REGULAR COUNCIL MEETING

The Regular Council Meeting was held on August 13, 2012 at 7:30 p.m. with Council President Leary presiding. Council members present were Mr. Anderson, Mr. Lynn, Mr. Perza, Mr. Bonar, Mrs. Williams, Mr. Hare, and Mr. Hutchison. Mrs. Russell was absent.

Council staff members present were Maj. Bernat, Mrs. Mitchell, Mrs. Townshend, Deputy Fire Chief West, Mr. Koenig, City Solicitor Rodriguez, and Mrs. McDowell. Mayor Carey was also present.

OPEN FORUM

The Open Forum was held at 7:15 p.m., prior to commencement of the Official Council Meeting. Council President Leary declared the Open Forum in session and reminded those present that Council was not in official session and could not take formal action.

There was no one present wishing to speak during the Open Forum.

The invocation was given by Chaplain Jake McCready, followed by the Pledge of Allegiance.

AGENDA ADDITIONS/DELETIONS

Mr. Bonar moved for approval of the agenda as presented, seconded by Mr. Hutchison and unanimously carried.

Mrs. Williams moved for approval of the consent agenda as presented, seconded by Mr. Bonar and carried by a unanimous roll call vote (Mrs. Russell absent).

ADOPTION OF MINUTES - REGULAR COUNCIL MEETING OF JULY 23, 2012

The Minutes of the Regular Council Meeting of July 23, 2012 were unanimously approved by motion of Mrs. Williams, seconded by Mr. Bonar and bore the written approval of Mayor Carey.

PRESENTATION - RECOGNITION OF SERVICE - JOHN J. FRIEDMAN - SERVICE ON THE PLANNING COMMISSION - AUGUST 1992 - JUNE 2012

Mrs. Ann Marie Townshend, Director of Planning and Community Development, read a Resolution that was adopted by the Planning Commission on July 16, 2012, into the record as follows:

WHEREAS, John Friedman became a member of the City of Dover Planning Commission on August 24, 1992 and has served with diligence and distinction in this capacity as an advocate for sound land use planning in the public interest; and,

WHEREAS, John Friedman has played a key role in ensuring fundamental fairness and careful forethought in the planning and development of the Capital City through his service on the Planning Commission; and,

WHEREAS, John Friedman has provided leadership on the Planning Commission through his role as Chairman of the Commission from July 17, 1995 to July 19, 2010; and,

WHEREAS, John Friedman has influenced the pattern and appearance of development in Dover through his contributions to the City's Comprehensive Plans including the 1996 Comprehensive Plan known as The Dover Plan, the 2003 Comprehensive Plan Update, the 2008 Comprehensive Plan; his participation in the development of numerous amendments to the City of Dover Zoning Ordinance including the COZ-1, C-2, IPM-2, AEOZ, TND, SWPOZ, and ROS zones; and,

WHEREAS, John Friedman completed his term of service on the City of Dover Planning Commission on June 25, 2012.

NOW THEREFORE BE IT RESOLVED THAT, the City of Dover Planning Commission does hereby express its sincere appreciation to John Friedman for his faithful and exemplary service to the Citizens of the City of Dover as an active member of the City of Dover Planning Commission, and extends its very best wishes to John Friedman for a bright and prosperous future.

Mayor Carey presented Mr. John J. Friedman with the Resolution and, on behalf of members of Council, he presented Mr. Friedman with a Dover Cup in recognition of his many years of service on the Planning Commission.

Mr. Friedman thanked the Mayor and Council for allowing him to serve on the Planning Commission for 20 years. He stated that he has enjoyed his service very much and appreciated having the opportunity to work with many Mayors, Councils, and City Staff, including previous Mayor, Crawford Carroll and previous City Manager, Mr. Tony DePrima.

PRESENTATION BY DOVER/KENT COUNTY METROPOLITAN PLANNING ORGANIZATION (MPO) - DELAWARE BIKE SUMMIT

Mrs. Kate House-Layton, Public Liaison, Dover/Kent County Metropolitan Planning Organization (MPO), announced that the Annual Delaware Bike Summit will be held in Dover on September 7, 2012 and provided members a brochure ***(Exhibit #1)*** regarding the event.

PUBLIC HEARING/FIRST READING - ORDINANCE #2012-20 - REAPPORTIONMENT OF DISTRICT BOUNDARIES

Council President Leary reminded the public that copies of Proposed Ordinance #2012-20 were available at the entrance of the Council Chambers or could be obtained from the City Clerk's Office. He announced that a Public Hearing/Second Reading and final action by Council would take place on August 27, 2012 at 7:30 p.m.

Ms. Janelle Cornwell, Planner II, reminded members that the intent of the redistricting was to create four (4) voting districts with an evenly distributed population and that met the requirements of the 1988 Consent Decree between the Central Delaware Branch of the National Association for the Advancement of Colored People (NAACP)/Cecil Wilson and the City of Dover. She advised members that the 2010 U.S. Census total population for the City of Dover was 36,047 and that, equally divided, the target number for each district would be 9,012 people. Ms. Cornwell stated that the proposed redistricting would distribute the population as follows: District 1 - 8,933 (24.8% of the total population); District 2 - 9,138 (25.3% of the total population); District 3 - 9,076 (25.2% of the total population); and District 4 - 8,900 (24.7% of the total population). She noted that the

percentage of population in all four (4) districts would vary by less than 1%. The Consent Decree requires that the City have a minority district with a 65% African American population, a majority of which is of voting age. As presented, Ms. Cornwell stated that District 4 would have an African American population of 70.6%, with 54.5% of voting age, and that both of these percentages exceeded the requirements of the Consent Decree.

Council President Leary declared the public hearing open.

Ms. Roxie Smiley-Carter, resident of Towne Point and President of the Local Chapter of the NAACP, advised members that she was not aware of any of the initial meetings and wished she had the opportunity to participate to observe why and how the recommendation presented was developed. It was her understanding that notices of the meetings were sent to the national branch of the NAACP in Baltimore, Maryland. She felt that, as President of the Local Chapter of the NAACP, she should have been made aware of any and all meetings regarding this matter.

There being no one else wishing to speak, Council President Leary declared the public hearing closed.

In accordance with Section 1-9 of the Dover Code, Council acknowledged the First Reading of the Proposed Ordinance as read by the City Clerk, by title only, as follows:

> CHAPTER 2 - ADMINISTRATION, ARTICLE II - CITY COUNCIL, DIVISION 1 - GENERALLY, SECTION 2-31 - DISTRICT BOUNDARIES

PUBLIC HEARING/FINAL READING - PROPOSED ZONING TEXT AMENDMENTS - ORDINANCE #2012-13 - AMENDMENT TO APPENDIX B - ZONING, ARTICLE 5 - SUPPLEMENTARY REGULATIONS, SECTION 4 - SUPPLEMENTARY SIGN REGULATIONS

A public hearing was duly advertised for this time and place to consider approval of Ordinance #2012-13 - Amendment to Appendix B - Zoning, Article 5 - Supplementary Regulations, Section 4 - Supplementary Sign Regulations.

Mr. Bonar moved that the Final Reading of Proposed Ordinance #2012-13 be acknowledged by title only, seconded by Mr. Hutchison and unanimously carried. *(The First Reading of the proposed ordinance was accomplished during the Council Meeting of June 25, 2012.)*

Mrs. Ann Marie Townshend, Director of Planning and Community Development, advised members that the proposed ordinance was a comprehensive amendment to the City of Dover sign regulations and included clarifications, simplification of the requirements, and significant relaxation of the regulations currently in place. Changes included an increase in allowable sign area, an increase in the number of signs permitted, incorporation of several definitions and other provisions from the United States Sign Council Model Sign Code, a reduction in the exclusion zone between sign structures, and increased flexibility in temporary signage. Mrs. Townshend advised members that the Planning Commission recommended approval of the proposed amendments.

Referring to Line 477, Mr. Anderson relayed concerns regarding the inclusion of the term "or painted," explaining that some businesses have operational delivery vehicles with business information on the vehicles (such as pharmacy delivery and rent-a-center trucks, etc.) and have been told by code enforcement staff that the vehicles were not permitted to park when returning to establishments after deliveries. Referring to Line 498, relative to sandwich boards and handheld signs, he relayed concerns regarding possible first amendment implications for people engaging in peaceful, non-violent protest or commercial speech.

Responding, Mrs. Townshend stated that Line 498 addressed staff's concern that individuals wearing or holding signs could be disruptive to vehicular traffic; however, she stated that staff would not object to striking Line 498 since there were other means to address this issue. With regard to vehicle signs, she felt that it would be necessary to maintain the phrase "or painted"; however, it was her recollection that language should have been included that would require such vehicles to be operable.

Council President Leary declared the public hearing open.

Mr. Connie Malmberg, 30 The Green, stated that he served on the committee that assisted in the development of the proposed amendments and felt confident that the proposed ordinance would prove productive and useful to the community. It was his recollection that the compromise for the vehicle signs was that there would not be a prohibition if the vehicle were operational. He urged members to approve the proposed ordinance.

There being no one else present wishing to speak during the public hearing, Council President Leary declared the hearing closed.

Mrs. Williams moved for adoption of Ordinance #2012-13, stipulating that the ordinance be amended to address the issue of signs on trucks that are operational and by eliminating Line 498 in its entirety. The motion was seconded by Mr. Anderson and failed by a roll call vote of five (5) no, three (3) yes (Mr. Anderson, Mrs. Williams, and Council President Leary), and one (1) absent (Mrs. Russell).

Mr. Anderson moved for adoption of Ordinance #2012-13, seconded by Mr. Bonar.

Mr. Anderson moved to amend by deleting Line 498 in its entirety (Section H), seconded by Mr. Bonar and carried by a unanimous roll call vote (Mrs. Russell absent).

Mr. Anderson moved to amend by deleting Lines 477-481 in their entirety and inserting in lieu thereof "vehicles signs, including changeable signs, attached to or painted on vehicles for the sole purpose of being used as signage; or attached to or painted on inoperable vehicles." The motion was seconded by Mr. Bonar and carried by a unanimous roll call vote (Mrs. Russell absent).

Mr. Bonar moved for adoption of Ordinance #2012-13, as amended *(Exhibit #2)*. The motion was seconded by Mrs. Williams and carried by a unanimous roll call vote (Mrs. Russell absent).

PUBLIC HEARING/FINAL READING - PROPOSED ZONING TEXT AMENDMENTS - ORDINANCE #2012-14 - AMENDMENT TO APPENDIX B - ZONING, ARTICLE 3 - DISTRICT REGULATIONS, SECTION 23 - AGRICULTURAL ZONE (A)

A public hearing was duly advertised for this time and place to consider approval of Ordinance #2012-14 - Amendment to Appendix B - Zoning, Article 3 - District Regulations, Section 23 - Agricultural Zone (A).

Mr. Bonar moved that the Final Reading of Proposed Ordinance #2012-14 be acknowledged by title only, seconded by Mr. Hutchison and unanimously carried. *(The First Reading of the proposed ordinance was accomplished during the Council Meeting of June 25, 2012.)*

Mrs. Ann Marie Townshend, Director of Planning and Community Development, advised members that the proposed ordinance would allow the sale of agricultural supplies and products accessory to the agricultural use of a parcel. She advised members that the Planning Commission recommended approval of the proposed amendments.

Council President Leary declared the hearing open. There being no one present wishing to speak during the public hearing, Council President Leary declared the hearing closed.

By motion of Mr. Bonar, seconded by Mr. Anderson, Council, by a unanimous roll call vote (Mrs. Russell absent), adopted Ordinance #2012-14, as follows:

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DOVER, IN COUNCIL MET:

That Appendix B – Zoning, Article 3 – District Regulations, Section 23 – Agricultural Zone (A), Subsection 23.1 – Uses Permitted, be amended to read as follows:

Section 23. - Agricultural zone (A).

23.1 *Uses permitted*. In an agricultural zone (A), no land or building shall be used and no building or part of a building shall be erected or altered which is arranged, intended or designed to be used, in whole or in part, for any uses except the following:

> 23.11 Agriculture including general farming, pasture, orchard, grazing, outdoor plant nurseries, truck farming, forestry, and wild crop harvesting;
>
> 23.12 Kennels and stables as a conditional use under section 10.1 of this ordinance, provided that any building or open pen for keeping of animals shall be located at least 100 feet from any lot lines;
>
> 23.13 Non-commercial recreational uses including parks, camps, picnic grounds, hiking and riding trails, fishing areas, game farms, fish hatcheries, wildlife sanctuaries, nature preserves, swimming areas and boat launching sites. No buildings or impervious ground covers shall be permitted in connection with recreation uses,

except as a conditional use by permission of the planning commission under article 10, section 1 of this ordinance;

23.14 Public utility rights-of-way and structures, subject to such conditions as the planning commission may impose in order to protect and promote health, safety and general welfare;

23.15 Single-family detached residential dwellings on individual lots in the form of a conventional subdivision, or single-family detached or attached housing in the form of rural residential cluster development. The density and lot size requirements for conventional residential development of agriculturally zoned land are set forth in article 3, section 23.2 of this ordinance. The conditions of eligibility, density limits and design requirements for rural residential cluster development are set forth in article 3, section 23.3 of this ordinance.

23.16 Sales of agricultural supplies and products as an accessory use to the principal agricultural use on a parcel.

ADOPTED: AUGUST 13, 2012

PUBLIC HEARING/FINAL READING - PROPOSED ZONING TEXT AMENDMENTS - ORDINANCE #2012-15 - AMENDMENT TO APPENDIX B - ZONING, ARTICLE 3 - DISTRICT REGULATIONS, SECTION 9 - GENERAL RESIDENCE AND OFFICE ZONING (RGO)

A public hearing was duly advertised for this time and place to consider approval of Ordinance #2012-15 - Amendment to Appendix B - Zoning, Article 3 - District Regulations, Section 9 - General Residence and Office Zoning (RGO).

