

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 \_\_\_\_ 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

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 1.79 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 0.373 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 (0.236 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 Section

40.33.300 of the UDC in effect at the time of the execution of this Declaration, which pursuant to the provisions of Section 40.05.050K of the UDC excludes the square footage of parking structures; however, nothing herein shall be construed as permitting the construction of garages the footprint of which is not included in the overall 1.79 acre limitation set forth above for all buildings.

3. Building Set-Back. The New Building shall not be closer than 90 feet to the right of way line for the Montchanin Road right-of-way, as shown on the attached Compromise Plan and shall be accessed by the existing entrance off of Montchanin Road. The attached Compromise Plan establishes a “Building Limitation Line” so that no expansion and/or replacement of the Existing Building or any part thereof, or construction of any new building shall be closer to Brecks Lane or to the adjoining property owned by the Raskob Foundation, than the Building Limitation Line. No expansion or replacement of the existing cooling tower shall be closer to or more visible from Brecks Lane. In addition, any expansion of the Existing Building or construction of an additional building, other than the New Building, shall occur only within the area identified as “Buildable Area” on the attached Exhibit “B”.

4. Rezoning. The two acre parcel created abutting Montchanin Road and Route 141 which serves as the site of the New Building, as shown on the Compromise Plan, and which has been rezoned from Office Regional, “OR”, to Commercial Neighborhood, “CN” to accommodate the New Building; shall nevertheless not be used for any purpose other than offices or uses accessory thereto, unless all mortgages or other financing liens against the Property at the time of such rezoning and at the time of recordation of this Declaration are and shall remain subordinate to this Declaration. The New Building, proposed as a drive through facility, shall not be used for a drive through restaurant, gas station or convenience store, tavern, bar not incidental to a restaurant, or other potentially nuisance uses such as tattoo parlors and arcades. Except for this rezoning of said site for the New Building, the Property, other than the newly rezoned parcel, may not be used for any purpose other

than for offices and uses accessory thereto. There shall be no further rezoning of any portion of the Property, nor shall any other portions of the Property be used for non-office purposes, except for those uses accessory to office uses (however, this prohibition shall not preclude the New Building from being used for the non-office purposes specified above).

5. Exterior Appearance. All sides of the New Building, and of any future additional building, shall be fully finished and compatible in style and materials with the Existing Building.

6. Landscaping. Existing berms and landscaping along Montchanin Road and outside of the “Buildable Area” shown on Exhibit “B” shall be preserved insofar as possible.

7. Access. The New Building and any future additional building shall be served solely by the existing entrance off of Montchanin Road.

8. Stormwater. All new construction or expansion of the Existing Building shall meet the stormwater/drainage requirements of the UDC, so as not to increase run-off onto the homes along Brecks Lane or onto the adjoining property owned by the Raskob Foundation.

9. Effectiveness. This Declaration is executed, attested, sealed, acknowledged and delivered into escrow, to be recorded concurrently with recordation of the approved Final Record Compromise Plan and approval of this Amended and Restated Declaration of Restrictions. In the event that the Compromise Plan is not recorded, then this Declaration shall not be recorded; provided, however, that no use shall be made of the two (2) acre site for the New Building based on any rezoning approval for such site without prior recordation of this Declaration.

10. Context. This Declaration is intended, so long as it remains in force and effect, to stand on its own as a replacement for the Prior Declaration. However, it derives from and implements a more comprehensive agreement dated as of December 31, 2010 between CRG on one hand and Declarant, Barley Mill, LLC, Greenville Center Associates, LLC and 3704 Kennett, LLC on the other hand (the “Agreement”). So long as the Agreement remains in force and effect, which shall be a

minimum of five (5) and maximum of ten (10) years from the date of this Declaration, as defined in the Agreement, this Declaration shall be construed in accordance with and not contrary to the Agreement. Following expiration of the Agreement, this Declaration shall stand on its own if not previously extinguished as provided below.

