

September 26, 2024

RE: Resolution 24-006

Resolution 24-006 was approved and adopted on September 25, 2024, at the regularly scheduled Board meeting. After the meeting, it was identified that the maintenance bond amounts reflected 10% of the performance bond amounts instead of 10% of the construction cost amounts. The updated maintenance bond amounts are listed below for each utility:

Water Maintenance Bond: \$51,038.21

Sewer Maintenance Bond: \$29,451.41

Stormwater Maintenance Bond: \$65,547.07

Electric Maintenance Bond: \$100,171.32

Thanks,



Austin Calaman

General Manager

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Resolution No. 24-00

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BOARD OF
PUBLIC WORKS OF THE CITY OF LEWES ACCEPTING THE UTILITY
IMPROVEMENTS FOR THE OLDE TOWN AT WHITE'S POND
DEVELOPMENT**

WHEREAS, Section 4.1, *among other provisions*, of the Charter for the Board of Public Works of the City of Lewes (the "Lewes BPW"), being Chapter 10, Volume 77, Laws of Delaware, as amended (the "Lewes BPW Charter"), grants the Lewes BPW authority, responsibility, supervision, and control over current or future utility systems established within the Lewes BPW Service Area; and

WHEREAS, Section 1 of the Lewes BPW Charter defines the Lewes BPW Service Area as "the corporate limits of the City of Lewes, the territory beyond such limits authorized in [the Lewes BPW Charter], and any franchised service area"; and

WHEREAS, Section 4.20 of the Lewes BPW Charter more specifically authorizes the Lewes BPW to supply utility services to properties located within two (2) miles of the corporate limits of the City of Lewes; and

WHEREAS, on September 12, 2022, the Lewes BPW entered into a Development Agreement with Olde Town Lewes, LP ("Developer") concerning utility infrastructure supporting a proposed residential development to be known as "Olde Town at White's Pond" (this Development Agreement hereinafter referred to as the "Olde Town at White's Pond Development Agreement"); and

WHEREAS, the Olde Town at White's Pond Development Agreement, among other things, obligated Developer to construct the utility infrastructure consistent with the approved construction plans and the Lewes BPW specifications and regulations; and

WHEREAS, Developer has requested that the Lewes BPW initiate the process for final acceptance of the utility infrastructure for the Olde Town at White's Pond Development, all as specified in the approved plans for the Olde Town at White's Pond Development dated June 2020 (the "Olde Town at White's Pond Utilities"); and

WHEREAS, Section 2.5 of the Olde Town at White's Pond Development Agreement provides that the Lewes BPW will not accept any dedication of utility improvements until written approval of the condition of the utility improvements is provided and an easement, if applicable, is provided to the BPW;

WHEREAS, George, Miles & Buhr, LLC ("GMB"), the Lewes BPW engineering firm, based in part on consultation with Lewes BPW staff concerning the electric utility improvements, provided written approval of the condition of the Olde Town at White's Pond Utilities in a letter

47 dated September 23, 2024 (GMB’s September 23, 2024 letter is attached hereto and incorporated
48 herein as Exhibit “A”); and
49

50 **WHEREAS**, relevant easements concerning the Olde Town at White’s Pond Utilities were
51 either previously approved and recorded or, in the case of one pending easement, has been
52 approved and is awaiting signature and recordation pending Lewes BPW approval, said pending
53 easement being attached hereto and incorporated herein as Exhibit “B” (the “Pending Olde Town
54 at White’s Pond Easement”); and
55

56 **WHEREAS**, Section 2.10(e) of the Olde Town at White’s Pond Development Agreement
57 provides that Developer must provide final plans and as-built drawings in electronic AutoCad
58 format and PDF format as part of the Lewes BPW final inspection and approval process; and
59

60 **WHEREAS**, GMB confirmed in its September 23, 2024 letter that Developer provided the
61 required final plans and as-built drawings for the Olde Town at White’s Pond Utilities; and
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63 **WHEREAS**, Developer has paid all required inspection and review fees related to the Old
64 Town at White’s Pond Utilities; and
65