Mr. Bonar moved that the Final Reading of Proposed Ordinance #2012-15 be acknowledged by title only, seconded by Mr. Hutchison and unanimously carried. *(The First Reading of the proposed ordinance was accomplished during the Council Meeting of June 25, 2012.)*

Mrs. Ann Marie Townshend, Director of Planning and Community Development, advised members that the proposed ordinance would eliminate the prohibition on the sale of alcohol in restaurants in the RGO zone. Restaurants in this zone are subject to Conditional Use approval by the Planning Commission. She advised members that the Planning Commission recommended approval of the proposed amendments.

In response to Mr. Anderson, Mrs. Townshend stated that most of the RGO properties are around the core of downtown. She indicated that the Governor's Club Café spurred the proposed amendments. The proposed amendments would only affect those properties within the historic district overlay zone.

Council President Leary declared the hearing open.

Mr. Connie Malmberg, 30 The Green, stated that he represented the Governor's Club Café, which was seeking to expand their business beyond a sandwich shop to have the option to serve alcoholic beverages. He stated that without the proposed amendment, the existing ordinance would push business owners to rezone their properties to commercial, which may cause the City to lose control in the historic and surrounding areas. He urged members to adopt the proposed ordinance.

There being no one else present wishing to speak during the public hearing, Council President Leary declared the hearing closed.

By motion of Mr. Bonar, seconded by Mr. Hare, Council, by a unanimous roll call vote (Mrs. Russell absent), adopted the Ordinance #2012-15, as follows:

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DOVER, IN COUNCIL MET:

That Appendix B – Zoning, Article 3 – District Regulations, Section 9 – General Residence and Office Zoning (RGO), Subsection 9.14 (b), be amended to read as follows:

(b) In order to stimulate limited commercial activity in this zone where the city's historic district overlay zone exists and to make this portion of the city's historic district a greater attraction to tourists and residents, the following list of preferred uses may be permitted as conditional uses, subject to the approval of the planning commission:

I. Antique shops, art galleries, gift and card shops, book stores, specialty hobby stores (i.e., miniatures, models, needlecrafts), bakeries (including baking on premises), and restaurants.

ii. Limitation of entrances from State Street only.

iii. Total floor area of any one retail use is not to exceed 2,000 square feet.

iv. Such uses will be subject to historic district requirements and will therefore require an architectural review certificate. Architectural review certificates for retail uses described above shall not be granted unless it has been demonstrated that the proposed use will result in either no material change to the exterior of the structure visible from State Street or will result in a restoration of the structure to an appearance which can be documented to more closely reflect the historical appearance of that structure. Material change would include modifications to doors, windows and masonry, other than routine maintenance.

v. No parking shall be required for the retail user.

vi. If new construction is proposed on State Street between Loockerman and Water Streets, the proposal must not require demolition or extensive

modifications of any existing structure which presently contributes to the historic district because of its age or architectural appearance. In addition, the RG-O zone bulk and parking requirements would be waived in certain respects. Lot width and depth will be as appropriate to the site, subject to architectural review and site plan review. Setbacks will be discouraged. Side yards will reflect the needs of adjacent structures by providing adequate light and air to reach existing windows. The height limit of 35 feet or 2½ stories will be retained, as will the 85 percent lot coverage limit. The floor area ratio limitation will be raised to 1.0. The parking requirements will be waived.

ADOPTED: AUGUST 13, 2012

UTILITY COMMITTEE REPORT - JULY 23, 2012

The Utility Committee met on July 23, 2012 with Chairman Bonar presiding.

Proposed Resolution No. 2012-11 - Adoption of the American Public Power Association (APPA) Safety Manual

Mr. Scott Koenig, City Manager, submitted proposed Resolution #2012-11 for the adoption of the American Public Power Association (APPA) Safety Manual. He advised members that the provisions of the APPA Safety Manual were currently being utilized as policy within the City's Electric Department. He explained that the Manual consisted of over 200 pages and provided the best practices to ensure the safety of the City's electrical workers, as well as the system, and that adoption of the Resolution would solidify support of the Manual and allow the City to meet the requirements of the Reliable Public Power Provider (RP3) Program.

The Committee recommended adoption of proposed Resolution No. 2012-11.

By consent agenda, Mrs. Williams moved for approval of the committee's recommendation, seconded by Mr. Bonar and by a unanimous roll call vote (Mrs. Russell absent), Council adopted Resolution No. 2012-11, as follows:

A RESOLUTION ADOPTING THE AMERICAN PUBLIC POWER ASSOCIATION (APPA) SAFETY MANUAL FOR THE CITY OF DOVER ELECTRIC UTILITY

WHEREAS, the City of Dover owns a municipal electric utility employing a number of dedicated employees in the electric trade; and

WHEREAS, it is the City's goal to employ safe practices that will ensure the highest level of protection possible to all electrical utility employees; and

WHEREAS, provisions of the American Public Power Association (APPA) Safety Manual are currently being utilized as policy within the City's Electric Utility Department; and

WHEREAS, official adoption of the APPA Manual will allow the City to meet the requirements of the Reliable Public Power Provider (RP3) Program.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF DOVER, IN COUNCIL MET:

That the American Public Power Association (APPA) Safety Manual is adopted as the governing set of safety rules for its municipal electric utility employees.

ADOPTED: AUGUST 13, 2012

(Clerk's Office Note: The American Public Power Association (APPA) Safety Manual is on file in the City Clerk's Office.)

Presentation - Energy Commodity Risk Management Policy Modifications (The Energy Authority)

Mr. Jamie Mahne, Chief Client Officer for The Energy Authority (TEA), reviewed a Presentation - Dover Risk Policy Modifications. As the City's Energy Manager, he explained that TEA had recommendations for modifications to the City's Energy Risk Policy.

Mr. Bonar indicated his firm opposition to redacting anything involving public policies related to management of the City's electricity, noting that this was "the people's electric department for the foreseeable future." Responding, Mr. Mahne stated that TEA was owned by and served public power organizations exclusively and was sensitive to and agreed with Mr. Bonar's concern. He advised members that this was one of the overriding reasons for recommending the policy modifications and that another reason was to bring Dover's Risk Policy up to the industry's best practices.

In response to Mr. Blakeman, Mr. Mahne indicated that City staff (City Manager, Utility Managers, and the Controller/Treasurer) and representatives of TEA, who serve as the Executive Committee, were involved in the rewriting of the policy and approved it for presentation to members of the Utility Committee.

No further action was taken by the Committee. *(City Clerk's Office Note: In accordance with the policy, the Utility Committee must conduct an annual review and approval of the Governing Policy For Energy Commodity Risk Management; therefore, this item has been scheduled for consideration by the Committee on August 13, 2012.)*

Review of Utility Related Capital Investment Plan (CIP) *(Electric and Water/Wastewater)*

Members were provided a Project Tracking Report, as of May 31, 2012, for the Utility (Electric and Water/Wastewater) Related Capital Investment Plan (CIP).

Mrs. Williams questioned the number of projects and the fact that so many were in a waiting status. Responding, Mr. Scott Koenig, City Manager, reviewed some of the projects listed, explaining that the new Library was nearing completion, and that some projects, such as the roof replacement at Dover Park, had been deferred. He noted that the City Hall fire sprinkler system was being presented to City Council during their meeting later in the evening. Mr. Koenig explained that staff had been attempting to complete several street program projects and had initially intended to use General Fund

monies; however, prior to beginning the projects, various legislators submitted Community Transportation Funds, which resulted in the ability to use alternative funding. Referring to the Water Street Brick Sidewalk that had been pending for some time, Mr. Koenig explained that this was a very historic sidewalk that was located against a very historic wall (Christ Church wall along Water Street), which created a major problem. Mrs. Williams requested that staff determine if the wall referred to was indeed historic, noting that it was built several years after the Church. She expressed her concern that some of these projects never seem to be completed, and thus the City's objectives are not accomplished.

Continuing, Mr. Koenig noted that the City did not plan to build a parking lot at Schutte Park and would transfer this funding to sidewalk work at Schutte Park. He explained that since Wyoming Mill Road had been relocated, staff could continue installing the sidewalk along that roadway, noting that the intent was to begin a sidewalk to the south. Referring to the Route 13/North State Street-Kings Highway project, he advised members that originally the State planned to pay the City to pave Route13; however, there had since been a supplemental agreement to transfer monies back to the State to handle this project. He noted that the City had been running behind on the Street Program due to contract response issues, staff commitments, and issues with the State regarding the roundabout at Eden Hill on North Street.

Responding to Mr. Bonar regarding the North Street Project, Mr. Koenig noted that this project was separate from the CIP, explaining that the North Street Project referred to by Mr. Bonar would be financed by a grant through the Downtown Dover Partnership. He confirmed that this project would require the City to make adjustments to the water system because there was not a great deal of space in North Street, and Verizon had installed their conduit bank on top of the City's water line in this area. It was his understanding that equipment was being brought in to begin construction on this portion of the project this week and that completion would be expected within the next week or so.

Mr. Bonar recalled concerns regarding a traffic signal in front of the new Dover High School and that the Delaware Department of Transportation (DelDOT) had indicated that this would require a process. Regardless of the process required of DelDOT, he indicated his desire for the traffic signal to be installed prior to the school opening, noting that there was a true safety issue involved and his feeling that the State's bureaucracy on several of these types of projects was not necessary.

Concurring with the safety concerns involving the new Dover High School, Mrs. Williams questioned if City Council could take temporary safety measures, such as providing additional police officers during the times when students would be entering and exiting the school, in an attempt to mitigate these risks. Responding, Mr. Koenig felt that staff could meet with representatives of DelDOT and the Capital School District to discuss this issue. He advised members that recent conversations with DelDOT indicated that DelDOT was attempting to move these projects, such as the installation of traffic signals, forward. He stated that DelDOT was relying heavily on the engineering study and warrant analysis that was completed by the engineers for the Capital School District to determine where traffic signals should be installed. In accordance with the warrant analysis, a traffic signal should be installed on the west end of the property; however, since the traffic coming out of the east end would be only intermittent, it did not meet the warrant analysis. It was his understanding that the warrant analysis serves as a legal test for DelDOT; therefore, if DelDOT

were to install a traffic signal in a location that did not meet the warrant analysis and an accident occurred, DelDOT could be held liable. As a result, DelDOT was very reluctant to perform work that did not meet a warrant analysis.

As mentioned by the City Clerk, Mr. Bonar noted that since this matter was not included in the CIP, members should refrain from any further discussion. He suggested that this issue be considered by the Safety Advisory and Transportation Committee. Responding, Mr. Hutchison reminded members that the Safety Advisory and Transportation Committee had recently considered this matter and as a result, City Council authorized a letter to be sent to DelDOT relaying the City's concerns.

Referring to the Water/Wastewater CIP, Mr. Koenig noted that although there had been a 50% reduction in the City's engineering staff, projects were moving forward and, although the backlog was not complete, there had been a reduction. He noted that most of the Electric CIP projects were on schedule and within budget.

In response to Mr. Blakeman regarding the Life Extension of Units 1 and 2, Mr. Koenig stated that discussions on this matter were continuing and he anticipated that members would be provided related information to consider between now and the end of the year.

Responding to Mrs. Williams, Mr. Koenig stated that the Fox Hall Pump Station Upgrade had been completed and that staff was working on the contract documents to close the project. He anticipated the roadway to be repaved as a part of a repaving project in the future.

No further action was taken by the Committee.

Update - Garrison Oak Technical Park Project

Mr. Scott Koenig, City Manager, stated that staff was working through the engineering consulting reviews of the Garrison Oak Technical Park Project and anticipated bringing forward amendments to the engineering contract to facilitate the design of the pump station. In addition, staff would be presenting a supplemental contract for the construction of an elevated water tower for the property. He noted that the engineering analysis which was completed indicated the need for a 12-inch water line and an elevated storage tower and that long-term improvements to the plant were a part of the City's CIP proposals. Mr. Koenig stated that staff was working with Kent County to develop a sewer alignment and pump station that would allow the City to tie into the East Dover bypass and to abandon the station on White Oak Road.

It was Mr. Koenig's understanding that Calpine's air permit would be reviewed by the Delaware Department of Natural Resources and Environmental Control (DNREC) during the month of August. He advised members that Calpine was securing their purchases and working through issues related to the natural gas line extension.

By consent agenda, Mrs. Williams moved for acceptance of the Utility Committee Report, seconded by Mr. Bonar and carried by a unanimous roll call vote (Mrs. Russell absent).

LEGISLATIVE, FINANCE, AND ADMINISTRATION COMMITTEE REPORT - JULY 23, 2012

The Legislative, Finance, and Administration Committee met on July 23, 2012 with Councilman Hare presiding in the absence of Chairman Lynn.

Proposed Amendments to Ground Lease Agreement Between Calpine and the City of Dover

Mr. William Neaton, Economic Development Manager, reviewed proposed amendments to the Ground Lease Agreement with Garrison Energy Center, LLC (Calpine Corporation) for the Garrison Oak Technology Park, as follows:

1) Paragraph 3 Lease of Premises: The property has been identified as being a portion of Lot 7, which is 36.8 acres and is depicted in Exhibit B.

2) Paragraph 5A defines the number of acres to be leased and the cost per acre. The previous agreement required quarterly lease payments. The change will read "tenant shall pay the landlord once per year."

3) Paragraph 42E, previously titled Publicity, is now deleted.

