

Resolution No. 24-002

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BOARD OF
PUBLIC WORKS OF THE CITY OF LEWES ACCEPTING THE ONSITE
UTILITY IMPROVEMENTS FOR PHASES 6 AND 7 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, CMF has requested that the Lewes BPW initiate the process for final acceptance of the onsite utility infrastructure for Phases 6 and 7 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 6 and 7 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 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, provided written approval of the condition of the Phases 6 and 7 Onsite Utilities in a letter dated July 18, 2024 (GMB’s July 18, 2024 letter is attached hereto and incorporated herein as Exhibit “A”); and

47 **WHEREAS**, relevant easements concerning the Phases 6 and 7 Onsite Utilities were either
48 previously approved and recorded or, in the case of one pending easement, has been signed and is
49 awaiting recordation pending Lewes BPW approval, said pending easement being attached hereto
50 and incorporated herein as Exhibit "B" (the "Pending Tower Hill Phases 6 and 7 Easement"); and
51

52 **WHEREAS**, Section 3.1 of the Tower Hill Development Agreement provides that CMF
53 must provide final plans and as-built drawings in electronic AutoCad format and PDF format as
54 part of the Lewes BPW final inspection and approval process; and
55

56 **WHEREAS**, GMB confirmed in its July 18, 2024 letter that CMF provided the required
57 final plans and as-built drawings for the Phases 6 and 7 Onsite Utilities; and
58

59 **WHEREAS**, CMF has paid all required inspection and review fees related to the Phases 6
60 and 7 Onsite Utilities; and
61

62 **WHEREAS**, CMF has provided a maintenance bond in the amount of \$35,884 (i.e., ten-
63 percent (10%) of the construction costs of the Phases 6 and 7 Onsite Utilities) (i.e., \$6,725.00 for
64 Phase 6 water, \$13,140.00 for Phase 6 sewer, \$4,854.00 for Phase 7 water, and \$11,165.00 for
65 Phase 7 sewer) as required under Section 5 of the Tower Hill Development Agreement (the "Onsite
66 Maintenance Bond"); and
67

68 **WHEREAS**, the Lewes BPW desires to accept CMF's dedication of the Phases 6 and 7
69 Onsite Utilities into the Lewes BPW utility system.
70

71 **NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE**
72 **LEWES BOARD OF PUBLIC WORKS, IN SESSION MET THIS 24TH DAY OF JULY, 2024,**
73 **THAT:**
74

75 **Section 1.** The Lewes BPW hereby accepts CMF's dedication of the Phases 6 and 7
76 Onsite Utilities into the Lewes BPW utility system and assumes all operational and routine
77 maintenance costs thereof from and after the date on which the Pending Tower Hill Phases 6 and
78 7 Easement is recorded subject to CMF's continuing obligations under the Tower Hill
79 Development Agreement.
80

81 **Section 2.** This Resolution is conditioned on CMF recording the Pending Tower Hill
82 Phases 6 and 7 Easement.
83

84 **Section 3.** The Onsite Maintenance Bond must remain in place for a period of one
85 year from the date on which the Pending Tower Hill Phases 6 and 7 Easement is recorded.
86

87 **Section 4.** Pursuant to Section 5 of the Tower Hill Development Agreement, CMF is
88 obligated to provide a construction guarantee for the Phases 6 and 7 Onsite Utilities for a period
89 of one year from the date on which the Pending Tower Hill Phases 6 and 7 Easement is recorded.
90

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

93 Adopted by the Board of Directors
94 of the Lewes Board of Public Works
95
96
97 _____
98

99 I, D. Preston Lee, P.E., Secretary of the Board of Directors of the Board of Public Works
100 of the City of Lewes, do hereby certify that the foregoing is a true and correct copy of the
101 Resolution passed by the Board of Directors of the Lewes BPW at its meeting on July 24, 2024, at
102 which meeting a quorum was present and voting throughout and the same is still in full force and
103 effect.
104
105
106
107
108


Secretary

■ ■ ■ ■
**ARCHITECTS
ENGINEERS**

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

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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. PFEIFER, P.E.
BENJAMIN K. HEARN, P.E.

July 18, 2024

Board of Public Works
107 Franklin Avenue
Lewes, DE 19958

Attn: Austin Calaman
General Manager

Re: Tower Hill - Phases 6 and 7
Lewes, Delaware
Final Acceptance
GMB File No. R180214

Dear Mr. Calaman:

This letter is issued to provide the status of the utility work in Phases 6 and 7 of the Tower Hill Development project located off New Road. The scope of the utility work (specifically water and sewer) is specified by the approved "Roadway, Stormdrain, Sewer, Water, & ESC for Tower Hill" drawings dated May 20, 2021.

GMB can confirm that all punchlist items have been completed and the water and sewer utilities have been installed per the LBPW standard specifications with the exception of four (4) gate valve boxes requiring grade adjustment. (CMFA has this work scheduled to be completed before July 24 and GMB will verify completion prior to that date).

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. There is an easement required for the water and sewer services to the Dawson property and this easement is expected to be recorded prior to the July 24 Board meeting.

Recommendation of Acceptance

Based on the notes above, GMB recommends that the improvements are ready for acceptance by the LBPW.

Austin Calaman
July 18, 2024
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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: Connolly Gallagher, LLP
Attn: Michael J. Hoffman

Exhibit "B"

Tax Parcel No(s): 335-8.00-2.00 p/o

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

UTILITY EASEMENT AND MAINTENANCE AGREEMENT

This UTILITY EASEMENT AND MAINTENANCE AGREEMENT (this "Agreement") is made this ____ day of July, 2024 by and between CMF Tower Hill L.L.C., a Delaware limited liability company, 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 in the Lewes and Rehoboth Hundred, Sussex County and State of Delaware, being identified on the tax maps of Sussex County as part of Tax Parcel Number 335-8.00-2.00 (the "Tower Hill Open Space Parcel"), as a portion of said parcel is shown on that exhibit entitled Variable Width Utility Easement Exhibit Tower Hill, prepared by Solutions Integrated Planning Engineering & Management, LLC, dated March 26, 2024, and attached hereto as **Exhibit A** and incorporated herein by reference; and

WHEREAS, a portion of the Tower Hill Open Space Parcel is currently subject to that certain 10' x 20' sign easement as shown on the Record Plat for Tower Hill, of record in the Office of the Recorder of Deeds in and for Sussex County, Delaware, in Plot Book 321, Page 77, which is to be extinguished by Grantor; and

WHEREAS, in connection with the dedication, use, and maintenance of certain utility improvements constructed by the Grantor, 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 area marked on **Exhibit A** as New Variable Width Utility Easement, consisting of approximately 4,730 square feet, and as further described in **Exhibit B**, attached hereto and incorporated herein, (the "Easement Area"), at any time that Grantee may see fit for the purpose of 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 underground water and sanitary sewer utilities and any related pipes and other improvements (the "Utility Facilities"). This Easement 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 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, 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 possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the BPW shall have the right to enter upon the Tower Hill Open Space 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 Easement 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, including without limitation the Tower Hill Property Owners Association, Inc. The BPW's rights under this Agreement are personal and not appurtenant to other property besides that which is depicted on **Exhibit A** 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

[SIGNATURE PAGES FOLLOW]

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

CMF Tower Hill L.L.C., Grantor

Lisa Melle

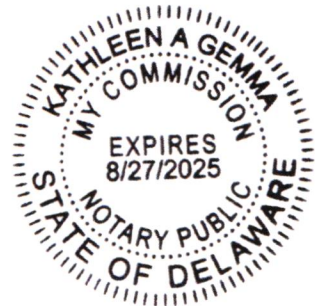
By: [Signature] (SEAL)
Name:
Title:

STATE OF DELAWARE)
) SS.
COUNTY OF SUSSEX)

BE IT REMEMBERED, that on this 18 day of July, 2024,
personally came before me, the Subscriber, a Notary Public for the State and county aforesaid,
Josh Mastrenjelo [NAME], SVP [TITLE] of
CMF Tower Hill L.L.C., party to this Agreement, known to me personally to be such, and
acknowledged this to be their act and deed on behalf of said limited liability company.

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

Kathleen A Gemma
Notary Public
Name: Kathleen A Gemma
My Commission Expires: 8/27/2025



WITNESS:

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

By: _____ (SEAL)
Tom Panetta, President

STATE OF DELAWARE

)

) SS.

COUNTY OF SUSSEX

)

BE IT REMEMBERED, that on this ___ day of _____, ____, personally came before me, the Subscriber, a Notary Public for the State and county aforesaid, Tom 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: _____

My Commission Expires: _____

EXHIBIT A

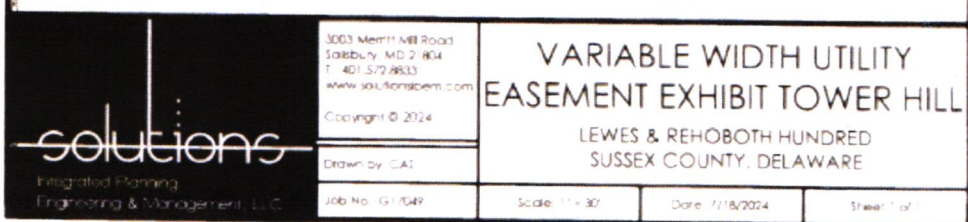


EXHIBIT B

LEGAL DESCRIPTION
OF
UTILITY EASEMENT
TOWER HILL SUBDIVISION
SUSSEX COUNTY DELAWARE

March 26, 2024

All that certain tract, piece or parcel of land lying and being situated in the Lewes and Rehoboth Hundred of Sussex County Delaware; and being located along the northerly right of way line of Hilltop Boulevard and being more particularly described with the bearings hereon referenced to The Delaware State Grid, NAD 83, as follows, to wit:

COMMENCING along the northerly right of way line of Hilltop Boulevard (64 feet wide) at the southwesterly corner of lot 1 and Open Space A, thence leaving lot 1 and with the northerly right of way line of Hilltop Boulevard and Open Space A, South 45°08'11" West a distance of 8.16 feet to a point at the POINT OF BEGINNING, thence continuing with the northerly right of way line of Hilltop Boulevard and Open Space A

1. South 45°08'11" West a distance of 35.23 feet to a point, thence leaving the northerly right of way line of Hilltop Boulevard and across Open Space A
2. North 45°05'59" West a distance of 177.04 feet to a point along the southerly line of the lands of William H. Dawson (see deed 1009/314), thence with the said Dawson lands
3. North 44°35'21" East a distance of 18.17 feet to a point, thence leaving the aforesaid Dawson lands and across Open Space A
4. South 50°35'50" East a distance of 178.12 feet to the POINT OF BEGINNING, as shown on the exhibit entitled "Variable Width Utility Easement Exhibit, Tower Hill", prepared by Solutions Integrated Planning Engineering & Management, LLC, dated March 26, 2024, attached hereto and made a part hereof

CONTAINING 4,730 Square Feet of land more or less.

BEING part of the same lands conveyed to CMF Tower Hill LLC by deed from Groome United Methodist Church, Inc., dated September 18, 2020 and recorded in the Office of the Recorder of Deeds and for Sussex County in Deed Book 5313 page 265.