, as determined by the BPW, in its discretion, the BPW may place the matter on the next applicable regularly scheduled meeting of the BPW Board for final action on acceptance of the BPW Improvements.

2.11. **Payment for BPW Service.** Developer shall pay for utility service as the BPW determines, consistent with practices and policies applicable to similar Projects served by the BPW current and existing at the time payment is to be made, and as amended from time to time. Developer shall pay and be subject to such penalties for noncompliance as established by the BPW, including but not limited to the BPW's right to terminate service in the event of nonpayment and the imposition of a reconnection charge. The Development shall be subject to and bound by the Resolutions, policies, rules, and regulations established by the BPW, as the same may be amended from time to time.

2.12. **Impact Fees.** Upon requesting service, Developer, its successors or assigns, including homeowners, as applicable, shall pay the impact fee for utility service at the rate current and existing at the time of service, which fees may be subject to adjustment at any time pursuant to the BPW rules and regulations, or any other applicable laws, rules, and regulations. If there are any changes to the use or to the structures existing on the Property, either in number, size, style, or kind, such change may become subject to further impact and other fees. Any other fees, existing at the time of application for service shall become due and owing at said point.

2.13. **Tap Fees.** Upon requesting service, Developer, its successors or assigns, including homeowners, as applicable, shall pay the water tap fees at the rate current and existing at the time of service, which fees may be adjusted by the BPW at any time.

2.14. **Usage Fees.** Developer, its successors or assigns, including homeowners, as applicable, shall be responsible for and subject to the BPW's normal usage charges for utility service at the time of connection, which rates may be subject to change in the future.

2.15. **Water Meters.** Developer shall install the water meter pit and the BPW shall install the water meter after payment is received for the applicable fees and charges.

2.16. **Fire Hydrants.** Developer shall, at its expense, install or cause to be installed on the Property a sufficient number of fire hydrants of such size and of such other specifications as are determined by the State Fire Regulations and as contained in the BPW-approved BPW Improvement Plans.

2.17. **Transfer of Ownership of the BPW Improvements and Easements to the BPW.** Prior to final acceptance under Section 2.10 herein of the BPW Improvements to be accepted by the BPW, Developer shall execute, or cause to be executed, such documents as the BPW shall reasonably request to transfer ownership of the BPW Improvements to, and to evidence ownership of, the BPW Improvements by BPW, free and clear of all liens, claims, encumbrances, and restrictions unless otherwise approved by the BPW in writing. Also prior to acceptance, Developer shall grant to the BPW all such reasonable and necessary easements as the BPW may require to install, operate, maintain, service, repair, and replace the BPW Improvements. Ownership by the BPW of the BPW Improvements for connections to residential dwellings shall terminate at the property line of the individual lots contained within the Property, except as otherwise shown on the Land Development Plan or the BPW Improvement Plans.

2.18. **Guarantee of the BPW Improvements.** Developer shall maintain and, as necessary, repair the BPW Improvements to be constructed by Developer until the complete BPW Improvements are accepted by the BPW. Additionally, Developer shall provide the BPW a construction guarantee for the correction of all defects and deficiencies in the BPW Improvements constructed or installed by Developer and accepted by the BPW that occur or become evident within one (1) year after final acceptance by the BPW of the complete BPW Improvements, provided such defect or deficiency is not caused by an action of the BPW. If any such defect or deficiency, not caused by the action of the BPW, occurs or becomes evident during such period, then Developer shall, within thirty (30) days after written demand from the BPW to do so, correct it or cause it to be corrected. If the BPW, in its sole discretion, has to complete an emergency repair, Developer shall fully reimburse the BPW the actual cost of said emergency repair. Developer shall provide a maintenance bond in the amount of ten-percent (10%) of the BPW-approved construction costs of the BPW Improvements or, in the alternative, deposit a sum equal to ten percent (10%) of the BPW-approved construction costs of the BPW Improvements in an escrow account the disposition of which shall be directed by the BPW, for a period of one (1) year from final acceptance by the BPW of the complete BPW Improvements. Upon expiration of the one (1) year maintenance bond period, the BPW shall promptly return the

maintenance bond. If the BPW Improvements are accepted in phases, the guarantee requirements of this Section shall apply to each individually accepted phase.