4) Now included in the Ground Lease are Exhibits A and B. Exhibit A is the description and depiction of the property, Lots 1 through 15 of the Garrison Oak Technical Park. Exhibit B is the description and depiction of the premises Lot 7 (86.4211 acres) and the leased portion of Lot 7 (36.7971 acres).

5) There are a number of grammatical and punctuation changes agreed upon between the City of Dover's attorney and Garrison Energy Center.

Mr. Neaton assured members that Mr. Kirk Betts, Attorney for the City of Dover, and Mr. John Watson, Land Specialist, Calpine Corporation, had reviewed the documents and that Calpine had accepted the revised Ground Lease Agreement as presented.

Responding to Mr. Bonar, Mr. Neaton announced that the Air Permitting is scheduled for August 8, 2012 at the Richardson & Robbins Building.

Staff recommended approval of the revised Ground Lease.

The Committee recommended approval of the revised Ground Lease Agreement with the Garrison Energy Center, LLC (Calpine) as presented.

By consent agenda, Mrs. Williams moved for approval of the Committee's recommendation to approve the revised Ground Lease Agreement with the Garrison Energy Center, LLC (Calpine) ***(Exhibit #3)*****, seconded by Mr. Bonar and carried by a unanimous roll call vote (Mrs. Russell absent).**

Review of Grant Application - Two-Way 800 MHZ Radios - Fire Marshal's Office

Mr. Scott Koenig, City Manager, advised members that the Fire Marshal and the Mayor's Office had requested authorization to apply for a Delaware Emergency Management Agency (DEMA) Grant for two-way 800 MHZ Radios. The City of Dover requested funding from DEMA for the purchase of 12 portable radios and five (5) mobile radios. Mr. Koenig noted that the total cost of the radios would not exceed the grant amount of $83,328.00. Members reviewed a cost analysis from Motorola Solutions provided by Magnum Electronics, which is a State vendor.

Mr. Koenig indicated that the funding for this project was provided under short notice because other municipalities in the State had not completed their projects by the due date set forth by the Federal Government. He stated that all costs associated with the project would be charged to the Fire Marshal's Office and that 100% of the project costs would be reimbursed to the City of Dover upon application for reimbursement. He advised members that it was possible that the radios would be borrowed by Public Works supervisors while assisting the Fire Marshal's Office during an emergency situation, such as a disaster; however, he noted that the use of the 800 MHZ system is very restricted throughout the State.

Staff recommended authorization to complete the project and request reimbursement for all costs associated with the purchase of two-way radios and accessories.

Responding to Mr. Shevock, Mr. Koenig stated that the maintenance costs would be covered under warranty for the first year and thereafter would become a part of the radio maintenance contract. Since a majority of the radios would be replacements and the maintenance contract was based on the number of radios, staff did not anticipate any additional costs.

The Committee recommended that staff be authorized to complete the project and request reimbursement from the Delaware Emergency Management Agency (DEMA) for all costs associated with the purchase of two-way 800 MHZ radios and accessories.

By consent agenda, Mrs. Williams moved for approval of the Committee's recommendation, seconded by Mr. Bonar and carried by a unanimous roll call vote (Mrs. Russell absent).

By consent agenda, Mrs. Williams moved for acceptance of the Legislative, Finance, and Administration Committee Report, seconded by Mr. Bonar and carried by a unanimous roll call vote (Mrs. Russell absent).

MONTHLY REPORTS - JUNE 2012

By motion of Mrs. Williams, seconded by Mr. Bonar, the following monthly reports were accepted by consent agenda:

Chief of Police	City Planner
City Assessor	Dover Fire Department
City Manager	Capital Investment Plan (CIP)

REVISION TO GARRISON OAK TECHNICAL PARK PROFESSIONAL SERVICES CONTRACT

Mr. Scott Koenig, City Manager, reminded members that in 2009, the City of Dover's Economic Development Office solicited Requests for Proposals (RFPs) for engineering services related to the future development of Garrison Oak Technical Park. He noted that in September 2009, City Council authorized $322,100 for the engineering services contract with Becker Morgan Group. Mr. Koenig stated that land planning and engineering design of the subdivision had been ongoing since 2009 and that construction documents, including utility and infrastructure design, were approximately 70% complete. He explained that since the utility demands for the Garrison Energy Center (Calpine Project) have been determined, the City is now able to complete the final design of the subdivision as well as the utility infrastructure. Based on the utility demands of the Garrison Energy Center, as well as additional environmental considerations, some design changes are necessary.

Mr. Koenig advised members that two (2) of the original tasks were eliminated from the contract, which resulted in a reduction in the contract value to $289,500. The current proposal would address the design changes necessitated by the utility design changes and environmental considerations. Members reviewed information which outlined each engineering task in terms of the original contract cost and the amendments proposed for adoption by City Council.

Staff recommended that the City Manager be authorized to sign an amendment to the engineering services contract with Becker Morgan Group to complete the Subdivision Design and Construction Documents for the Garrison Oak Technical Park at a cost not to exceed $377,500 ($88,000 more than the current contract value of $289,500 (a staff reduction in the original amount of $322,100 authorized by City Council in 2009)).

Mr. Lynn noted that City Council had originally authorized an expenditure in the amount of $322,100, which appeared to be reduced to $289,500; therefore, he questioned if the $88,000 being requested would be reduced by $32,600 to $55,400. Responding, Mr. Koenig stated that although staff was authorized to spend up to $322,100, the amount required would be [$55,400] over the approved amount; therefore, staff was required to obtain Council approval.

In response to Mrs. Williams regarding the gas junction, Mr. Koenig stated that the gas extension will be coming from north of Cheswold and will enter the property from the north side to feed the Garrison Energy Center directly. Easements will be obtained to extend the gas line with a 16" diameter pipe. He indicated that Chesapeake Utilities had not identified an additional route to the south and that the gas extension was a private venture with Chesapeake Utilities, Calpine Corporation, and Eastern Shore Natural Gas, as well as other partners.

Responding to Mr. Anderson, Mr. Koenig indicated that approximately $15,000 remained to be charged against a $400,000 State Grant received for the development of the Garrison Farm. The remaining balance, in the amount of $88,000, would be charged against the infrastructure projects for the Garrison Farm Improvements identified in the FY-2013 Draft Operating Budget and Capital Investment Plan.

Mr. Bonar moved for approval of staff's recommendation to authorize the City Manager to sign an amendment to the engineering services contract with Becker Morgan Group to complete the Subdivision Design and Construction Documents for the Garrison Oak Technical Park at a cost not to exceed $377,500 ($88,000 more than the current contract value of $289,500 (a staff reduction in the original amount of $322,100 authorized by City Council in 2009)). The motion was seconded by Mrs. Williams and carried by a roll call vote of seven (7) yes, one (1) no (Mr. Lynn), and one (1) absent (Mrs. Russell).

EVALUATION OF BIDS - DISTRIBUTION CAPACITOR AND CONTROLS - RFL ELECTRONICS MULTIPLEXERS

Mr. Scott Koenig, City Manager, advised members that the purpose of the Distribution Capacitor and Controls Project is to ensure a high level of power quality and maintain near unity power factor throughout the electric system. He explained that the multiplexers provide communication from the electric substations to the System Operations Center at the Electric Administration building, for increased monitoring capabilities and advanced metering. This increased ability to analyze system performance remotely will allow the department to more efficiently determine the proper locations for additional capacitor banks and switch capacitor banks on and off to ensure system power factor compliance.

Mr. Koenig advised members that the multiplexers will replace vintage equipment that currently does not have the technology for the above described communication. In addition, the existing equipment is no longer supported for repair or replacement. He indicated that those units to be replaced under this order are for the following substations: College Road, New College Road, McKee Run, Dover Downs, St Jones, Sun Park, Horsepond, Dover AFB, Lebanon, Danner Farm, Mid City, Mayfair, Parkland, North Street and Division Street.

Staff recommended purchasing the RFL ACCESS Multiplexers from the sole vendor, RFL Electronics Inc., for an amount of $103,440. On site training installation and commissioning will be based on time and material not to exceed the total cost of $125,000.

Responding to Mrs. Williams, Mr. Koenig indicated the possibility that the multiplexers may be interchangeable between the substations. He felt that redundancies were built into the system that would allow redirect communications should one fail.

Mrs. Williams moved for approval of staff's recommendation for the purchase of the RFL ACCESS Multiplexers from the sole vendor, RFL Electronics Inc., for an amount of $103,440. On-site training installation and commissioning will be based on time and material not to exceed the total cost of $125,000. The motion was seconded by Mr. Bonar and carried by a unanimous roll call vote (Mrs. Russell absent).

APPOINTMENTS/REAPPOINTMENTS RECOMMENDED BY MAYOR CAREY

Mayor Carey requested approval of the following appointments:

Dover Public Library Commission - Five (5) Year Term to Expire June 16, 2017

Zachery Carter *(to fill unexpired term of Edward J. Hynes)*

Dover Housing Authority - Six (6) Year Term to Expire August 15, 2018
Enrico LePore *(reappointment)*

Ethics Commission - Five (5) Year Term to Expire July 31, 2017
Andrew S. Moreland *(to fill expired term of Dennis K. Jones)*

By consent agenda, Mrs. Williams moved for approval of the appointments/reappointments as recommended by Mayor Carey, seconded by Mr. Bonar and carried by a unanimous roll call vote (Mrs. Russell absent).

COUNCIL MEMBERS ANNOUNCEMENTS
Council President Leary relayed belated birthday wishes to Councilman Lynn.

Mr. Bonar reminded those living, working, and traveling in the City that there will be a new influx of freshmen college students at Wesley College. He noted that several street improvements have been made in the area that may cause confusion with parking. In addition, he reminded everyone that students walk and text and may not be paying attention; therefore, he requested that everyone, including emergency vehicles, take extra precautions and slow down to avoid accidents.

Mr. Lynn moved to adjourn into executive session to discuss legal matters, seconded by Mr. Anderson and unanimously carried.

Meeting Adjourned at 8:31 P.M.

TRACI A. McDOWELL
CITY CLERK

All orders, ordinances, and resolutions adopted by City Council during their Regular Meeting of August 13, 2012, are hereby approved.

CARLETON E. CAREY, SR.

/TM/jg
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Exhibits to Original Minutes
Exhibit #1 - Brochure - 2012 Delaware Bike Summit
Exhibit #2 - Ordinance #2012-13 - Amending Appendix B - Zoning, Article 5 - Supplementary Regulations, Section 4 - Supplementary Sign Regulations
Exhibit #3 - Revised Ground Lease Agreement with the Garrison Energy Center, LLC (Calpine)

2012 DELAWARE BIKE SUMMIT

SEPT. 7, 2012 AT DOVER DOWNS HOTEL & CASINO





Delaware Bike Summit returns to Dover for 2012

- This year's summit will focus on active transportation, including:
  - safety
  - encouraging youth to bicycle
  - creating bicycle-friendly communities
  - an update on the First State Trails and Pathways Plan
- Enjoy an exciting post-summit ride on the Dover Downs track!
- The 2012 summit is being held in conjunction with the 2012 Amish Country Bike Tour
- Event includes lunch, breaks and materials

When: 9 a.m. Friday, Sept. 7 (registration begins at 8:30 a.m.)

Where: Dover Downs Hotel & Casino, 4th Floor Diamond Lounge

Register Online by visiting: www.wilmapco.org/bikesummit

Be ready the next day, Sept. 8 for the Amish Country Bike Tour! For more information, visit: www.AmishCountryBikeTour.com

2012 DELAWARE BICYCLE SUMMIT

September 7, 2012

AGENDA



8:30 a.m.	Registration and Continental Breakfast
9:00 a.m.	Welcome: - Mayor Carleton Carey, Sr., City of Dover - **Moderator, Senator David Sokola**
9:30 a.m.	Key note – Delaware, a Role Model Andy Clarke, League of American Bicyclists
10:00 a.m.	Federal Transportation Legislation Update: MAP-21 and Biking Tracy Hadden Loh, National Transportation Enhancements Clearinghouse
10:30 a.m.	Break
10:45 a.m.	Bike Friendly Community Application Workshop: Dover a Real World Example - Andy Clarke (Moderator) - Ann Marie Townsend, Dover City Planner - Mike Tyler, City of Lewes - Mike Fortner, City of Newark
11:30 p.m.	Lunch
11:45 p.m.	Lunch Discussion: Bicycle Safety, and the Rights and Responsibilities of Cyclists Bud Heberling, DE State Police
12:45 p.m.	Dover/Kent County MPO Bike Plan - Rich Vetter, Executive Director, Dover/Kent County MPO - Ann Marie Townsend, Dover City Planner
1:15 p.m.	Beyond Spandex: Encouraging Youth and Non-Traditional Populations - Doug Tynan, Nemours and Prevention Services (Moderator) - Liz Pisarczyk, Neighborhood Bike Works - Kristin Gavin, Gearing Up - Nicole Suto, Newark Bike Project - Jen McCue, Safe Kids
2:15 p.m.	The First State Trails and Pathways Plan – One Year Later - Collin O'Mara, Secretary, DNREC - Shailen Bhatt, Secretary, DelDOT
3:00 p.m.	Awards Presentation
3:15 p.m.	Closing Remarks Governor Jack Markell (invited)
3:30 p.m.	Summit Concludes
4:00 p.m.	Post-Summit Ride on the Dover Speedway ($7 Cost) Led by Governor Markell (invited)
5:00 p.m.	Reception at Frankie's Bar and Restaurant, Dover Downs (15% discount provided to summit attendees)

CITY OF DOVER
ORDINANCE #2012-13

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DOVER, IN COUNCIL MET:

That Appendix B – Zoning, Article 5 – Supplementary Regulations, Section 4 – Supplementary Sign Regulations be amended to read as follows:

Section 4. Supplementary sign regulations.