66 **WHEREAS**, Developer must provide maintenance bonds in the amount of \$76,557.31
67 (i.e., ten-percent (10%) of the construction costs of the water utilities), \$44,177.12 (i.e., ten-percent
68 (10%) of the construction costs of the sewer utilities), \$98,320.60 (i.e., ten-percent of the
69 construction costs of the stormwater utilities), and \$150,256.98 (i.e., ten-percent of the
70 construction costs of the electric utilities) as required under Section 2.20 of the Olde Town at
71 White’s Pond Development Agreement (the “Olde Town at White’s Pond Maintenance Bond”);
72 and
73

74 **WHEREAS**, the Lewes BPW desires to accept Developer’s dedication of the Olde Town
75 at White’s Pond Utilities into the Lewes BPW utility system.
76

77 **NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE**
78 **LEWES BOARD OF PUBLIC WORKS, IN SESSION MET THIS 25TH DAY OF**
79 **SEPTEMBER, 2024, THAT:**
80

81 **Section 1.** The Lewes BPW hereby accepts Developer’s dedication of the Olde Town
82 at White’s Pond Utilities into the Lewes BPW utility system and assumes all operational and
83 routine maintenance costs thereof from and after the date on which the Pending Olde Town at
84 White’s Pond Easement is recorded subject to Developer’s continuing obligations under the Olde
85 Town at White’s Pond Development Agreement.
86

87 **Section 2.** This Resolution is conditioned on: (1) Developer providing the Olde Town
88 at White’s Pond Maintenance Bond; and (2) the Developer recording the Pending Olde Town at
89 White’s Pond Easement.
90

91 **Section 3.** The Olde Town at White’s Pond Maintenance Bond must remain in place
92 for a period of one year from the date on which both the Olde Town at White’s Pond Maintenance

93 Bond is received by the Lewes BPW and the Pending Olde Town at White's Pond Easement is
94 recorded.

95
96 **Section 4.** Pursuant to Section 2.20 of the Olde Town at White's Pond Development
97 Agreement, Developer is obligated to provide a construction guarantee for the Olde Town at
98 White's Pond Utilities for a period of one year from the date on which both the Olde Town at
99 White's Pond Maintenance Bond is received by the Lewes BPW and the Pending Olde Town at
100 White's Pond Easement is recorded.

101
102 **Section 5.** This Resolution shall take effect immediately upon its adoption by the
103 Board of Directors of the Lewes Board of Public Works.

104
105 Adopted by the Board of Directors
106 of the Lewes Board of Public Works

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108
109 _____

110
111 I, D. Preston Lee, P.E., Secretary of the Board of Directors of the Board of Public Works
112 of the City of Lewes, do hereby certify that the foregoing is a true and correct copy of the
113 Resolution passed by the Board of Directors of the Lewes BPW at its meeting on September 25,
114 2024, at which meeting a quorum was present and voting throughout and the same is still in full
115 force and effect.

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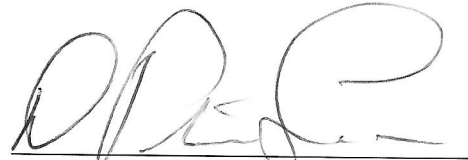

Secretary

Exhibit "A"



GEORGE, MILES & BUHR, LLC



ARCHITECTS
ENGINEERS

110 ANGLERS ROAD
UNIT 102
LEWES, DE 19958
PH: 302.628.1421
PH: 800.789.4462
lewes@gmbnet.com

SALISBURY
BALTIMORE
SEAFORD
LEWES
OCEAN VIEW

www.gmbnet.com



September 23, 2024

Board of Public Works
107 Franklin Avenue
Lewes, DE 19958

Attn: Mr. Austin Calaman
General Manager

Re: Olde Town at Whites Pond
Lewes, Delaware
Final Acceptance
GMB File No. R190021

Dear Mr. Calaman:

This letter is issued to provide the status of the utility work in the Olde Town at White's Pond Development project located off Theodore C. Freeman Memorial Highway. The scope of the utility work is specified by the approved drawings dated June 2020.