11. Extinguishment. The Agreement relates not only to 20 Montchanin Road, defined in this Declaration as the Property, but also to three other properties known as (i) Barley Mill Plaza at the intersection of Routes 141 and 48, (ii) Greenville Center at the intersection of Route 52 and Buck Road, and (iii) the former Kirkwood Fitness property on Route 52 across from Greenville Center at 3704 Kennett Pike; all four of which properties (the “Properties”) are located in Christiana Hundred, New Castle County, Delaware, and all of which have certain common ownership and/or are under common management. A rezoning, subdivision and land development approvals are being sought for Barley Mill Plaza; a parking variance and land development plan approval is being sought for Greenville Center; and a parking variance is being sought for 3704 Kennett Pike; all as part of a global compromise relating to the Properties announced in the Fall of 2010 by Senator Christopher Coons. In the event that all approvals required for all compromises plans for all of the aforesaid Properties is not obtained, or the Agreement is terminated, then Declarant has the right to extinguish this Declaration by restoring the status quo ante as to all of the Properties and recording a Consent to Extinguishment signed by CRG. Extinguishing this Declaration shall mean that the Declarant, and the Property, shall be subject to the Prior Declaration; that Declarant is free to pursue any and all land use approvals for the Property that are otherwise available under the law; and that CRG is free to oppose or support such pursuit of other approvals.

12. Enforcement. Following its recordation and so long as it has not been extinguished, the terms of this Declaration may be enforced solely by The Kennett Pike Association, Inc. and/or Delaware Greenways, Inc. Notwithstanding any language contained herein to the contrary, neither The Kennett Pike Association, Inc. nor Delaware Greenways, Inc. nor any party claiming any rights

as a third party beneficiary, shall have the right, obligation or authority to prohibit the termination and extinguishment of this Declaration. Declarant accepts jurisdiction over all matters arising under this Declaration by the Delaware Courts sitting in New Castle County, Delaware, and agrees that there is no adequate remedy for breach hereof and that any action hereunder may be properly brought in the Delaware Chancery Court. The provisions hereof shall be governed by the laws of the State of Delaware applicable to sealed instruments. The provisions hereof shall be fairly construed in accordance with their plain intent without limitation or frustration by technical rules of construction, special presumptions or policy considerations governing ambiguities or deed restrictions.

13. Interpretation. Paragraph headings are for convenience only and shall not affect the meaning of the language herein. The singular shall include the plural, and tenses and genders shall be interchangeable, as the context reasonably warrants. The word “including” and its variants shall be by way of illustration and not by way of limitation; and unless the context otherwise indicates, the word “or” means “and/or.” This Declaration shall not be amended except by a writing duly executed, sealed and acknowledged by Declarant, The Kennett Pike Association, Inc. and Delaware Greenways, Inc., and properly recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware (or any successor office or agency). The termination and extinguishment of the Declaration shall not be considered an amendment or modification of this Declaration for which the approval of The Kennett Pike Association, Inc. and Delaware Greenways, Inc. is required.

14. Severability. In the event that any provision of this Declaration is deemed to be illegal or unenforceable, the balance of this Declaration shall remain in full force and effect; and at the request of Declarant or CRG, they shall endeavor to negotiate in good faith a commercially reasonable equivalent replacement provision that shall be memorialized by recording an amendment hereto. If they are unable to agree on such a provision, then either Declarant or CRG may apply to

the Court of Chancery for reformation of this Declaration to compensate for the illegal or unenforceable provision.

*{Signatures appear on the following page}*

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed as of the day and year first above written.

WITNESS:

20 MONTCHANIN ASSOCIATES, LLC

\_\_\_\_\_  
Witness

By: \_\_\_\_\_ (Seal)  
Keith D. Stoltz  
Authorized Member

STATE OF DELAWARE    )  
                                  : SS.  
NEW CASTLE COUNTY    )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2011, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, Keith D. Stoltz, Authorized Member of 20 Montchanin Associates, 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 company, that the signature of the Authorized Member thereto is in his own proper handwriting and the seal affixed is the common and official seal of said company, and that his act of sealing, executing, acknowledging and delivering said Indenture was duly authorized by a resolution of the voting members of said company.

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

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

**EXHIBIT "A"**  
**COMPROMISE PLAN**

**EXHIBIT "B"**  
**BUILDING LIMITATION LINE**  
**AND**  
**BUILDABLE AREA**