4.1 *Purpose statement.* The purpose of this section is to create a legal framework for a comprehensive and balanced system of signs and other street graphics to facilitate an easy and pleasant communication between people and their environment. The ordinance from which this section is derived is enacted to avoid the visual clutter that is potentially harmful to vehicular and pedestrian safety, property values, business environment and opportunities, and community appearance. With these purposes in mind, it is the intent of this section to authorize the use of signs which are compatible with their surroundings, appropriate to the activity that displays them, expressive of the identity of individual activities and the community as a whole, and legible in the circumstances in which they are seen, understanding that it is important for the economic vitality of the community as well as individual businesses and institutions that they are clearly identified and their services are understood by the traveling public.

All signs, which are regulated by this section, shall conform to the following general guidelines:

A. *The legibility of signs*. Signs shall be legible under the circumstances in which they are primarily seen. Signs shall legibly convey their messages without being distracting or unsafe to motorists reading them. The legibility of signs is related to the speeds at which they are viewed; the context and surroundings in which they are seen; and the design, colors, and contrasts of the sign copy and sign face.

B. *The relationship of signs to the buildings and sites they identify*. Signs shall be an integral architectural element of the buildings and sites that they identify and their design shall be consistent with, and not detract from, the overall architectural concept of the site. Signs should be of an appropriate size and scale in relation to the buildings on the lot.

4.2 *General provisions*.

A. *Permitting*. No sign, advertising display or structure, poster or device shall be erected, moved, enlarged or reconstructed except in accordance with this ordinance. All signs, except exempt signs, shall require a permit and fee as prescribed in Appendix F, Chapter 22-Buildings and Building Regulations.

B. *Administration*. Administration, interpretation, and enforcement of the provisions of this section shall be under the authority of the city planner or their authorized designee. In administering the provisions of this section, the city planner shall evaluate signs and applications for sign permits for conformity with the design guidelines, standards, and specifications contained herein. Appeals from the application or interpretation of any provision of this section may be processed in

accordance with the provisions of article 9 (board of adjustment) of the zoning ordinance.

C. *Unsafe, dilapidated and illegal signs*. If it is determined by the city planner or his authorized designee that any sign is unsafe, presents a hazard to the safe operation and movement of motorized or nonmotorized vehicular traffic, or to pedestrians, or is in a dilapidated condition, or is in a state of disrepair, or is otherwise in violation of any provision of this section, the owner of such sign shall be responsible for removal of such sign and supporting structure within 14 days of receipt of written notification by the city planner. In cases where signs are determined to be unsafe or present a hazard, the city planner may order their removal in a shorter period of time. Responsibility for removal shall be in accordance with subsection 4.10 - Nonconforming signs, B., and subsection 4.11 - Abandoned and Damaged signs, of this section.

D. Setback. All signs, including those which do not require a permit, shall be setback from the right-of-way in accordance with the provisions of Article 5, Section 4.7, unless otherwise specified, and shall not interfere with aboveground or underground utilities.

E. Administrative Waiver. For existing developed properties where placement of the sign in accordance with the required setback would interfere with existing required parking, fire lane, or other site improvements, the city planner shall have the authority to waive the setback requirement.

4.3 *Sign definitions*.

Abandoned sign: A sign relating to or identifying a business or activity which has not been conducted on the premises for 90 days, or seven days after an election or event that the sign is advertising.

Adjacent to residential: Property lines which are situated within 200 feet and which front on the same street as a parcel, or group of parcels containing residential uses, or that are zoned for residential uses, excluding residential uses and districts fronting on principal arterial roads.

Architectural feature: An exterior component of the architecture of a building, which has a structural, functional or decorative purpose. This term shall apply to elements such as windows, doors, entry porticos, porte-cocheres, colonnades, cornices, porch columns, railings and balusters, band courses, quoins, water tables, exterior vents and louvers, moldings and other trim.

Awning sign: A wall sign that is a part of a fabric or other non-structural awning.

Banner: A light-weight fabric or similar non-rigid material which is mounted to a pole or structure, either enclosed in a frame or mounted to allow movement caused by the atmosphere.

Canopy sign: A type of wall sign attached to a permanent, decorative porch or walkway cover, other than an awning, which is attached to a building or supported by columns, extending to the ground.

Changeable sign: A sign with the capability of content change by means of manual or remote input, includes the following types:

1. Manually activated – Changeable sign whose messages, copy or content can be changed manually on a display surface.

2. Electrically activated – Changeable sign whose message copy or content can be changed by means of remote electrically energized on-off switching combinations of alphabetic or pictographic components arranged on a display surface. Illumination may be integral to the components, such as characterized by lamps or other light-emitting devices; or it may be from an external light source designed to reflect off the changeable component display. See also Electronic Message Center.

Clear Height: The distance from the ground to the bottom of the sign. The minimum clear height shall be eight feet for pylon sign, projecting sign, and any other sign that may impact pedestrian traffic.

Comprehensive signage plan: A plan for all signs associated with a unified campus or complex.

Conforming sign: Any sign that conforms to the provisions of this section.

Construction sign: A sign which identifies architects, engineers, contractors and other individuals or firms involved with construction on the premises, the name of the building or development, the intended purpose of the building, and/or the expected completion date.

Directional sign: A freestanding sign whose primary function is to give aid to motorists or pedestrians in locating buildings or roads.

Electronic Message Center or Sign (EMC): An electrically activated changeable sign whose variable message and/or graphic presentation capability can be electronically programmed by computer from a remote location. Also known as an EMC. EMC's typically use light emitting diodes (LEDs) as a lighting source.

Exclusion zone: The area adjacent to an existing or proposed freestanding sign within which no other freestanding sign of a similar sign type shall exist or be placed. The exclusion zone shall be measured outward in all directions from the extreme limits of the sign structure a prescribed distance.

Flag: A rectangular or pennant shaped piece of fabric or flexible material of distinctive design that is used as a symbol (as of a nation or state), as a signaling device, or as a decoration and is attached to a flag pole.

Freestanding sign: A sign that is not attached to a building and is permanently attached to the ground by one or more supports. Freestanding signs include monument, pylon, post and panel, and post signs.

Frontage: For the purposes of this section, the term "frontage" refers to a parcel's property line along a right-of- way, be it public or private, excluding alleys and service drives that are

abutting residential properties. The parcel must be directly adjacent to the right-of-way for it to be considered to have frontage.

Historical or memorial sign: A sign or tablet attached to a building indicating the date of construction and/or the names of the building, the principals involved in its construction, or the history of the building or the site.

Illuminance: The amount of light falling upon a real or imaginary surface, commonly called "light level" or "illumination". Measured in foot candles (lumens/square foot) in the English system and lux (lumens/square meter) in the SI (metric) system.

Illuminated Sign: A sign characterized by the use of artificial light, either projecting through its surface (s) internally or trans-illuminated; or reflecting off its surface(s).

Inflatable sign: A sign that is designed to be filled with air to form a three-dimensional shape which is designed to be anchored to the ground.

Luminance: The light that is emitted by or reflected from a surface. Measured in units of luminous intensity (candelas) per unit area (square meters in SI measurement units or square feet in English measurements units). Expressed in SI units as cd/m2, and in English units as foot lamberts. Sometimes also expressed as "nits", a colloquial reference to SI Units. Can be measured by means of a luminance meter.

Lux: The SI (metric) unit for illuminance. One lux equals 0.093 foot candles.

Monument sign: A low freestanding sign that is affixed to a base that is equal to or wider than the sign itself. The height of the sign is to be measured from the finished grade to the top of the sign. (See figure 5-3.)

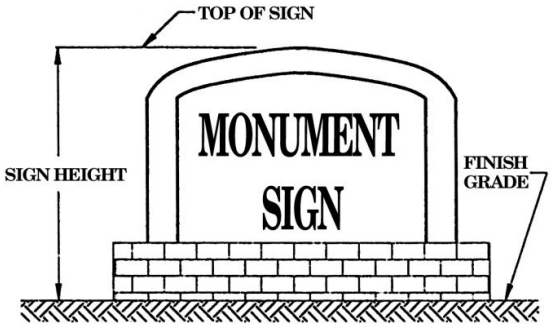


FIGURE 5-3

Nit: A photometric unit of measurement referring to luminance. One nit is equal to one cdm2.

Nonconforming sign: Any sign which does not conform to the regulations of this ordinance, including any signs granted by variance where it can be demonstrated that the original hardship on which the variance was based no longer exists. This definition also includes the structure upon which the sign is erected, or the mounting hardware in the case of wall mounted signs.

Off-premises sign (billboard, etc.): A permanent or temporary sign erected, maintained, or used in the outdoor environment for the purpose of the display of commercial or noncommercial messages not appurtenant to the use of, products sold on, or the sale or lease of the property on which it is displaced. Also referenced as billboard or commercial outdoor advertising sign.

On-premises sign: A sign which advertises or directs attention to a business, commodity, or service conducted, offered, or sold on the premises, or directs attention to the business or activity conducted on the premises.

Political Sign: A temporary sign intended to advance a political statement, cause, or candidate for office.

Portable sign: Any sign not permanently attached to the ground or other permanent structure, including but not limited to signs with attached wheels, A- or T-frame signs, and menu and sandwich board signs.

Post sign: A freestanding sign that is attached to the underside of a horizontal plane or arm and is supported by the horizontal plane. (See figure 5-4.)

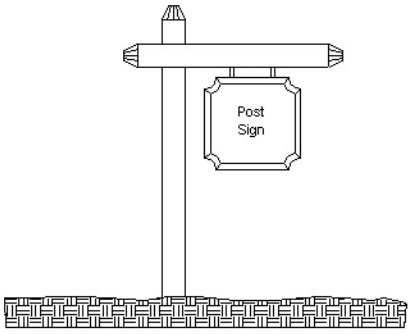


Figure 5.4

Post and Panel sign: A freestanding sign that has a noninternally illuminated panel, not more than six inches in depth that is affixed to two posts and is not more than seven feet in total height. The sign shall not be higher than the supporting posts. (See figure 5-5.)

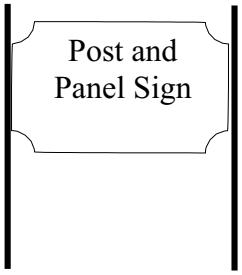


FIGURE 5-5

Projecting sign: A wall sign attached to a building with a bracket or other support projecting at a right angle from the building face. (See figure 5-6.)

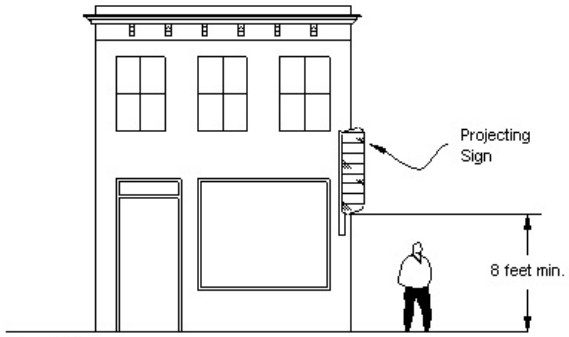


Figure 5.6

Public sign: A sign erected by or on behalf of a governmental body to post a legal notice, identify public property or public buildings, convey public information, and direct or regulate pedestrian or vehicular traffic.

Pylon sign: A tall freestanding sign that is held up by a pole or poles. The supporting structure must be equal to or narrower than the sign itself. (See figure 5-7.)

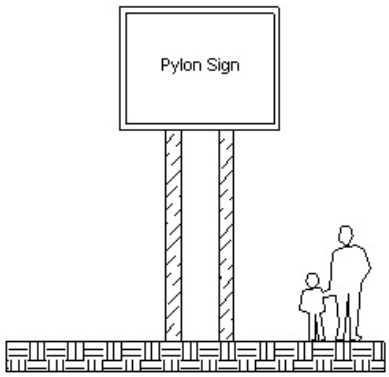


Figure 5.7

Race weekend sign: Any sign erected seven days prior to a sanctioned automobile race for the purpose of advertising products and services to race fans.

Real estate sign: A sign advertising the premises for sale, rent or lease.

Roof sign: A sign that is attached or painted on the roof, including porch roofs, dormer roofs, overhang roofs, canopy roofs or roofs of another architectural feature. Signs on the lower portion of a mansard or canopy are considered wall signs.

SI (International System of Units): The modern metric system of measurement.

Shared freestanding sign: A sign structure which is shared among multiple nonresidential properties or business interests for the purpose of displaying the name, logo type or other commercial message of multiple nonresidential occupants of said adjoining properties.

Sign: Any device visible from a public place whose essential purpose and design is to convey either commercial or noncommercial messages by means of graphic presentation of alphabetic or pictorial symbols or representations.

Sign area: The area of the smallest geometric figure, or the sum of the combination of regular geometric figures, which comprise the sign face. The area of any double-sided or "V" shaped sign shall be the area of the largest single face only. The area of a sphere shall be computed as the area of a circle. The area of all other multiple-sided signs shall be computed as fifty (50) percent of the sum of the area of all faces of the sign.

Sign face: The surface upon, against or through which the sign copy is displayed or illustrated, not including structural supports, architectural features of a building or sign structure, nonstructural thematic or decorative trim, or any areas that are separated from the background surface upon which the sign copy is displayed by a distinct delineation, such as a reveal or border.

Sign height: The height of a sign shall be the vertical distance from normal grade to the highest point of the sign. Any berming, filling or excavating solely for the purpose of locating the sign shall be computed as a part of the sign height.

Sign setback: The straight line distance measured in linear feet between the street right-of-way line and the nearest element of a sign.