GMB can confirm that all punchlist items have been completed and the water, sewer and storm water utilities have been installed per the LBPW standard specifications with the exception of flushing of the stormwater pipes. George & Lynch is scheduling this work to be completed, once flushing is performed, GMB will verify the work is completed and send a verification letter to the BPW. After consulting with BPW staff, it is also GMB's understanding that the BPW has reviewed the as built electrical plans, ensured the electric utilities have been installed per the LBPW standard specifications and are ready for acceptance. GMB can also confirm that all final plans and as-built drawings required under the Development Agreement have been submitted, reviewed and approved. As-builts have been submitted in digital format as required. Release of liens have also been received from the Developer.

Please note there is a Maintenance Bond requirement of ten percent of construction costs for water, sewer, stormwater and electric. Ten percent of water construction costs are \$76,557.31, ten percent of sewer construction costs are \$44,177.12, ten percent of stormwater costs are \$98,320.60 and ten percent of electric costs are \$150,256.98. A Maintenance Bond in these amounts will be required for each utility.

Recommendation of Acceptance

Based on the notes above, GMB recommends that the improvements are ready for acceptance by the LBPW. Please note that a separate acceptance will be sent to the City regarding its infrastructure once all City punchlist items are addressed.

JAMES H. WILLEY, JR., P.E.
CHARLES M. O'DONNELL, III, P.E.
A. REGGIE MARINER, JR., P.E.
JAMES C. HOAGESON, P.E.
STEPHEN L. MARSH, P.E.
DAVID A. VANDERBEEK, P.E.
ROLAND E. HOLLAND, P.E.
JASON M. LYTLE, P.E.
CHRIS B. DERBYSHIRE, P.E.
MORGAN H. HELFRICH, AIA
KATHERINE J. MCALLISTER, P.E.
W. MARK GARDOCKY, P.E.
ANDREW J. LYONS, JR., P.E.

PETER A. BOZICK, JR., P.E.
JUDY A. SCHWARTZ, P.E.
W. BRICE FOXWELL, P.E.

JOHN E. BURNSWORTH, P.E.
VINCENT A. LUCIANI, P.E.
AUTUMN J. BURNS
CHRISTOPHER J. PFEIFER, P.E.
BENJAMIN K. HEARN, P.E.

If you have any questions or comments, please contact me at dculver@gmbnet.com or 302-381-0282.

Sincerely,



Dean Culver
Construction Services Group Leader

cc: Connolly Gallagher, LLP
Attn: Michael J Hoffman
City of Lewes
Attn: Janelle Cornwell
BPW
Attn: Robin Davis

Exhibit "B"

Tax Parcel No.: 335-8.00-46.00 p/o

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

Document # 2024000033533 BK: 6174 PG: 163
On 9/25/2024 at 8:45:17 AM
RECORDER OF DEEDS Alexandra Reed Baker
Sussex County
Consideration: \$0.00 County/Town: \$0.00
State: \$0.00 Total: \$0.00 Doc Surcharge Paid

UTILITY AND ACCESS EASEMENT AND MAINTENANCE AGREEMENT

This UTILITY AND ACCESS EASEMENT AND MAINTENANCE AGREEMENT (this "Agreement") is made this 19th day of September 2024 and between **OLDE TOWN LEWES, LP**, a Delaware limited partnership, its successors and assigns ("Grantor"), and **BOARD OF PUBLIC WORKS OF THE CITY OF LEWES**, a chartered utilities board of the State of Delaware, its successors and assigns (hereinafter referred to as the "Grantee" or the "BPW"). The Grantor and Grantee are collectively referred to herein as the "Parties."

BACKGROUND

WHEREAS, Grantor is the fee owner of that certain lot, piece, or parcel of land with improvements thereon, situate within the municipal boundaries of the City of Lewes, Sussex County and State of Delaware, being identified on the tax maps of Sussex County Tax Parcel Number 335-8.00-46.00 (the "White's Pond Parcel"), as a portion of said parcel is shown on that Record Plan entitled Olde Town at White's Pond, prepared by Davis, Bowen & Friedel, Inc., dated June 2020, and attached in relevant part hereto as **Exhibit A** and incorporated herein by reference (the "Easement Exhibit"); and

WHEREAS, in connection with the access for and construction, use, and maintenance of certain electric utility improvements, the Grantor and Grantee desire to enter into this Agreement to grant to the BPW the easements for utilities defined below and to provide for the maintenance of the applicable area in a manner defined below.