2.19. **Bond.** Developer shall, with BPW approval and before any work is started, put in escrow sufficient funds or provide a performance bond(s) or irrevocable letter(s) of credit, in an amount reasonably determined by the BPW to be 150% of the BPW-approved cost of the BPW Improvements. The escrow, performance bond, or irrevocable letter of credit may be provided by a third party on behalf of Developer if Developer so desires. Developer shall provide an estimate of the costs associated with the BPW Improvements for review, approval, and confirmation of the BPW-approved 150% performance bond(s) or irrevocable letter(s) of credit. If the BPW Improvements are completed in an incremental or phased manner, the escrowed funds, performance bond, or irrevocable letter of credit may be an amount reasonably determined by the BPW, in its sole discretion, to be 150% of the BPW-approved cost of the BPW Improvements to be constructed by Developer for a given phase. The escrowed funds, performance bond, or irrevocable letter of credit shall not be released until the BPW Improvements for the applicable phase are accepted by the BPW in accordance with Section 2.10 herein.

3. **Insurance Coverage.**

Developer or any site contractor(s) shall obtain and keep in force, until the successful completion of this Agreement, Contractors' Comprehensive General Liability Insurance including Contractual Liability Insurance with the below-referenced minimum coverages. The named insured shall be the Developer, the Developer's site contractor(s) and the BPW. The name of the Development must be included on the certificate of insurance. Construction shall not commence until insurance certificates are provided to the BPW. The insurance certificate shall be required no later than the pre-construction meeting. If insurance lapses for any reason, the BPW will coordinate with the agency having jurisdiction to ensure certificates of occupancy shall not be issued until insurance is in force. The BPW shall be notified in writing of any cancellation or change in insurance coverage no later than thirty (30) days prior to said cancellation or change.

- 3.1. Bodily Injury Liability - \$1,000,000 per person with an aggregate limit of \$3,000,000 per occurrence;
- 3.2. Property Damage Liability - \$3,000,000;
- 3.3. Hazards coverage (site contractor(s) only) (explosion, collapse, and underground);
- 3.4. Excess or Umbrella Liability - \$5,000,000.

4. **Environmental Protection Compliance.**

Developer shall comply with all federal, state, and local environmental laws and regulations to the extent that they are applicable to the Improvement Construction Plans.

5. **Failure to Complete or Maintain Improvements.**

5.1. **Site Management Corrective Measures.** Failure of Developer, or its site contractor(s), to properly and promptly install and maintain the BPW Improvements as required under this Agreement shall result in the following:

5.1(a). Notwithstanding any notification provision in this Agreement, the BPW, through the General Manager of the BPW or his designees, shall list deficiencies and shall notify Developer that the deficiencies must be corrected within a commercially reasonable specified time. Such notice may be effected by the most expeditious method as decided by the General Manager, including but not limited to, fax, hand delivery, regular mail, certified mail, telephone, or electronic mail. The BPW, through its designees, may notify Developer in advance of any proposed action, but failure of the BPW to do so will not affect Developer's or the BPW's rights or obligations hereunder.

5.1(b). Notwithstanding other remedies available in this Agreement, failure to achieve compliance by the date specified herein shall be cause for the BPW to take such action, as it or they deem appropriate, including but not limited to the right to correct the deficiency and draw all costs from the performance guarantee, seek reimbursement, setoff, or other remedy. The determination as to whether there is complete compliance with the notification rests solely with the BPW and shall be made in good faith.