Temporary sign: A sign intended to display either commercial or noncommercial messages of a transitory or temporary nature. Any sign not permanently embedded in the ground, or not permanently affixed to a building or sign structure that is permanently embedded in the ground, is considered a temporary sign.

Unified campuses and complexes: The term "unified campuses and complexes" means:

(1) Any "shopping center" as the term is defined in the zoning ordinance.

(2) Or, any group of three or more principal structures under common management and operation, located on one or more contiguous properties;

(3) Or, any single commercial or institutional parcel which has more than 400 linear feet of frontage on a principal arterial roadway which is occupied by a conforming commercial or institutional use. Unified campuses and complexes include, but are not limited to, shopping centers; entertainment, educational, medical, governmental, or religious campuses; office complexes; and industrial parks.

Urban Collector and Local Streets: All streets or portion of streets within the corporate limits of the City of Dover which are not specifically classified as urban principal arterials or urban minor arterials under the provisions of this section.

Urban Minor Arterials: Delaware (DE) Route 8 (including all alternative names); McKee Road; Saulsbury Road; College Road; North Street (from Saulsbury Road to the western city limits); Kenton Road (from College Road to DE Route 8); State Street (from Walker Road north to US Route 13 and Wyoming Avenue south to the southern city limits); Loockerman Street; Leipsic Road; Webbs Lane, New Burton Road, Scarborough Road, Walker Road and Governors Avenue (from

Division Street to the southern city limits) are considered to be urban minor arterials under the provisions of this section.

Urban Principal Arterial: US Route 13, Bay Road, and Court Street between 13 and Bay Road are considered to be urban principal arterials under the provisions of this ordinance. Delaware State Route 1 is not considered to be a road that will provide frontage for any parcel.

Vehicle sign: A sign displaying a name or names, logo types, graphics, commercial messages or any combination thereof, which is attached to, painted on, or otherwise applied to a motor vehicle.

Wall area: For purposes of calculating wall area, the calculations shall include the height of the wall from ground level to the roofline (mansard roofs also count as wall area), multiplied by the width of the wall (including all architectural features).

Wall sign: Any sign, other than a projecting sign, which is attached to or painted on any wall of any building and projects from the plane of the wall less than 18 inches. A sign attached to the lower slope or face of a mansard roof, canopy, or awning shall be considered a wall sign for purposes of this ordinance. For purposes of this section only, a "wall" shall include any permanent architectural extension of a wall, including parapets, even if such extension projects beyond or above the enclosed portions of the building. Canopy, marquee, and awning signs are all types of wall signs. (See figure 5-8).



Figure 5.8

Window sign: A sign affixed to the surface of a window with its message intended to be visible to the exterior environment.

4.4 *Design requirements*.

A. *Freestanding signs*.

1. Freestanding signs and attendant structures and bases shall be designed as an integral part of the site development and shall be coordinated and compatible with site grading, utility placements, landscaping and architectural elements.

2. Freestanding signs and associated landscaping shall be situated and maintained so as not to impair or block visibility of motorists and/or pedestrians traveling within the public street right-of-way or entering, exiting or crossing vehicular site entrances. No sign or landscaping in excess of three (3) feet in height above the adjacent street grade, shall be erected, placed or maintained on any corner within the triangular area formed by intersecting right-of-way lines. Two sides of the triangular area shall be 20 feet in length and measured from the point of intersection of the right-of-way lines.

3. Freestanding signs shall be situated on the site and dimensioned so as not to substantially impair or block the visibility of adjacent buildings and/or existing signs.

4. All freestanding signs shall respect the exclusion zone. When a sign is not permitted within the exclusion zone, one (1) additional wall sign may be permitted in accordance with the wall sign regulations.

5. When the presence of an existing freestanding sign on an adjoining property precludes a property from placing a freestanding sign due to exclusion zone provisions, the adjoining property owners and/or business interests may share a single freestanding sign structure in accordance with the provisions of subsection 4.9 - Supplementary sign provisions, F - Shared freestanding signs, of this section.

6. Location of monument signs and post and panel signs may be approved by the Planning Commission as part of a Site Development Plan Approval process.

B. *Materials and craftsmanship of signs*. Signs shall be carefully crafted, durable, and consistent with the quality and permanence of the buildings and sites that they identify. Lettering shall be of a professional quality.

C. *Wall sign placement*.

1. When wall signs are planned, such signs shall be designed as an integral component of the building facade architectural composition.

2. Wall signs shall be limited in area and number in accordance with the provisions of subsection 4.7 - Permitted signs, of this section.

3. Wall signs shall be situated so as not to cover or overlap decorative architectural elements such as cornices, belt courses, and window and doorframe moldings.

4. In cases where only one wall sign is permitted because the lot has one frontage, the business may choose to locate the sign on any exterior wall of the building to afford the best possible visibility for the traveling public.

5. In cases where more than one wall sign is permitted, the city planner or their authorized designee may allow the business to locate the additional wall sign on a different exterior wall of the building to afford the best possible visibility for the traveling public.

D. *Sign Illumination Standards*

1. A sign may be illuminated at night. Signs that are illuminated at night may not exceed a maximum luminance level of seven hundred fifty (750) cd/m2 or Nits, regardless of the method of illumination.

2. Signs that have external illumination, whether the lighting is mounted above or below the sign face or panel, shall have lighting fixtures or luminaries that are fully shielded.

3. All illuminated signs must comply with the maximum luminance level of seven hundred fifty (750) cd/m2 or Nits at least one-half hour before Apparent Sunset. All illuminated signs must comply with this maximum luminance level throughout the night, if the sign is energized, until Apparent Sunrise.

E. *Changeable signs*.

1. Changeable signs may be incorporated into a sign face when the changeable component of the sign face occupies less than 70 percent of the total area of that sign face.

2. Changeable sign area shall be integrated into the sign face and shall be enclosed by a border or similar enclosure so as to form one sign panel.

3. Electronic Message Centers (EMC)

(a) The following EMC display features and functions are permitted: scrolling, fading and dissolving while transitioning between messages.

(b) EMC's shall have a minimum display time of eight seconds. The transition time between message and/or message frames is limited to one second.

(c) The following EMC display features and functions are prohibited: traveling, flashing, spinning, rotating, any other moving effects, and all dynamic frame effects or patterns of illusionary movement or simulated movement.

4.5 *Signs permitted in all districts and not requiring permits*

A. Signs advertising the sale, lease, or rental of the premises upon which the sign is located, which sign shall not exceed six and one-fourth square feet in residential districts and 32 square feet in all other districts, and shall comply with setback regulations. One such sign shall be permitted for each 200 linear feet of street frontage for the parcel.

B. Signs designating the name and address of the occupants, hours of operation, security notices, and business policy statements, and may not exceed four square feet.

C. Signs denoting the architect, engineer, developer, or contractor placed on premises where construction, repair, or renovation is in progress, which signs shall not exceed 32 square feet in area. No more than two signs of any type are permitted for any one property or building project. Signs shall be fifty feet from other signs on the site, except where it is not physically possible, then the signs shall be as far away from the other sign as much as possible.

D. Directional signs limited in area to no more than five square feet per sign, plus one square foot for each additional tenant. A permit is required for directional signs identifying the entrance or exit of a site if over five square feet in sign area. The sign area for these larger directional signs shall not exceed eight square feet and shall not be over four feet in height.

E. Public signs.

F. Historical and memorial signs.

G. Any sign located in an internal location on a site, campus, or complex and that cannot be seen from any public right-of-way or adjacent property.

H. People wearing costumes of the logo or character associated with the company as long as they are located on the business location.

I. Political signs shall not be over six square feet in sign area in all Residential Zones and Districts and all other zoning districts shall comply with the size regulations in subsection 4.7 Permitted Signs, of this section. All election signs shall be removed no later than seven days after the election.

J. Signs noting a tenant, store, building, etc. is “coming soon”, which sign shall not exceed 32 square feet and only one sign is permitted on the site. The sign shall be 50 feet from other signs. The sign shall not be placed on the site for more than six months. After six months the sign shall be removed even if the tenant, store, building, etc. has not opened or been constructed.

K. Portable signs designed to be transported, including, but not limited to, A-frames, sandwich boards, and umbrellas. These types of signs shall not obstruct pedestrian or vehicular access. No more than one sign is permitted per business, and shall not exceed four feet in height.]

L. Signs required by federal or state law or by a municipal authority.

M. Signs carved into a building or raised in integral relief on a building.

N. Flags on flag poles.

O. Public Art.

P. "Open" signs for business not to exceed two per business.

4.6 *Sign prohibited in all districts*.

A. Signs which emit audible sound, vapor, smoke, odor, particles or gaseous matter.

B. Any sign which competes for attention with, or may be mistaken for, traffic signals. Also, any sign that is determined by the city planner to constitute a traffic hazard by reason of size, location, content, color, or type of illumination.

C. Off-premises signs of any type (billboards, temporary signs, directional signs for developments, etc.), except for shared freestanding signs as provided in subsection 4.4 - Design requirements, A.~~,~~5., and subsection 4.9 - Supplementary sign provisions, F., of this section.

D. Inflatable signs, except as specifically permitted in subsection 4.9 - Supplementary sign provisions, D.3., of this section.

E. Vehicle signs, including changeable signs, attached to or painted on vehicles for the sole purpose of being used as signage; or attached to or painted on inoperable vehicles.

F. Signs painted on or attached to trees, fence posts, natural features, or telephone or utility poles.

G. Signs that are flashing, rotating, or that give the appearance of movement, or are illuminated by flashing or intermittent lights, or lights of changing degrees or intensity, except as permitted under subsection 4.4 - Design requirements, of this section.

H. Temporary signs made of cardboard, paper, canvas or similar impermanent material, except those permitted in subsection 4.9 - Supplementary sign provisions, of this section.

I. Window signs covering more than 50 percent of a window or a door, or mounted above the first floor, except those permitted in subsection 4.9 - Supplementary sign regulations, A.5., of this section.

J. Pennants, balloons, streamers, flags, etc. except when permitted in subsection 4.5 - Signs permitted in all districts and not requiring permits and in subsection 4.9 - Supplementary sign regulations, D.1., of this section.

4.7 *Permitted signs*. Signs are permitted in all zones in accordance with the following table, which is a list of permitted sign types by use, proximity to residential uses and road classification.

TABLE INSET:

SIGN TABLE									
Use		Road Type	Permitted Signs						
	Specific		Sign Type	Number Permitted	Max Size	Max Height	Percentage of Total Wall Area	Setback (R.O.W)	Exclusion Zone
Residential Uses and Non-Residential Uses in Residential Districts	Single-Family Detached Semi-detached	All Streets	Signs permitted in §4.5 only						
	Professional Office Sub divisions Multi-family Residential Uses Manufactured Home Parks	All Streets	Post or Monument	1/entrance	12 S.F.	7 feet	N/A	5 feet	20 feet
		All Streets	Wall	1/frontage	16 S.F.	N/A	<= 15%	N/A	N/A
		All Streets	Wall &	1/frontage	32 S.F.	N/A	<= 15%	N/A	N/A
			Monument or Post and Panel	2/entrance	32 S.F.	7 feet	N/A	5 feet	20 feet
Non-Residential Uses adjacent to Residential Districts or Uses	Places of Worship Daycare Centers Approved Conditional Uses Educational/ Institutional All other approved Non-residential Uses	Urban Principal Arterial	Wall &	2/frontage	32 S.F.	N/A	<= 15%	N/A	N/A
			Monument or Post and Panel OR	1/entrance	32 S.F.	7 feet	N/A	10 feet	20 feet
			Post** &	1/frontage	16 S.F.	7 feet	N/A	5 feet	5 feet
			Pylon*	1/frontage	32 S.F.	30 feet	N/A	30 feet	50 feet
		Urban Minor Arterial	Wall &	2/frontage	32 S.F.	N/A	<=15%	N/A	N/A
			Monument or Post and Panel OR	1/entrance	32 S.F.	7 feet	N/A	5 feet	20 feet
			Post**	1/frontage	16 S.F.	7 feet	N/A	5 feet	10 feet
		Urban Local/ Collector	Wall &	2/frontage	32 S.F.	N/A	<=15%	N/A	N/A
			Monument or Post and Panel OR	1/entrance	32 S.F.	7 feet	N/A	5 feet	20 feet
			Post**	1/frontage	16 S.F.	7 feet	N/A	5 feet	10 feet
Non-Residential Uses in Non-Residential Districts	Non-Residential Uses	Urban Principal Arterial	Wall &	2/frontage	No max	N/A	<=15%	N/A	N/A
			Monument or Post and Panel &	1/entrance	100 S.F.	10 feet	N/A	10 feet	20 feet
			Pylon OR *	1/frontage	100 S.F.	30 feet	N/A	15 feet	50 feet
			Pylon*	1/frontage	150 S.F.	30 feet	N/A	31 feet	50 feet
		Urban Minor Arterial	Wall &	2/frontage	64 S.F.	N/A	<=15%	N/A	N/A
			Monument or Post and Panel OR	1/entrance	64 S.F.	7 feet	N/A	5 feet	20 feet
			Post**	1/frontage	16 S.F.	7 feet	N/A	5 feet	10 feet
		Urban Local/ Collector	Wall &	2/frontage	32 S.F.	N/A	<=15%	N/A	N/A
			Monument or Post and Panel OR	1/entrance	32 S.F.	7 feet	N/A	5 feet	20 feet
			Post**	1/frontage	16 S.F.	7 feet	N/A	5 feet	10 feet

* Denotes that an additional wall sign may be permitted/added in lieu of a freestanding pylon sign.