AGREEMENT

NOW, THEREFORE, in consideration of the sum of Ten and NO/100 Dollars (\$10.00) and the mutual covenants, promises, stipulations and agreements contained herein, the sufficiency of which is acknowledged by the Parties, the Grantor and Grantee hereby agree as follows:

1. Easement. Grantor hereby grants unto the Grantee, its employees, contractors, agents, servants, licensees and invitees, successors and assigns, (collectively, the "Permittees") a non-exclusive, uninterrupted, permanent and perpetual utility easement and right of way in, to, upon, under, over and through the areas marked on **Exhibit A** as "Revised Easement to Cover Underground Utilities Lines" (the "Open Space D Easement") and "New Access Easement for BPW to Cover Underground Electric Lines from Existing Pole" (the "Open Space C Access Easement"), the Open Space D Easement consisting of approximately 25,680 square feet, and as further described in **Exhibit B** (the "Open Space D Easement Area"), and the Open Space C Access Easement consisting of approximately 1,383 square feet, and as further described in **Exhibit C** (the "Open Space C Access Easement Area") (collectively, the Open Space D Easement Area and Open Space C Access Easement Area are referred to herein as the "Easement Area"), at any time that Grantee may see fit for the purpose of accessing, constructing, maintaining, improving, installing, operating, inspecting, repairing, replacing, modifying, enlarging, renewing, or removing utilities and appropriate facilities, accessories, and appurtenances, including but not limited to electric utility infrastructure and any related lines, poles, and other improvements (the "Utility Facilities"). These Easements and the Utility Facilities shall remain personal to the BPW. The BPW shall have the rights of ingress, egress, regress, and access in, to, upon, under, over, and through the Easement Area, as necessary for the enjoyment of the rights granted herein.

2. No Obstructions. The Grantor shall not erect, cause, or permit to be caused, the erection or growth of, or permit or suffer to remain upon the Easement Area, any growth, building, structure, or other object or improvement extending or encroaching into, upon or over such area in such manner as to impede the use by the Grantee and its Permittees of the Easement Area under this Agreement. In the event the Grantor defaults in the performance of any of the obligations required to be observed or performed pursuant to the terms of this Agreement, the BPW shall have the right, but not the obligation, upon the expiration of thirty (30) days' written notice to Grantor to cure such default at the expense of Grantor, provided that the expense is reasonable and that Grantor has not, prior to the expiration of such 30-day notice period, cured the breach or commenced to cure the breach and is diligently continuing such efforts to cure the same. Notwithstanding the provisions of this Section 2, in the event of emergency conditions constituting a default hereunder, which will include without limitation, in the BPW's reasonable discretion, a default of such a nature that impairs the BPW's necessary access to the Easement Area, the BPW shall have the right to cure such default upon such advance notice as is reasonably practical under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as practical thereafter. To effectuate any such cure, the BPW shall have the right to enter upon the White's Pond Parcel to perform any necessary work or furnish any necessary materials or services to cure the default as the BPW shall deem reasonably necessary or appropriate.

3. Maintenance of Easement Area. All costs and expenses necessary for the maintenance and repair of the Utility Facilities (collectively, "Maintenance") shall be undertaken by the Grantee. Regular lawn mowing and maintenance of the Easement Area shall be the responsibility of the Grantor. All Maintenance shall be undertaken, performed and completed using quality materials and in a good and workmanlike manner by qualified, reputable and properly licensed and bonded contractors and subcontractors. If the BPW disturbs the Easement Area or other portions of the Grantor's property, the BPW agrees to restore the damaged area to substantially the same condition as existed prior to the BPW's exercise of its rights hereunder. Notwithstanding the foregoing, the BPW shall have no obligation to restore any structures or other improvements placed within the Easement Area.