5.2. **Demand for Completion of Improvements.** The BPW may demand that the BPW Improvements be installed or constructed prior to the time designated in the BPW rules and regulations, the Code, this Agreement, or other appropriate laws, rules, and regulations governing installation or construction where the BPW has reason to believe that Developer does not intend to complete the BPW Improvements within a reasonable time. The BPW shall provide Developer with a written demand that the BPW Improvements enumerated in the notice must be constructed within the time designated in the notice. If Developer fails to meet the terms of completion by the time designated in the notification, the BPW may use the proceeds from the performance guarantee to perform any work reasonable to install or construct the subject BPW Improvements and to transfer title to the applicable property if appropriate.

5.3. **Deteriorating or Unsafe Conditions.** If the condition of any BPW Improvements presents a health, safety, or welfare risk, the BPW may take immediate corrective action without notice to Developer, provided that the BPW provides notice to the Developer as soon as practicable. The BPW may seek reimbursement, setoff, or use the proceeds from the performance guarantee to perform any work necessary to remove or correct the condition.

6. **Remedies.**

6.1. If Developer fails in any manner to perform and carry out each and all of the terms, covenants and conditions of this Agreement, Developer shall be in default and notice in writing shall be given to Developer of the default by the BPW. If Developer fails to cure the default within the commercially reasonable time as may be stated in the notice, the BPW may, at



its option, terminate and cancel the Agreement or any part thereof, as appropriate, and, at the expense, including all actual costs, attorneys' fees and professional fees, of Developer and its surety, complete the BPW Improvements, as applicable, or cause them to be completed.

6.2. In the event of termination, all monies deposited by Developer under the terms of this Agreement shall be retained by the BPW, but the retention shall not release Developer or its surety from liability for Developer's default. In such event, however, Developer and its surety will be credited with the amount of money so retained toward any amount owed by Developer. If the aggregate amount of monies deposited by Developer exceeds the aggregate amount of all liabilities of Developer to the BPW, any excess monies deposited shall be returned to Developer.

6.3. Termination pursuant to Section 6.1 shall not affect or terminate any of the rights of the BPW as against Developer or its surety then existing, or which may accrue because of the default, and the above provision shall be in addition to all other rights and remedies available to the BPW under the law.

## 7. **Enforcement.**

7.1. **Additional Remedies.** In addition to any rights stated in this Agreement and the right to draw proceeds from the performance guarantee, if Developer fails to complete the BPW Improvements in conformance with this Agreement or violates or fails to perform any material term or provision of this Agreement beyond any applicable notice and cure period, the BPW may also seek any relief available at law or equity including declaratory relief, equitable relief, specific performance and monetary damages, including actual professional fees and attorneys' fees associated with the enforcement of this Agreement incurred by the BPW. In addition, if Developer is in violation of any provision of this Agreement beyond any applicable notice and cure period, Developer authorizes the BPW, in its sole discretion, to coordinate with the agency having jurisdiction to ensure the suspension of issuance of certificates of occupancy or use for all structures in the Development, as well as ensure the refusal of said jurisdiction to issue new building permits for the Development.

7.2. **Limitation.** If the BPW violates or fails to perform any term or provision of this Agreement, Developer shall be limited to a cause of action for *mandamus*; provided, however, that Developer reserves the right to assert any claim or cause of action against the BPW based solely upon the alleged willful misconduct or grossly negligent acts of the BPW.

7.3. **Right of Entry.** Developer shall allow representatives for the BPW access to all parts of the Property undergoing development or involving construction of any BPW Improvements included in this Agreement. Additionally, in the event Developer fails or declines to complete the required BPW Improvements in accordance with the provisions herein contained and beyond any applicable cure period, Developer hereby grants unto each of the BPW and its respective agents, assigns, and designees, the right, privilege and authority to enter the Development in order to complete the BPW Improvements as provided herein. The right of entry provided herein shall occur upon prior written notice to the Developer and at reasonable hours and shall be done in a manner that minimizes disturbance to the Property.

8. **Administrative Appeal.**

Developer may appeal to the BPW Board of Directors for relief prior to the initiation of any enforcement action under the terms of this Agreement concerning the BPW Improvements. However, any such appeal must be noticed to the BPW Board of Directors within seven (7) business days of the date of notice from the BPW that action is to be taken.