**Post sign would be in lieu of a monument sign or post and panel sign.

4.8 *Unified Comprehensive Signage Plan*

A. *Purpose statement*. Recognizing that large campuses and complexes have signage needs that may not be adequately addressed by traditional sign regulations, this subsection of the ordinance is intended to allow a procedure for approval of a unified comprehensive signage plan for these unified campuses and complexes.

1. Campuses and complexes are required to follow all standard signage requirements, as embodied elsewhere in this section, unless they choose to apply to the planning commission for comprehensive signage plan approval. All such plans must embody a thorough review of all existing signs.

2. Any proposed shopping center or group of three or more principal structures under common management and operation located on one or more contiguous properties is required to submit an application for comprehensive signage plan approval to the planning commission.

3. Any business or institution which has more than 400 linear feet of frontage on a principal arterial may submit an application for comprehensive signage plan approval.

B. *Design guidelines for unified comprehensive signage plans*.

1. Unified campuses and complexes applying for a unified comprehensive signage plan may not be held to the height, size, number and area regulations for signs found in other subsections of this section. However, the number, type and size of signs proposed may not be excessive, and must be in proportion to the scale of the buildings and the uses on the site.

2. All unified comprehensive signage plans must comply with all design guidelines found in subsection 4.4 - Design requirements of this section, as well as all specific design guidelines found in this section.

3. Building signs shall be in harmony with the overall architectural concept for the site, and be compatible with each other and the building facades.

4. The freestanding signs identifying shopping centers and other unified campuses and complexes shall identify the name of the campus or complex and no more than three separate tenants within the campus or complex unless otherwise approved by the planning commission.

5. There shall be architectural harmony and unity of signs within a unified campus or complex. Sign type, color scheme, size, and illumination within the site shall be coordinated and shall be compatible with the architecture of the center and the surrounding area.

C. *Planning commission duties*. In reviewing and approving comprehensive signage plans, the planning commission shall take into consideration the public health, safety

and welfare, the comfort and convenience of the public in general and of the residents, businesses, and property owners of the immediate neighborhood in particular, and shall ensure that unified campuses and complexes have adequate, but not excessive, signage. Specifically, the following objectives shall guide the commission when reviewing such plans:

1. That the size and complexity of the campus or complex warrants the need for extra signage under the provisions of this section;

2. That, in respect to the number and type of entrances, the placement of signage at or near those entrances provides superior visibility in order to ensure the safety of the driving public;

3. That the proposed signs are adequate in number to safely direct the public to the use or uses on the site;

4. The proposed signs must not have an adverse impact on the visibility of adjacent signs, and shall be consistent with, or an improvement over, the prevailing type and style of signage in the general area;

5. That the proposed signs will be of a style and color which will complement the architecture of the site, and the area in general.

D. *Submission requirements*.

1. A pre-application meeting is required. No application will be accepted without a pre- application meeting.

2. Copies of a sign plan, which details the signage proposal, including relevant application forms, will be due on the regularly scheduled submission deadline for planning commission review. The sign plan shall illustrate the physical location of all existing and proposed signs on the subject property and their relationship to existing and/or proposed buildings on the site. The submission plan shall include color renderings of each proposed sign (drawn to scale), along with architectural elevation drawings of the building depicting the placement of all wall mounted signs existing and proposed.

3. Public notice is required, following the procedures set forth in article 10, section 2.43 (C).

4. The application fee as provided for in Appendix F - Fees and Fines, is due at time of application.

E. *Amendments to approved comprehensive signage plans*. Any new or revised signs to be placed on a property with an approved comprehensive signage plan need not go back to the planning commission for re-approval if the sign area is not increased more than fifteen percent, and the proposed signs conform to the overall design concept and colors as approved. The fifteen percent increase shall be calculated cumulatively over the life of the project, based upon the originally approved sign

area.

4.9 *Supplementary sign provisions*.

A. *Window signs*.

1. Three window signs shall be permitted as additional signage on walls fronting on the public right-of-way.

2. Window signs shall not cover more than 50 percent of any window exclusive of window and/or door frame.

3. Windows principally viewed from drive aisles and parking lots and not prominently visible from the public right-of-way shall be exempt from restrictions on the number of signs, and may be approved by the city planner for a window coverage area greater than 50 percent when the business elects to have less window signage than permitted on the windows fronting on, or prominently visible from, the public right-of-way.

4. Window signs shall be permitted on windows on the first floor of a building only.

5. The city planner may waive the provisions of this subsection when it has been demonstrated that the proposed window signs are of a unique or superior quality and style, and are intended to compliment the architectural design of the building, or when the business elects to use less wall signs than permitted for the purpose of complimenting the architectural design of the building. Signs granted this waiver are not exempt from the requirement to obtain a sign permit.

B. *Historic district signs*.

1. All signs in the historic district must meet the standards laid out in the design standards and guidelines for the City of Dover Historic District Zone. Any and all standards found elsewhere in this section may be waived as part of the architectural review approval when proposed signs are determined to contribute to or improve the historic context of the building.

C. *Gas station signage*.

1. *Canopy signs*.

(a) Canopy sign height shall not exceed 30 feet.

(b) Canopy sign copy shall be directed toward a public street.

(c) Canopy sign area shall be limited to no greater than twenty percent of the area of the canopy face to which the sign is applied.

2. *Exempt signs*.

(a) State or federal required price per gallon signage shall not count towards overall sign area for the site, unless they exceed 32 square feet in size.

(b) Price per gallon signs not exceeding two square feet, located on the pump itself.

D. *Temporary signs*

1. *Temporary Signs*. Temporary signs for special events including inflatable signs with a surface area of less than 100 square feet and not more than 25 feet tall, may be erected on the premises of any establishment conducting a special event, provided that such signs do not exceed a total of two signs with a total of 100 square feet in sign area. Temporary signage shall be displayed no longer than 90 days per calendar year. For grand openings, the maximum number, sign type, and allowable area may be waived by the city planner. Permits for such signs are required and shall be accompanied by a fee as provided for in Appendix F - Fees and Fines. The city planner may waive the time period, not to exceed an additional 30 days, if they determine that there are extenuating circumstances requiring further time for a temporary sign.

2. *Race weekend signs*. During any seven-day period prior to the Saturday or Sunday that auto racing is occurring, temporary signs may be erected without a permit and with no restrictions on the number or size of the signs.

3. *Inflatable signs.* Permits for such signs are required and shall be accompanied by a fee as provided for in Appendix F - Fees and Fines.

(a) Inflatable signs with a surface area equal to or less than 100 square feet and not more than 25 feet tall are permitted in subsection 4.9 - Supplementary Sign provisions, D.1., of this section and shall meet the following requirements:

i. The inflatable sign shall be setback from the edge of the right-of-way a minimum of 25 feet.

ii. The inflatable sign shall be securely anchored to the building or ground.

(b) Inflatable signs with a surface area over 100 square feet and not more than 25 feet tall are permitted only during grand opening events, community festivals, and during race weekends in accordance with subsection 4.9 Supplementary Sign provisions, D.1. and D.2., of this section and shall meet the following requirements:

i. The inflatable sign shall be setback from the edge of the

right-of-way a minimum of 25 feet.

ii. A plot plan/survey is required showing the placement of the inflatable sign in respect to utility lines and traffic.

iii. The inflatable sign shall be securely anchored to the building or ground.

E. *Motor vehicle sales lots*. This subsection allows motor vehicle sales lots to compensate for their likelihood to be mistaken for ordinary parking lots unless additional signs or other attention getting devices are placed in the sales area. It has also been demonstrated that these businesses tend to have smaller buildings relative to their land area diminishing their ability to effectively use wall signs.

1. Banners are permitted on motor vehicle sales lots with a permit. Such banners may be permitted at a rate not to exceed one banner for each ten motor vehicle parking/storage spaces on the premises, and any such banner shall not be situated closer than 50 feet of any other banner on the premises. Parking spaces required for employees, customers, and service department uses shall not be counted to calculate the number of banners. The term "banner" does not include pennants, streamers, balloons, or other temporary or permanent signs.

2. Banners shall not exceed a width of three feet.

3. All banners must be securely attached to light standards, poles, or other substantial mounting hardware. Except for temporary signs permitted under the provisions of subsection 4.9. - Supplementary sign provisions, D., of this section, all banners must be constructed of a permanent, weather resistant material.

F. *Shared freestanding signs*.

1. For adjoining nonresidential properties, a freestanding sign structure may be shared among adjoining property owners or businesses solely for the purpose of identification of the adjoining premises or businesses.

2. Where multiple property owners have agreed to share a freestanding sign as referenced in subsection 4.4 - Design requirements, of this section, the shared freestanding sign shall be entitled to a combined sign area bonus of not more than 50 percent over the freestanding sign area otherwise permitted for the property on which the shared freestanding sign would be placed.

3. The permit application for a shared freestanding sign shall be accompanied by a binding legal agreement between the multiple adjoining property owners and/or businesses which describes the ownership and maintenance obligations for such shared sign.

G. *Single buildings with multiple commercial tenant spaces or facades*.

1. Structures, such as shopping centers, which contain multiple commercial tenant spaces, are permitted to have at least one wall sign on each unit. This provision shall only apply to units on the first floor of the structure.

2. When a structure is designed so that there are distinctly different facades or sections of the building along a single frontage, at least one wall sign is permitted on each facade or section of the building.

3. Multi story office buildings with multiple tenants are permitted one wall sign per tenant. Signs shall not be located above the second story.

4.10 *Nonconforming signs*.

A. *Exclusions*. Nonconforming signs which are within ten percent of compliance of any height, area or location requirement and which conform to all other provisions of this ordinance shall be considered legal signs for the purposes of these regulations, except as provided in subsection. 4.10 - Nonconforming signs, B.4, below.

B. *Removal or compliance required*. Nonconforming signs shall be removed from the premises or otherwise made to comply with these regulations in the following instances:

1. When there is renovation to more than 75 percent of the exterior of the principal building measured in square feet of exterior wall surface area, or expansion of more than 20 percent of the floor area of the principal building measured in square feet of floor area on the premises on which such nonconforming signs are present, except that freestanding signs that are nonconforming as specified shall not be required to conform; however, the degree of non-conformity shall not increase. When, within any given two-year period, individual renovation projects involving less than 75 percent of the building exterior and/or individual building additions involving less than 20 percent of the floor area of the principal building on the premises would in aggregate exceed the 75 percent renovation and/or 20 percent expansion thresholds set forth herein, all such nonconforming signs shall be brought into conformity with these regulations or shall be removed from the premises.

2. Prior to the issuance of any permit for the placement of any additional signage on the property. No new signs of any type shall be added to the property until the nonconforming sign is removed.

3. Nonconforming signs (including all supporting structures and mounting hardware) which have been abandoned shall be removed from the premises or otherwise made to conform within one year from the date of abandonment. Refacing the sign in accordance with other requirements of this section does not absolve an owner from complying with this subsection. In certain instances where it is evident that the reoccupation or reuse of a premises

which contains an abandoned nonconforming sign is imminent, the city planner may grant an extension of time within which to reestablish the use of such nonconforming sign.

4. Any nonconforming sign which has been removed from the premises shall be considered discarded, and replacement shall constitute a new sign, and require new permits.

C. *Notification and responsibility*. It shall be the responsibility of the owner of record of such property to cause the removal of such nonconforming signs in accordance with these provisions. When any of the above-listed conditions exist, the city planner is authorized to issue written notice to the owner of record of such property, stating that such signs shall be removed within two calendar weeks of the date of receipt of the written notice. In cases where signs are determined to be unsafe or present a hazard, the city planner may order their removal in a shorter period of time. Failure to comply with these regulations, after due notice, shall be deemed a violation of this ordinance and is punishable in accordance with the provisions of article 8, section 4 of this ordinance. In addition, in the event that compliance is not achieved within the stated period, the city planner may remove or cause to be removed from the premises any such signs in violation of this section. All expenses incidental to such removal shall be charged to the owner of record of such property and shall constitute a lien upon such property.

4.11 *Abandoned and Damaged signs*.

A. *Abandoned.* All signs that conform to the current regulations which are deemed abandoned shall either be refaced with a blank or blacked out face or removed totally (including the supporting structure and/or mounting hardware) within 90 days of abandonment. Covering sign copy with tarps, paper, tape, cardboard or other nonpermanent materials is not an acceptable method of refacing.

B. *Removal*. Any conforming sign, which has been removed from the premises, shall be considered discarded, and replacement shall constitute a new sign, and require new permits.

C. *Repair*. All signs that are damaged (no longer working, cracked, missing pieces, etc.) shall be repaired within 30 days. A permit is not required as long as the sign will look exactly the same as it did before the sign was damaged. If there are any changes (color, script, etc.) to the sign a new permit will be required.

4.12 *Historic or Significant Signs*.

A. *Preservation of Historic or Significant Signs*. Signs that are at least fifty years old and considered historic or to have cultural/aesthetic significance shall be protected and preserved. If these signs are legally nonconforming they shall maintain their nonconforming status indefinitely. The determination of the historic or cultural/aesthetic significance of the sign shall be determined by the historic district commission.

1. The owner of the premises on which these signs reside shall maintain the signs to ensure they work and are in good condition.

SYNOPSIS

The proposed ordinance is a comprehensive amendment to the City of Dover Sign Regulations and includes a combination of clarifications, simplification of the requirements, and significant relaxation of the regulations currently in place. Changes include an increase in allowable sign area, an increase in the number of signs permitted, incorporation of several definitions and other provisions from the United States Sign Council Model Sign Code, a reduction in the exclusion zone between sign structures, and increased flexibility in temporary signage.