4. Governing Law; Severability; Amendments. This Agreement shall be governed by and construed in accordance with Delaware law. If any term or provision, or any portion thereof, of this Agreement, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law. No amendment to this Agreement shall be valid unless such amendment is in writing and executed by the Parties.

5. Successors; Enforcement; No Waiver. The covenants, easements, and restrictions created herein shall be deemed to be covenants and easements running with the Grantor's land, and shall be binding upon, their respective heirs, executors, administrators, legal representatives, tenants, licensees, invitees, successors, and assigns. The BPW's rights under this Agreement are personal and not appurtenant to other property besides that which is depicted on the Record Plan but shall be binding upon BPW's successors and/or assigns. Provided that the notice and opportunity to cure provisions in Section 2 have been complied with, the Parties shall have the right, but not the obligation, to enforce this Agreement by bringing an appropriate action(s) in law and/or equity including, but not limited to, the right to obtain specific performance of the terms of this Agreement. No waiver by any party of any default under this Agreement shall be effective or binding on such party unless made in writing and no such waiver shall be implied from any omission by a party to take any action in respect to any default occurring hereunder.

NO TITLE SEARCH REQUESTED OR PERFORMED

NO SURVEY REQUESTED OR PERFORMED

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and sealed the day and year above first written.

OLDE TOWN LEWES, LP (Grantor)

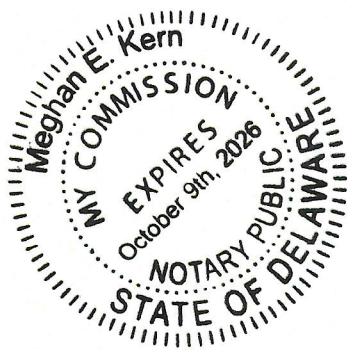
[Signature]

By: [Signature] (SEAL)
Nick Hammonds, Authorized Representative
Douglas A. Motley

STATE OF DELAWARE)
) SS.
COUNTY OF SUSSEX)

BE IT REMEMBERED, that on this 19th day of September 2024,
personally came before me, the Subscriber, a Notary Public for the State and county aforesaid,
Douglas A. Motley ~~Nick Hammonds~~, Authorized Representative for Olde Town Lewes, LP, party to this Agreement,
known to me personally to be such, and acknowledged this to be their act and deed.

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



[Signature]
Notary Public
Name: Meghan E Kern
My Commission Expires: 10/9/2026

WITNESS:

BOARD OF PUBLIC WORKS OF THE CITY OF LEWES (Grantee)

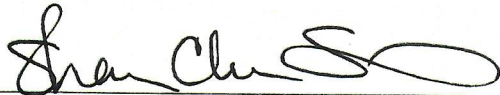


By:  (SEAL)
Thomas S. Panetta, President

STATE OF DELAWARE)
) SS.
COUNTY OF SUSSEX)

BE IT REMEMBERED, that on this 23rd day of September, 2024, personally came before me, the Subscriber, a Notary Public for the State and county aforesaid, Thomas S. Panetta, President of the Board of Public Works of the City of Lewes, a Delaware municipal corporation and a political subdivision of the State of Delaware, party to this Agreement, known to me personally to be such, and acknowledged this to be his act and deed and the act and deed of the said municipal corporation.

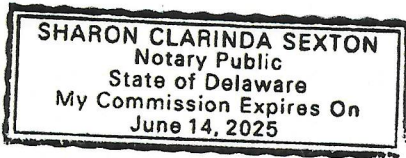
GIVEN under my Hand Seal of Office, the day and year aforesaid.



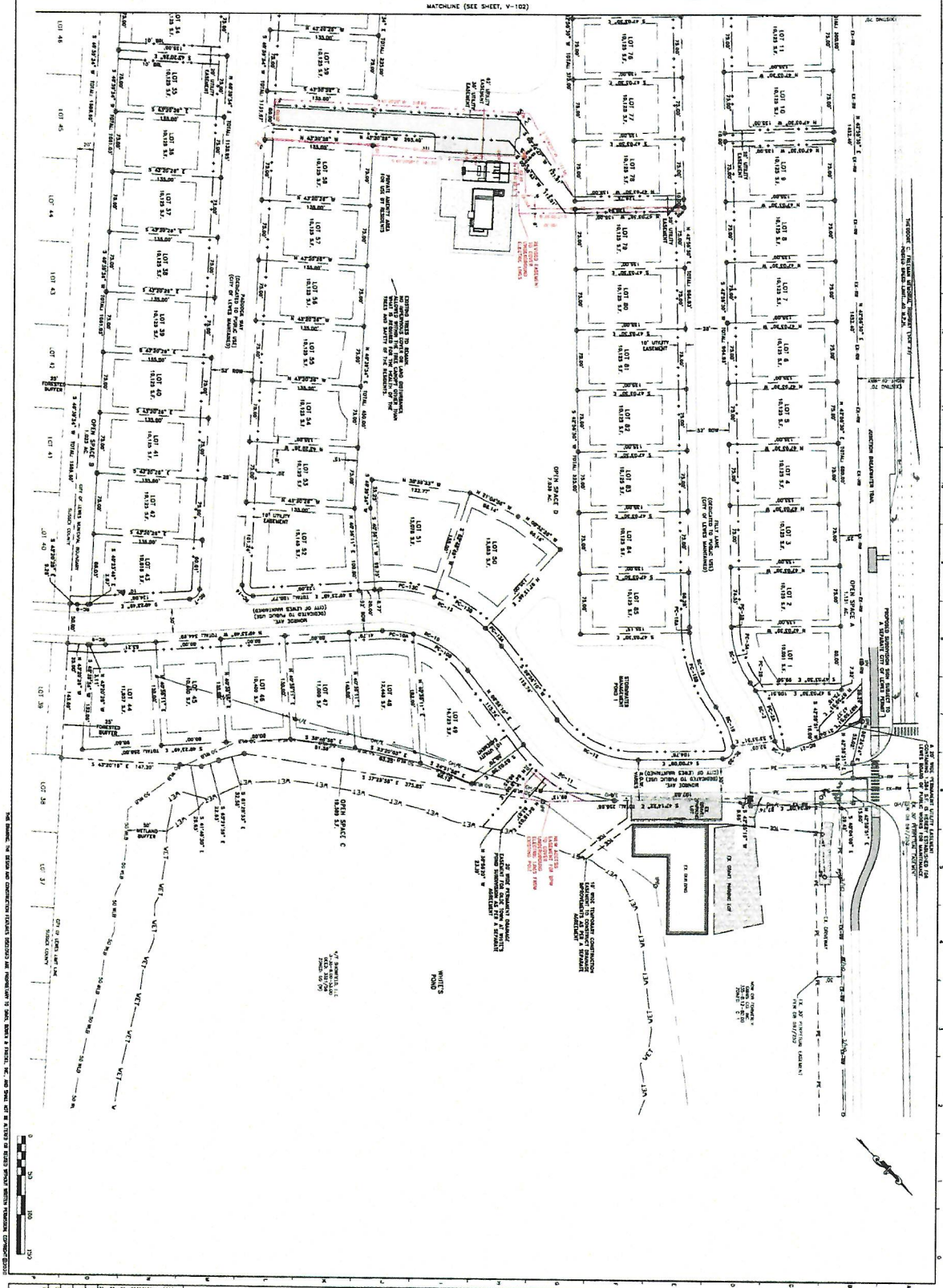
Notary Public

Name: Sharon Clarinda Sexton

My Commission Expires: June 14, 2025



MATCHLINE (SEE SHEET, V-102)



V-103

Project No.	22810037
Client	AS NOTED
Date	JUN, 2004
Scale	AS NOTED
Author	TJL
Checker	
Reviewer	
Approved	
2004-08-20	003
2004-08-20	004
2004-08-20	005
2004-08-20	006
2004-08-20	007
2004-08-20	008
2004-08-20	009
2004-08-20	010
2004-08-20	011
2004-08-20	012
2004-08-20	013
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2004-08-20	015
2004-08-20	016
2004-08-20	017
2004-08-20	018
2004-08-20	019
2004-08-20	020