9. **Binding Effect & Obligations Upon Sale and Transfer.**

9.1. **Successors in Interest.** This Agreement is for the benefit of the BPW and Developer. Except as otherwise provided, this Agreement shall be binding upon the respective parties to it and upon their successors and assigns; provided, however, that this Agreement shall not be assigned without the prior consent of the BPW, which consent shall not be unreasonably withheld, conditioned, or delayed. Developer has the right, subject to the BPW's prior consent, to partially assign the Agreement with respect to portions of the Property being transferred and conveyed for development. The BPW acknowledges and agrees that Developer's lender shall have the right to act as Developer's successor if Developer is in default under its loan and as successor in interest Lender shall have all of Developer's rights and obligations under this Agreement. Developer has the duty to inform any such successors or assigns of the obligations under this Agreement. "Successor" shall include any person, firm, corporation or other entity that owns, legally or equitably, any land within the Development but, unless provided otherwise herein, shall not include persons or entities purchasing a home or lot for the purpose of residing in said home or leasing the residential property to persons residing in said home. If the BPW has consented to an assignment of the rights and terms of this Agreement, Developer shall notify the BPW upon the sale or transfer of any interest in the Development to any other party or parties subject to procedures provided in the BPW rules, and regulations. Developer shall inform the BPW of the identity of the new party or parties obligated by the terms of this Agreement within thirty (30) days of any sale or transfer.

9.2. **Homebuilders and General Contractors.** Developer has the duty to provide notice to any such registered homebuilder or general contractor performing construction activity in this Development of the contents of this Agreement by providing any such registered home builder or general contractor with a copy of the Agreement prior to the construction activity.

9.3. **Third Party Rights.** Nothing herein creates any rights in third parties to enforce the provisions of this Agreement.

9.4. **Recorded Agreement.** The BPW shall, at Developer's sole cost and expense, record this fully executed Agreement with the Office of the Recorder of Deeds in and for Sussex County, State of Delaware following its execution by the parties and approval by the BPW.

10. **Miscellaneous.**

10.1. **Cooperation: Challenges to Validity of Agreement.** In the event of any legal or equitable action or other proceeding instituted by any person or entity challenging the validity of

any provision of this Agreement, Developer shall indemnify and save the BPW and its respective officers, agents, and employees harmless against all claims for damages to persons or property including any and all costs, expenses, attorneys' fees, and liability incurred by the BPW. The BPW may, in its sole discretion, participate in the defense of any such action but in no way shall such participation relieve Developer of its obligation under this Section.

10.2. **Hold Harmless and Indemnification.** Developer shall hold harmless the BPW and its respective officers, agents, employees, and representatives from liability for damage or claims for personal injury including death and property damage which may arise from the direct or indirect operations of Developer or those of its contractors, subcontractors, agents, employees, or other persons acting on its behalf which relate to the Development and/or BPW Improvements. Upon the BPW's request, Developer agrees to and shall defend the BPW, and its respective officers, agents, employees, and representatives, from actions for damages and claims caused or alleged to have been caused by reason of Developer's activities in connection with the Development and/or construction of the BPW Improvements. Developer hereby agrees to indemnify the BPW against all claims, expenses (including attorneys' fees), costs, damages, and liability as a result of loss or injury arising out of or in connection with the Development and/or construction of the BPW Improvements.

10.3. **Waiver.** Either party shall not be deemed to waive any rights unless such waiver is in writing and signed by the designee for the waiving party authorized to exercise such right.

10.4. **Vested Rights.** The Delaware common law doctrine of vested rights shall determine the vested rights, if any, of Developer.

10.5. **Entire Agreement.** This Agreement, in addition to any referenced plans, estimates, performance guarantees, and attachments, represents the entire agreement between the parties.

10.6. **Severability.** If any provision of this Agreement shall be deemed or held to be invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect any other provision of this Agreement which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Agreement are hereby declared to be severable.