Actions History:
June 25, 2012 - First Reading/Referral to the Planning Commission and Setting of Public Hearing for August 13, 2012
June 11, 2012 - Introduced in the Parks, Recreation and Community Enhancement Committee

(Execution Copy)

GROUND LEASE AGREEMENT

This Ground Lease Agreement (this "**Agreement**"), dated for reference purposes only as of _____, 2012, is between The City of Dover, a Delaware municipality ("**Landlord**"), and Garrison Energy Center LLC, a Delaware limited liability company ("**Tenant**"). Landlord and Tenant shall sometimes be referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. Landlord owns certain real property consisting of approximately 387 acres located in the City of Dover, County of Kent, State of Delaware, commonly known as the Garrison Tract, and more particularly described and depicted in Exhibit A attached hereto and incorporated herein by this reference (the "**Property**").

B. Pursuant to that certain Option Agreement, dated as of April 14, 2010, between Landlord, as "Optionor", and Tenant, as "Optionee" (the "**Option Agreement**"), Tenant acquired from Landlord an exclusive option to lease a portion of the Property consisting of up to 80 acres (subject to the terms of Section 3 of this Agreement) (the "**Premises**") on the terms and conditions set forth in this Agreement (the "**Option**"), for the purpose of designing, developing, constructing, installing, operating, using, maintaining and testing a dual-fuel combustion turbine power plant facility, together with appurtenant fixtures, facilities and equipment, including, but not limited to, an electric transmission line, a waste water discharge line, a gas supply pipeline, water supply line and ancillary and related uses (collectively, the "**Project**"). The Premises is described and depicted on Exhibit B attached hereto and incorporated herein by this reference.

C. Tenant has exercised the Option in accordance with the Option Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Definitions. The following terms, as used in this Agreement, shall have the definitions set forth below:

"**Applicable Laws**" shall mean any and all applicable laws, ordinances, codes, statutes, rules, regulations, orders, decisions, decrees, edicts, directives, permits and approvals issued by any Governmental Authority.

"**Business Day**" shall mean any day other than (a) a Saturday or Sunday, or (b) a day on which banking and savings and loan institutions in Dover, Delaware are authorized or obligated by law or executive order to be closed.

"**Claims**" shall mean all losses, liabilities, claims, demands, damages, causes of action, liens, obligations, fines, penalties, costs and expenses (including but not limited to all

investigation costs and reasonable consulting, engineering, reasonable in-house or outside attorney's fees or other professional fees).

"**Confidential Information**" means any and all non-public proprietary written information, data, analyses, documents, and materials furnished or made available by a Party or its Disclosure Representatives to the other Party or its Disclosure Representatives in connection with this Agreement, and any and all analyses, compilations, studies, documents, or other material prepared by the receiving Party or its Disclosure Representatives to the extent containing or based upon such information, data, analyses, documents, and materials, but does not include information, data, analyses, documents, or materials that (a) are when furnished or thereafter become available to the public other than as a result of a disclosure by the receiving Party or its Disclosure Representatives, or (b) are already in the possession of or become available to the receiving Party or its Disclosure Representatives on a non-confidential basis from a source other than the disclosing Party or its Disclosure Representatives, provided that, to the best knowledge of the receiving Party or its Disclosure Representatives, as the case may be, such source is not and was not bound by an obligation of confidentiality to the disclosing Party or its Disclosure Representatives, or (c) the receiving Party or its Disclosure Representatives can demonstrate has been independently developed without a violation of this Agreement. The Parties understand that Landlord's ability to protect confidential information is governed by the Delaware Freedom of Information Act which requires disclosure of public records (as defined by said act) upon request.

"**Disclosure Representatives**" shall mean the officers, directors, employees, legal counsel, accountants, lenders, advisors, or ratings agencies and other agents or representatives of a Party or of its affiliates.

"**Governmental Authority**" shall mean any federal, state, regional, county, municipal or other local government, authority, agency, commission, body, court, tribunal, department or division, including but not limited to Kent County Conservation District and/or any school, agricultural, conservation, landscaping, lighting, sanitary, fire, street, drainage or other improvement district.

"**Hazardous Materials**" shall mean all chemicals, materials, substances, or items in any form, whether solid, liquid, gaseous, semisolid, or any combination thereof, whether waste materials, raw materials, chemicals, finished products, by-products, or any other materials or articles, that because of their physical, chemical, or other characteristics may pose a risk of endangering human health or safety or of degrading the environment and are regulated under any environmental law, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. § 2701 *et seq.*), the Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*) and, the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*).

"**Official Records**" shall mean the official records of the county where the Premises is located.

"**Personal Property Taxes**" shall mean, collectively, all personal property taxes assessed against and levied upon the Project or Tenant's fixtures, facilities, equipment or personal property located on or used in connection with the Premises.

"**Real Property Taxes**" shall include any form of real estate or ad valorem tax or assessment, general, special, ordinary or extraordinary, and any license fee, rental tax, improvement bond or bonds, levy or tax against any legal or equitable interest of Tenant or Landlord in the Project or the Premises.

"**Related Agreements**" shall mean, collectively, this Agreement, and the Power Purchase Agreement.

"**Representatives**" shall mean, collectively, a Party's employees, contractors, subcontractors, consultants, agents, representatives, invitees, licensees or permittees.

2. Effectiveness of Agreement. This Agreement shall be effective upon execution and delivery of this Agreement by both Parties hereto in accordance with the Option Agreement, however if the last Party to sign this Agreement signs on a date other than the 1st of the month, the effective date of this Agreement shall be on the 1st day of the following month or _____, 1, 2012 (the "**Effective Date**").

3. Lease of Premises. Landlord hereby leases, transfers and demises to Tenant, and Tenant hereby leases, hires and takes from Landlord, the Premises, on the terms and conditions set forth in this Agreement. The parties acknowledge that the term "Premises" as of the Effective Date and up to the day prior to the delivery of the Final Determination Notice (as defined in this Section 3 below) (the "**Construction Term**") shall mean that certain 36.8-acre portion of the Property, as determined by Tenant, being a portion of Lot 7 and depicted on Exhibit B; however, in the event that Tenant constructs a power plant (the "**Power Plant**") on a portion of the Premises (the "**Power Plant Area**"), which portion Tenant shall determine in its sole and absolute discretion, then at least sixty (60) days prior to substantial completion of the construction of the Power Plant, Tenant shall provide Landlord with written notice (the "**Final Determination Notice**") (i) describing the area and approximate number of acres comprising the "Premises", which area shall not be less than 35 acres nor more than 40 acres and shall encompass the entire Project, including the Power Plant Area, the Access Roads (as defined in Section 6 below) and Easements (as defined in Section 6 below) but excluding any portion used in connection with the construction of the Project and not incorporated into the Power Plant Area, the Access Roads or Easements and (ii) depicting the Premises, which depiction shall replace that certain Exhibit B attached hereto. Therefore, upon the delivery of the Final Determination Notice and throughout the remainder of the Term (the "**Operation Term**"), the term "Premises" shall mean that certain portion of the Property described and depicted in the Final Determination Notice.

4. Term of Lease.

(a) Term. The term of this Agreement (the "**Term**") shall commence as of the Effective Date and shall expire as of 11:59 p.m. Eastern time on the date that is thirty (30) years after the date the Final Determination Notice is delivered (the "**Expiration Date**").

(b) Extensions. Provided that the Power Plant has not been permanently retired or abandoned and a Tenant Default (as defined in Section 18) does not exist on the date that the then-current term expires, this Agreement shall automatically be extended for four (4) additional five (5) year periods on the same terms and conditions as the initial term unless Tenant terminates this Agreement at the end of the then current term by giving Landlord written notice of the intent to terminate at least six (6) months prior to the end of the then current term.

(c) Early Termination. At any time during the Term, as the same may be extended, Tenant shall have the option (the "**Termination Option**") by providing written notice ("**Termination Notice**") to Landlord to terminate this Agreement for any reason, in which event, this Agreement shall be deemed terminated as of the

expiration of the Winding Down Period (as defined in Section 9(c) of this Agreement).

5. Base Rent.

(a) Base Rent. The annual base rent for the Premises during the Construction Term shall be Twenty Five Thousand Seven Hundred Sixty Dollars ($25,760.00) (which annual rental sum was determined by multiplying $700.00 by 36.8, which is the number of acres that Tenant will be leasing from Landlord during the Construction Term; however if that leased acreage shall at any time during the Construction Term be more or less than 36.8 acres, then the annual base rent shall be adjusted accordingly), to be to be billed by Landlord to Tenant annually and due and payable each and every year during the term of this agreement starting on the Effective Date as provided for in paragraph 2, and annually thereafter, with the first payment, if necessary, prorated to the Effective Date and the annual base rent for the Premises during the Operation Term shall be Seven Hundred and No/100ths Dollars ($700.00) per acre of Premises actually being leased pursuant to the Final Determination Notice, as adjusted periodically pursuant to Section 5(b) below (the "**Base Rent**"). Tenant shall pay to Landlord Base Rent once per year. The first Installment and each annual payment of Base Rent shall be due and payable thirty (30) days after the Landlord mails the bill to the Tenant. If the Final Determination Notice is delivered during any period for which the Base Rent has already been paid, Landlord shall prorate the Installment based on the number of days covered by the Installment and reimburse Tenant within thirty (30) days of the receipt of the Final Determination Notice.

(b) Base Rent Adjustment. The Base Rent shall be adjusted as of the first day of the first month (the "**First Adjustment Month**") of the first anniversary of the Effective Date and each subsequent annual anniversary of the Effective Date (each, an "**Adjustment Date**") to an amount equal to the product obtained when the Base Rent for the First Adjustment Month is multiplied by a fraction, the numerator of which is the "Comparison Index" (as hereinafter defined), and the denominator of which is the "Beginning Index" (as hereinafter defined). For the purpose of this Section 5(b), the following terms shall be defined as noted below:

(i) Index - The "**Index**" for computing the increases shall be the Consumer Price Index for All Urban Consumers U.S. City Average, published by the United States Department of Labor, Bureau of Labor Statistics. In the event that the Index shall ever be converted to a different standard reference base or otherwise be revised, a determination of subsequent adjustment to the Base Rent shall be made with the use of such conversion factor, formula or table for converting the Index as may be published by the Bureau of Labor Statistics. In the event the Index shall cease to be published, the index designated by the Bureau of Labor Statistics as replacing the Index, or the most comparable substitute if said Bureau fails to designate a replacement, shall be used thereafter.

(ii) Beginning Index - The "**Beginning Index**" shall be defined as the Index published for the month and year that is twelve (12) months prior to the Adjustment Date or, if the Index was not published in such month, the previous month in which the Index was published.

(iii) Comparison Index - The "**Comparison Index**" shall be defined as the Index published for the month in which the applicable Adjustment Date occurs or, if the Index was not published in such month, the previous month in which the Index was published.

(c) Proration. Tenant's obligation to pay Base Rent shall be prorated, if required, at the agreements initial commencement and at the expiration of the Term.

6. Ancillary Rights.

(a) To enable Tenant to design, develop, construct, install, operate, use, maintain and test the Project, Landlord shall do the following at no additional charge to Tenant:

(i) Grant to Tenant and its Representatives a non-exclusive license to use the access roads (the "**Access Roads**") that are located on the Property and any adjacent property owned by Landlord ("**Landlord's Property**") for necessary vehicular and pedestrian ingress and egress to and from the Premises.

(ii) Grant to Tenant and its Representatives irrevocable and exclusive easements and rights-of-way (acceptable to Tenant) (the "**Exclusive Easements**") for the Term on, over, across, above and under a portion of Landlord's Property for the purpose of installing, constructing, laying, operating, using, inspecting, accessing, maintaining, repairing, altering, improving, reconstructing, replacing, removing, and abandoning the following: (1) electric transmission lines and facilities, (2) a pipeline or pipelines for the interconnection to other pipelines and transportation of oil, gas, petroleum products or any other liquids, gases, or substances which can be transported through pipelines, and (3) such utilities, lines, facilities and services that Tenant reasonably determines are necessary or appropriate. Upon the termination of this Agreement, Tenant shall have no further rights or interest in the Exclusive Easements and shall return the easement areas to Landlord in their then as-is condition with no obligations of removal, repair or replacement of any existing improvements or fixtures.

(iii) Grant to Tenant and its Representatives non-exclusive easements and rights-of way (acceptable to Tenant) (the "**Non-Exclusive Easements**," which together with the Exclusive Easements shall hereinafter be collectively referred to as the "**Easements**") on, over, across, above and under a portion of Landlord's Property for the purpose of installing, constructing, laying, operating, using, inspecting, accessing, maintaining,

repairing, altering, improving, reconstructing, replacing, removing, and abandoning the following: (1) utility lines and facilities for such utility services including, without limitation, for water, electricity, gas, steam, sewer and storm water drainage and (2) telephone, communication and information services lines and facilities (items 1-3 in Section 6(a)(ii) and items 1-2 in this Section 6(a)(iii) shall be collectively referred to herein as the "**Facilities**"), and shall also include such other activities and uses related to the Project that Tenant reasonably determines are necessary or appropriate. Landlord shall negotiate in good faith and enter into utility service agreements for services that may be provided by Landlord or other service providers at rates no less favorable than the prevailing tariff rates for industrial customers in the City of Dover.

(iv) Assist Tenant in obtaining rights-of-way and entering into easement agreements acceptable to Tenant that would burden other real property adjacent to the Premises and Landlord's Property and benefit the Premises and/or Tenant for the purpose of installing, constructing, laying, operating, using, inspecting, accessing, maintaining, repairing, altering, improving, reconstructing, replacing, removing, and abandoning the Facilities and for such other activities and uses related to the Project that Tenant reasonably determines are necessary or appropriate; provided, however, nothing herein shall be construed to obligate Landlord to take any action that would violate Applicable Laws.