OLDE TOWN AT WHITE'S POND
LEWES AND REHOBOTH HUNDRED
CITY OF LEWES, SUSSEX COUNTY, DELAWARE

DAVIS BOWEN & FRIEDEL, INC.
 ARCHITECTS ENGINEERS SURVEYORS

RECORD PLAN

LEGAL DESCRIPTION
OLDE TOWN AT WHITE'S POND
TAX MAP 335-8.00-46.00
OPEN SPACE D EASEMENT

September 9, 2024

ALL that piece or parcel of land, hereinafter described, situate, lying and being on the northwesterly side of Paddock Way, the southeasterly side of Filly Lane, and being located in the City of Lewes, Lewes & Rehoboth Hundred, Sussex County, Delaware, being part of Parcel 46.00, as shown on an unrecorded plat completed by Davis Bowen & Friedel, Inc., dated September 2024; said piece or parcel being more particularly described as follows:

BEGINNING at point formed along the southerly line of Lot 58, with the northwesterly line of a 10' utility easement, as recorded in the Office of the Recorder of Deeds in and for Sussex County and the State of Delaware; thence,

- 1) running with said 10' utility easement, South 46 degrees 39 minutes 34 seconds West 50.00 feet to a point, thence running,
- 2) through subject parcel, the following 2 courses and distances, North 43 degrees 20 minutes 26 seconds West 316.65 feet to a point, thence running,
- 3) North 15 degrees 42 minutes 31 seconds East 117.58 feet to a point, thence running,
- 4) through Lot 78, North 47 degrees 03 minutes 30 seconds West 126.74 feet to a point on the southeasterly side of a 10' utility easement, thence,
- 5) continuing through Lot 78 and in part with running through subject parcel, North 42 degrees 56 minutes 30 seconds East 20.00 feet to a point along the southwesterly line of Lot 79, thence running,
- 6) through said Lot 79, South 47 degrees 03 minutes 30 seconds East 195.00 feet to a point, thence running,
- 7) through subject parcel, the following 2 courses and distances, South 42 degrees 56 minutes 30 seconds West 62.85 feet to a point, thence running,
- 8) South 43 degrees 20 minutes 26 seconds East 181.23 feet to a point on the northwesterly line of Lot 58, thence running,

9) with Lot 58, the following 2 courses and distances, South 46 degrees 39 minutes 34 seconds West 12.50 feet to a point, thence running,

10) South 43 degrees 20 minutes 26 seconds East 125.00 feet to the point and place of beginning; **CONTAINING** 25,680 square feet of land, more or less.

LEGAL DESCRIPTION
OLDE TOWN AT WHITE'S POND
TAX MAP 335-8.00-46.00
OPEN SPACE C ACCESS EASEMENT

September 9, 2024

ALL that piece or parcel of land, hereinafter described, situate, lying and being on the easterly side of Monroe Avenue, and being located in the City of Lewes, Lewes & Rehoboth Hundred, Sussex County, Delaware, being part of Parcel 46.00, as shown on an unrecorded plat completed by Davis Bowen & Friedel, Inc., dated September 2024; said piece or parcel being more particularly described as follows:

BEGINNING at point formed along the easterly line of a 10' utility easement, being 10' from the westerly line of subject parcel, as recorded in the Office of the Recorder of Deeds in and for Sussex County and the State of Delaware; thence,

- 1) running through subject parcel and running with said 10' utility easement, with a curve to the left having a radius of 186.00 feet, an arc length of 70.98 feet, a chord bearing and distance of North 14 degrees 59 minutes 46 seconds West 70.55 feet to a point, thence running,
- 2) through subject parcel, the following 4 courses and distances, South 47 degrees 14 minutes 22 seconds East 52.35 feet to a point, thence running,
- 3) South 37 degrees 29 minutes 38 seconds East 25.17 feet to a point, thence running,
- 4) South 52 degrees 30 minutes 22 seconds West 18.31 feet to a point, thence running,
- 5) South 85 degrees 56 minutes 08 seconds West 21.03 feet to the point and place of beginning; **CONTAINING** 1,383 square feet of land, more or less.