10.7. **Immunity.** No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by the BPW of the provisions of the Delaware Tort Claims Act or any other statutory or common law limiting municipal liability.

10.8. **Sunsetting.** If the Land Development Plan is subject to review pursuant to any sunset provisions of the Code, or any other applicable laws, rules, and regulations, the BPW reserves the sole discretion to modify this Agreement.

10.9. **Effective Date.** This Agreement shall be of no force or effect until the Agreement is recorded in the Office of the Recorder of Deeds in and for Sussex County, at

Georgetown, State of Delaware, following all necessary Sussex County and BPW approvals. The effective date of this Agreement shall be the recordation date of this Agreement.

10.10. **Signature.** This Agreement may be executed in counterparts.

10.11. **Governing Law.** This Agreement is made under and shall be governed in all respects by the Laws of the State of Delaware. Any litigation under this Agreement shall be initiated in the court of appropriate jurisdiction in the State of Delaware.

10.12. **Notices.** All notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addresses thereof (1) when delivered in person on a business day at the address set forth below or (2) on the third business day after being deposited in any main or branch United States post office, for delivery by properly addressed, postage prepaid, certified or registered mail, return receipt requested, at the address set forth below.

Notices and communications to the Developer shall be addressed to, and delivered at, the following addresses:

Mitchell's Corner, LLC  
4750 Owings Mills Blvd.  
Owings Mills, MD 21117

*with a copy to:*  
Morris James LLP  
107 W. Market Street  
Georgetown, Delaware 19947

Notices and communications to the BPW shall be addressed to, and delivered at, the following addresses:

Board of Public Works  
107 Franklin Street  
Lewes, Delaware 19958  
Attention: General Manager

*with a copy to:*  
Connolly Gallagher LLP  
267 East Main Street  
Newark, Delaware 19711

By notice complying with the requirements of this Section, each party shall have the right to change the address or addresses or both for all future notices and communications to such party, but no notice of a change of address shall be effective until actually received.

10.13. **Time of Essence.** Except as otherwise provided herein, time is of the essence in the performance of all terms and provisions of this Agreement.

10.14 **Amendments.** This Agreement may be amended from time to time. No amendments to this Agreement shall be effective unless in a written agreement signed by Developer and the BPW.

10.15. **Conflict.** It is agreed by the parties hereto that, in the event of any conflict between the terms of this Agreement, and the provisions of the Code or BPW rules and

regulations and any other applicable law, rules, and regulations, the provisions of the Code or BPW rules and regulations, as applicable, shall be governing and controlling over the terms of this Agreement.

10.16. **Headings.** The headings herein are inserted as a matter of convenience only, and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.

10.17. **Attorney's Fees.** Within five (5) days of the effective date of this Agreement, Developer agrees to reimburse the BPW \$2,000 in connection with the BPW's attorneys' fees and expenses incurred in the drafting, preparation, and review of this Agreement.

[SIGNATURE PAGES TO FOLLOW]

**IN WITNESS WHEREOF**, the parties have executed this Agreement on this \_\_\_\_ day of \_\_\_\_\_ A.D. 202\_.

Witness

\_\_\_\_\_

**MITCHELL'S CORNER, LLC**

By: \_\_\_\_\_(SEAL)

Name:

Title:

**THE BOARD OF PUBLIC WORKS OF THE CITY OF LEWES**

By: \_\_\_\_\_(SEAL)

Thomas Panetta, President

Attest: \_\_\_\_\_

D. Preston Lee, Secretary



**STATE OF DELAWARE** :  
: **ss.**  
**COUNTY OF SUSSEX** :

**BE IT REMEMBERED**, that on this \_\_\_ day of \_\_\_\_\_, 202\_, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, [NAME], Authorized Member of **MITCHELL’S CORNER, LLC**, a Delaware limited liability company, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his act and deed, and the act and the deed of the said limited liability company.

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

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Type or Print Name of Notary  
Commission Expires:



**EXHIBIT A**

**Plat Showing Approximate Location of Saltwater Monitoring Well and Easement**