(b) Provided that (i) the Relocation (as defined below) does not interrupt Tenant's access to the Project, operation of the Power Plant or the utilities services to the Power Plant, (ii) Landlord provides to Tenant alternative means of access and/or utility service to the Project during the Relocation, (iii) the rights of Tenant to the Premises are not affected by the Relocation, (iv) the new Access Roads and/or easement areas are of a similar size, type and construction as the previous Access Roads and/or easement areas, and (v) Tenant is not required to obtain any revisions to its existing licenses or permits, Landlord shall have the right to relocate (the "Relocation Right"), if necessary, at Landlord's sole cost and expense, all or part of the Access Roads and/or easement areas and the utilities and other improvements located thereon to another portion of the Property (any such relocation shall hereinafter be referred to as a "Relocation"). Landlord shall exercise its Relocation Right by delivering a written notice ("**Relocation Notice**") to Tenant at least six (6) months prior the Relocation, which Relocation Notice shall depict and describe the portion of the Access Road and/or easement area being relocated and that portion of the Property to which the Access Road and/or easement area shall be relocated. Landlord and Tenant shall mutually agree on the new location of the Access Road and/or easement area, and shall acknowledge in writing the new location of the Access Road and/or easement area. To the extent allowed by Applicable Laws, Landlord shall reimburse Tenant for any reasonable direct costs incurred by Tenant in connection with the Relocation.

7. Quiet Enjoyment. Subject to the terms of this Agreement, Tenant shall enjoy the peaceful and quiet use, possession and enjoyment of the Premises without hindrance or disturbance by Landlord or any persons claiming by, through or under Landlord.

8. Use of Premises. Tenant and its Representatives may use the Premises for the purpose of designing, developing, constructing, installing, operating, using, maintaining and testing the Project and ancillary and incidental uses, all of which shall comply with Applicable Laws, and for no other use without Landlord's prior written consent, which may not be unreasonably withheld, conditioned or delayed.

9. Title to Project.

(a) Tenant to Retain Title during Term. At all times until the expiration or earlier termination of the Term, the Project shall remain the property of Tenant for all purposes. Landlord and Tenant agree that all improvements, including fixtures, at any time constructed by or for Tenant on the Premises shall be considered with respect to the interest of Landlord and Tenant as the real property of Tenant and any Leasehold Mortgagee designated by Tenant. The Parties understand and agree that nothing in the preceding sentence shall be interpreted to bind Tenant with respect to its characterization of such improvements, including fixtures, for book and tax depreciation purposes.

(b) Title Insurance. Tenant may obtain, at Tenant's sole cost and expense, a policy of title insurance in an amount equal to the reasonable value of the Tenant's interest in the Premises, insuring Tenant's marketable title in the leasehold estate created hereunder. Landlord hereby agrees to execute all documents reasonably requested by the title company selected by Tenant in order for said title company to issue such policy of title insurance.

(c) End of Term; Removal. At the end of the Term (as may be extended) or any early termination thereof, unless Tenant provides Landlord with written notice of Tenant's desire to extend the Term beyond the extension provided for herein and continue its operations on the Premises or enter into a new lease, the Term shall be extended for thirty-six (36) months (the "**Winding Down Period**") in order to permit Tenant with sufficient time to remove the Project and all above-ground improvements, and any underground facilities (including equipment) used for the storage or movement of fuel oil, constructed by Tenant, or on behalf of Tenant (collectively, the "**Improvements**"), from the Premises. Tenant shall be responsible for the payment of rental on the Premises from the start of the Winding Down Period until the completion of the Improvement removal. During the Winding Down Period, Tenant shall also perform a Phase I inspection of the Premises and shall remove from the Premises, in compliance with Applicable Laws, any Hazardous Materials identified on the Phase I inspection that were not on the Premises prior to the Effective Date and were not placed on the Premises by Landlord, its agents or contractors, but only to the extent such removal is required under Applicable Laws. Notwithstanding anything in this Section 9 to the contrary, Tenant shall not be responsible for, and Landlord and Tenant shall

cooperate with each other in determining and/or prosecuting the source of, any Hazardous Materials that migrate, flow, percolate, diffuse, or in any way move on to, or under, the Premises after the Effective Date. The Premises shall be returned to Landlord at the expiration of the Winding Down Period with all Improvements removed or in such other condition mutually acceptable to Tenant and Landlord.

10. Purchase Option. Notwithstanding anything in Sections 4(c) and 9(c) to the contrary, Landlord shall have the right to purchase the Project (the "**Purchase Option**") by delivering written notice (the "**Option Notice**") to Tenant with one hundred twenty (120) days after Tenant has delivered the Termination Notice to Landlord, if applicable, or no later than one hundred eighty (180) days prior to expiration of Term. If Landlord fails to timely exercise the Purchase Option as provided herein, then Landlord shall have no right to exercise the Purchase Option and it shall terminate and be of no further force or effect. Time is of the essence with respect to the time deadline imposed on Landlord in this Section 10. The Project shall be sold to Landlord pursuant to terms and conditions mutually acceptable to Landlord and Tenant, provided, however, if Landlord and Tenant cannot agree on the terms of the purchase and sale of the Project within one hundred twenty (120) days of the delivery of the Option Notice to Tenant, the Purchase Option shall be deemed terminated, Landlord shall have no further rights to purchase the Project, and Tenant shall proceed as provided in Section 9(c) above.

11. Required Permits. Tenant shall apply for and obtain at Tenant's sole cost and expense all governmental and non-governmental authorizations, consents, permits, approvals, entitlements, licenses, rulings, exemptions, variances, orders, judgments, decrees, declarations or regulations necessary to design, develop, construct, install, operate, use, maintain and test the Project (collectively, the "**Required Permits**"). Landlord shall (i) promptly sign applications for such Required Permits in its capacity as the record owner of the Premises if the record owner's signature is required by the issuing authority, (ii) not oppose or delay Tenant's efforts to acquire such Required Permits, and (iii) reasonably cooperate with Tenant with respect to such Required Permits. During the Term, Tenant shall, at Tenant's sole cost and expense, maintain the Required Permits and all other authorizations necessary in connection with the construction, operation and maintenance of the Project.

12. Maintenance and Repair. Tenant shall promptly and diligently maintain the Project in good condition and repair, ordinary wear and tear accepted, and shall maintain both the Project and the Premises in material compliance with all Applicable Laws and Required Permits. Tenant shall be responsible and liable for any damage to or destruction of the Premises, except to the extent such damage or destruction is the result of the negligence or willful misconduct of Landlord or Landlord's Representatives. Whether such damage or destruction results from an occurrence that is insured by Tenant, Tenant shall promptly repair, restore and remedy any damage to or destruction of the Premises, except to the extent such damage or destruction is the result of the negligence or willful misconduct of Landlord or Landlord's Representatives, or in the event that Tenant determines, in Tenant's sole and absolute discretion, that the Premises or the Project cannot be substantially repaired and restored within one (1) year from the date of the casualty or in the event that there is less than five (5) years left in the Term, in which event Tenant shall

have the right to terminate this Agreement by providing Landlord with written notice.

13. Pre-Existing Environmental Conditions. Landlord agrees to assume full and complete responsibility for any and all excavation, cleanup, assessment, remediation and/or monitoring activities that may be required during the Term by any Governmental Authority (including, without limitation, any federal or state court, any federal, state or local agency with jurisdiction over the Premises) for any and all materials, pollutants, irritants, contaminants and Hazardous Material (as defined in Section 1) that would constitute a violation of environmental laws existing in, on, under, or emanating from the soil, surface water, groundwater or subsurface at the Premises, in each case prior to the Effective Date. As of the date of this Agreement, Tenant has inspected the Premises and that inspection has not revealed any conditions that would constitute a violation of environmental laws. The parties agree that the foregoing does not constitute a waiver as to any conditions that Tenant may later discover on the Premises.

14. Taxes. Tenant shall be responsible and shall pay all real and personal property taxes imposed by a Governmental Authority on the Premises and the Project.

15. Compliance Inspections. Landlord shall have the right to enter the Premises (i) at any time, in the case of an emergency, and (ii) otherwise at reasonable times upon not less than five (5) Business Days' prior notice via the telephone or e-mail and during normal business hours, in each case for the purpose of inspecting the condition of the Premises and for verifying compliance by Tenant with this Agreement and all Applicable Laws and Required Permits. Nothing herein shall limit the right of Landlord or other governmental employees to access said Premises in the course of normal governmental business for safety, health or taxing, or to exercise normal police powers.

16. Mutual Indemnification. Landlord and Tenant shall each indemnify, defend, protect and hold harmless the other and its successors and assigns, and each of their respective Representatives from and against any and all Claims related to or arising out of (i) any breach of the indemnifying party's representations or warranties contained in this Agreement, (ii) the actions or omissions of the indemnifying party (or the indemnifying party's Representatives and any other entity or individual for whom the indemnifying party is responsible), or (iii) any default by the indemnifying party under any provisions of this Agreement; except to the extent such Claims may be due to or caused by the negligence or willful misconduct of the other party or its Representatives. The indemnifying party shall pay all reasonable attorneys' fees and legal costs incurred by the other party in order to enforce the indemnifying party's obligations hereunder.

17. Landlord Default and Remedies.

(a) Landlord Default. The occurrence of the following shall constitute a "**Landlord Default**" under this Agreement: Landlord shall have failed to perform any obligation to be performed by Landlord or violated any material term, covenant or condition applicable to Landlord under this Agreement within the time frame specified, and such failure or violation shall be continuing following written notice and the expiration of a thirty (30) day remedy period (provided, however,

that if more than thirty (30) days is reasonably required in order to perform such obligations or remedy such violations, Landlord shall have such longer period as reasonably necessary to complete such performance or remedy, provided that Landlord commences such performance or remedy within such thirty (30) day period and thereafter diligently prosecutes such performance or remedy to completion).

(b) Remedies. Upon the occurrence of a Landlord Default, without any requirement of further notice or demand, Tenant shall be entitled to pursue any remedy at law or in equity available to Tenant as a result of such Landlord Default.

18. Tenant Default and Remedies.

(a) Tenant Default. The occurrence of any of the following shall constitute a "**Tenant Default**" under this Agreement:

(i) Tenant shall have failed to make any payment of Base Rent or any other payment required to be made by Tenant to any third party under this Agreement, and such failure shall have continued for a period of thirty (30) days after Tenant's receipt of written notice of such failure.

(ii) Tenant shall have failed to perform any obligation to be performed by Tenant or violated any material term, covenant or condition applicable to Tenant under this Agreement (other than those set forth in Section 18(a)(i) above) within the time frame specified and such failure or violation shall be continuing following written notice and the expiration of a thirty (30) day remedy period (provided, however, that if more than thirty (30) days is reasonably required in order to perform such obligations or remedy such violations, Tenant shall have such longer period as reasonably necessary to complete such performance or remedy, provided that Tenant commences such performance or remedy within such thirty (30) day period and thereafter diligently prosecutes such performance or remedy to completion).

(b) Remedies. Upon the occurrence of a Tenant Default, without any requirement of further notice or demand but subject to the rights of the Leasehold Mortgagee under Section 22 of this Agreement, Landlord shall thereafter have the right to reenter or repossess the Premises, either by summary proceedings, surrender or otherwise, and dispossess and remove therefrom Tenant or other occupants thereof and their effects. In such case, Landlord shall use reasonable efforts to re-let the Premises or any part thereof at the highest rental rate reasonably attainable as the agent of Tenant, with Tenant remaining liable to pay Landlord rent and other charges reserved herein for the balance of the term, less the actual rental received for the Premises for the same period; or Landlord at its option may terminate this Agreement, thereby releasing Tenant from any further liabilities hereunder. Should the actual rental received for the Premises be less than the rent provided herein, Tenant shall pay such deficiency on a monthly basis. The

remedy provided herein for the breach of any obligation shall be exclusive, with the exception that Landlord may bring an action for any rent that has accrued and is otherwise delinquent. Neither consequential nor punitive damages are recoverable.

19. Dispute Resolution.

(a) General. It is the intent of the Parties that disputes arising from or related to this Agreement shall be resolved as quickly as possible. Accordingly, each Party shall designate a representative in writing (which representative may be changed from time to time in accordance with the notice provision set forth in Section 20 of this Agreement) to whom disputes shall be referred. The Parties shall attempt in good faith to resolve any such dispute by negotiations between such representatives. When resolution is not possible, the Parties may seek to resolve such disputes in the manner set forth elsewhere in this Section 19.

(b) Escalated Dispute Resolution Procedure. The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiations between a decision-making representative designated by Landlord and an executive of similar authority of Tenant. Either Party may give the other Party written notice of any such dispute. Within ten (10) days after delivery of the notice, the designated representatives shall meet at a mutually acceptable time in the City of Dover, and thereafter as often as they reasonably deem necessary to exchange information and attempt to resolve the dispute.

(c) Confidentiality of Dispute Resolution Negotiations. All negotiations conducted pursuant to this Section shall be confidential and treated as compromise and settlement negotiations. Each Party is required to continue to perform its obligations under this Agreement pending resolution of any dispute arising out of or relating to this Agreement.

(d) Injunction. Notwithstanding the foregoing provisions, a Party may seek a preliminary injunction or other provisional judicial remedy if in its judgment such action is necessary to avoid irreparable damage.

(e) Jurisdiction. All disputes shall be litigated in a Delaware State Court, or if jurisdiction cannot be obtained in a Delaware State Court, then in a Federal Court of competent jurisdiction, and the Parties hereby agree to the jurisdiction of such courts.

20. Notices.

(a) All notices to be given under this Agreement shall be in writing and either: (i) sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) