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Resolution No. 23-013

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BOARD OF PUBLIC WORKS OF THE CITY OF LEWES ACCEPTING THE OFFSITE UTILITY IMPROVEMENTS AND THE ONSITE UTILITY IMPROVEMENTS FOR PHASES 1C, 2, 3, 4, AND 5 CONCERNING THE TOWER HILL 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 24, 2020, the Lewes BPW entered into a Development Agreement with CMF Tower Hill, LLC “CMF” concerning utility infrastructure supporting a proposed residential development to be known as “Tower Hill” (this Development Agreement hereinafter referred to as the “Tower Hill Development Agreement”); and

WHEREAS, the Tower Hill Development Agreement, among other things, obligated CMF to construct the utility infrastructure consistent with the approved construction plans and the Lewes BPW specifications and regulations; and

WHEREAS, on June 5, 2023, CMF requested that the Lewes BPW initiate the process for final acceptance of the offsite utility infrastructure as specified in the approved plans known as “DelDOT Utility Plan – New Road and Lynn Road” and dated May 4, 2022 (the “Offsite Utilities”); and

WHEREAS, CMF thereafter also requested that the Lewes BPW initiate the process for final acceptance of the onsite utility infrastructure for Phases 1C, 2, 3, 4, and 5 of the Tower Hill Development, all as specified in the approved plans known as “Roadway, Stormdrain, Sewer, Water, & ESC for Tower Hill” and dated May 20, 2021 (the “Phases 1C, 2, 3, 4, and 5 Onsite Utilities”); and

WHEREAS, Section 2.5 of the Tower Hill Development Agreement provides that the Lewes BPW will not accept any dedication of utility improvements until written approval of the

47 condition of the utility improvements is provided and an easement, if applicable, is provided to the
48 BPW;

49
50 **WHEREAS**, George, Miles & Buhr, LLC (“GMB”), the Lewes BPW engineering firm,
51 provided written approval of the condition of the Offsite Utilities and the Phases 1C, 2, 3, 4, and
52 5 Onsite Utilities in a letter dated November 22, 2023 (GMB’s November 22, 2023 letter is
53 attached hereto and incorporated herein as Exhibit “A”); and

54
55 **WHEREAS**, relevant easements concerning the Offsite Utilities and the Phases 1C, 2, 3,
56 4, and 5 Onsite Utilities were approved and recorded on December 5th, 2023, December 6th, 2023
57 and December 7th 2023; and

58
59 **WHEREAS**, Section 2.7 of the Tower Hill Development Agreement provides for cost
60 reimbursement for certain incremental costs identified in the Tower Hill Development Agreement
61 upon Lewes BPW’s acceptance of the subject utility improvements; and

62
63 **WHEREAS**, the required cost reimbursement to CMF under Section 2.7 of the Tower Hill
64 Development totals \$2,076,872.94 (the “Section 2.7 Cost Reimbursement”) and no other amount
65 is owed by the Lewes BPW; and

66
67 **WHEREAS**, Section 3.1 of the Tower Hill Development Agreement provides that CMF
68 must provide final plans and as-built drawings in electronic AutoCad format and PDF format as
69 part of the Lewes BPW final inspection and approval process; and

70
71 **WHEREAS**, GMB confirmed in its November 22, 2023 letter that CMF provided the
72 required final plans and as-built drawings for the Offsite Utilities and the Phases 1C, 2, 3, 4, and
73 5 Onsite Utilities; and

74
75 **WHEREAS**, CMF has paid all required inspection and review fees related to the Offsite
76 Utilities and the Phases 1C, 2, 3, 4, and 5 Onsite Utilities, and has also paid money owed related
77 to emergency repair work on the watermain performed by the Lewes BPW;

78
79 **WHEREAS**, CMF has provided a maintenance bond in the amount of \$217,225.33 (i.e.,
80 ten-percent (10%) of the construction costs of the Offsite Utilities, or more specifically, \$77,512.17
81 for Offsite Sewer, \$106,514.10 for Offsite Water, and \$33,199.06 for Offsite Electric), as required
82 under Section 5 of the Tower Hill Development Agreement (the “Offsite Maintenance Bond”);
83 and

84
85 **WHEREAS**, CMF has provided maintenance bond(s) in the amount of \$146,540.00 (i.e.,
86 ten-percent (10%) of the construction costs of the Phases 1C (\$70,746.00), 2 (\$26,433.00), 3
87 (\$20,875.00), 4 (\$12,775.00), and 5 (\$15,711.00) Onsite Utilities) as requested under Section 5 of
88 the Tower Hill Development Agreement (the “Onsite Maintenance Bond”); and

89
90 **WHEREAS**, the Lewes BPW desires to accept CMF’s dedication of the Offsite Utilities
91 into the Lewes BPW utility system.
92

93
94 **NOW THEREFORE, BE IT RESOLVED** BY THE BOARD OF DIRECTORS OF THE
95 LEWES BOARD OF PUBLIC WORKS, IN SESSION MET THIS 7TH DAY OF DECEMBER,
96 2023, THAT:
97

98 **Section 1.** The Lewes BPW hereby accepts CMF's dedication of the Offsite Utilities
99 and the Phase 1C, 2, 3, 4, and 5 Onsite Utilities into the Lewes BPW utility system and assumes
100 all operational and routine maintenance costs thereof subject to CMF's continuing obligations
101 under the Tower Hill Development Agreement.
102

103 **Section 2.** The Lewes BPW will reimburse CMF for the Section 2.7 Cost
104 Reimbursement within a reasonable time following adoption of this Resolution by the Board of
105 Directors of the Lewes Board of Public Works.
106

107 **Section 3.** The Offsite Maintenance Bond and the Onsite Maintenance Bond must
108 remain in place for a period of one year from the date of this Resolution's adoption by the Board
109 of Directors of the Lewes Board of Public Works.
110

111 **Section 4.** Pursuant to Section 5 of the Tower Hill Development Agreement, CMF is
112 obligated to provide a construction guarantee for the Offsite Utilities and Phases 1C, 2, 3, 4, and 5
113 Onsite Utilities for a period of one year from the date of this Resolution's adoption by the Board
114 of Directors of the Lewes Board of Public Works.
115

116 **Section 5.** This Resolution shall take effect immediately upon its adoption by the
117 Board of Directors of the Lewes Board of Public Works.
118

119 Adopted by the Board of Directors
120 of the Lewes Board of Public Works
121
122

123 _____
124
125 I, D. Preston Lee, P.E., Secretary of the Board of Directors of the Board of Public Works
126 of the City of Lewes, do hereby certify that the foregoing is a true and correct copy of the
127 Resolution passed by the Board of Directors of the Lewes BPW at its meeting on April 26, 2023,
128 at which meeting a quorum was present and voting throughout and the same is still in full force
129 and effect.
130

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Secretary

Exhibit "A"

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■ ■ ■ ■

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ENGINEERS

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OCEAN VIEW

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■ ■ ■ ■

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. PFBIFER, P.E.
BENJAMIN K. HEARN, P.E.

November 22, 2023

Board of Public Works
107 Franklin Avenue
Lewes, DE 19958

Attn: Austin Calaman
General Manager

Re: Tower Hill - Phases 1C, 2, 3, 4 and 5
Tower Hill - Offsite Utilities (Water, Sewer and Electric)
Lewes, Delaware
Final Acceptance
GMB File No. R180214

Dear Mr. Calaman:

This letter is issued to provide the status of both the onsite utility work in Phases 1C, 2, 3, 4 and 5 and the offsite utility work of the Tower Hill Development project located off New Road. The scope of the onsite utility work (specifically water, sewer and pump station) is specified by the approved "Roadway, Stormdrain, Sewer, Water, & ESC for Tower Hill" drawings dated May 20, 2021. The offsite utility work is specified by the approved "DeIDOT Utility Plan – New Road and Lynn Road" dated March 4, 2022. The Phasing Plan for the onsite work has been attached for reference. It should be noted that the pump station for the project is included in Phase 1C.

Onsite Utilities – Phases 1C, 2, 3, 4 and 5

GMB can confirm that all punchlist items have been completed and the water, sewer utilities and pump station have been installed per the LBPW standard specifications. GMB can also confirm that all final plans and as-built drawings required under the Development Agreement have been submitted, reviewed, and approved. All as-builts have been submitted in digital format as required.

Offsite Utilities

GMB can confirm that all punchlist items have been completed and the water, sewer and electrical conduit have been installed per the LBPW standard specifications and inspected. GMB can also confirm that the DeIDOT Utility Permit group has inspected the work and has accepted the work in accordance with the LBPW's DeIDOT Utility permit requirements.

GMB can confirm that all final plans and as-built drawings required under the Development Agreement have been submitted, reviewed, and approved. All as-builts have been submitted in digital format as required.

Recommendation of Acceptance

Based on the notes above, GMB recommends that the improvements (both onsite and offsite) are ready for acceptance by the LBPW.

If you have any questions or comments, please contact me at vluciani@gmbnet.com or 302.628.1421

Sincerely,

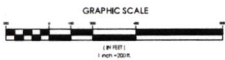
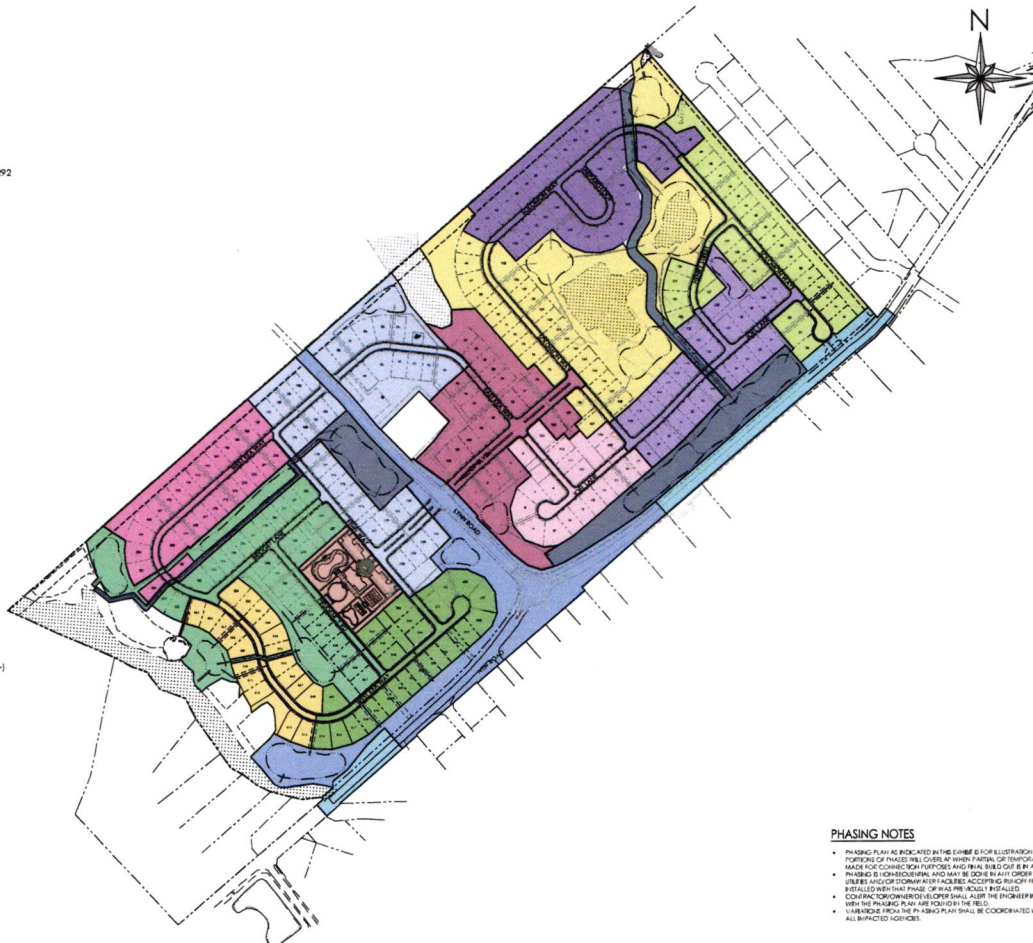
Vincent Luciani

Vincent Luciani, P.E.
Senior Project Manager

cc: Tarabicos Grosso, LLP
Attn: Michael J. Hoffman

PHASES

- PHASE 1A - 8.7 ACRES (+/-)
STORMWATER PONDS
- PHASE 1B - 16.5 ACRES (+/-)
PHASE 1 DELDOT
- PHASE 1C - 12.8 ACRES (+/-)
LOTS 84-94, 169-186, 233-236
= 33 LOTS
- PHASE 2 - 12.0 ACRES (+/-)
LOTS 2038, 204, 237-240, 247-258, 282-292
= 29 LOTS
- PHASE 3 - 7.0 ACRES (+/-)
LOTS 167-202, 241-246, 269
= 25 LOTS
- PHASE 4 - 4.9 ACRES (+/-)
LOTS 205-214, 269-268
= 20 LOTS
- PHASE 5 - 7.2 ACRES (+/-)
LOTS 167-202, 270-281
= 26 LOTS
- PHASE 6 - 9.3 ACRES (+/-)
LOTS 1-4, 76-83, 95-102, 104-105
= 22 LOTS
- PHASE 7 - 5.5 ACRES (+/-)
LOTS 5-17, 103, 108-112
= 19 LOTS
- PHASE 8 - 20.0 ACRES (+/-)
LOTS 65-75, 106-107, 155-168
= 27 LOTS
- PHASE 9 - 9.9 ACRES (+/-)
LOTS 50-64, 138-154
= 32 LOTS
- PHASE 10 - 7.4 ACRES (+/-)
LOTS 18-29, 113-122, 128-133
= 26 LOTS
- PHASE 11 - 9.2 ACRES (+/-)
LOTS 30-49, 123-127, 134-137
= 30 LOTS
- PHASE 12 - 2.75 ACRES (+/-)
CLUB HOUSE LOT
- DELDOT PHASE 2 & 3 - 3.90 ACRES (+/-)
TO BE CONSTRUCTED PRIOR TO
ISSUANCE OF 140TH BUILDING PERMIT



PHASING NOTES

- PHASING PLAN AS INDICATED IN THE EXHIBIT IS FOR ILLUSTRATION PURPOSES ONLY. PORTIONS OF PHASES WILL COVER UP WHEN PARTIAL OR TEMPORARY IMPROVEMENTS ARE MADE FOR CONSTRUCTION PURPOSES AND PHASES MAY BE DONE IN A VARIOUS PHASE.
- PHASING IS NON-SEQUENTIAL AND MAY BE DONE IN ANY ORDER PROVIDED THAT ALL UTILITIES AND/OR CONSTRUCTION ARE ACCORDING TO THE PHASING PLAN.
- RETAINED PHASES THAT PHASE 12 OF THIS DEVELOPMENT WILL BE.
- CONTRACTOR/OWNER/DEVELOPER SHALL ALERT THE ENGINEER IMMEDIATELY IF ISSUES WITH THE PHASING PLAN ARISE FOR THE FIELD.
- VARIANCES FROM THE PHASING PLAN SHALL BE COORDINATED WITH THE ENGINEER AND ALL IMPACTED AGENTS.

PHASING PLAN for TOWER HILL SUSSEX COUNTY, DELAWARE Prepared for: CMF TOWER HILL, LLC																			
REVISIONS <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">NO.</th> <th style="width: 10%;">DATE</th> <th style="width: 80%;">DESCRIPTION</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>	NO.	DATE	DESCRIPTION																SHEET NO.: 1 TOTAL SHEETS: 1 DATE: 8/1/2020 DRAWN BY: [Blank] CHECKED BY: [Blank]
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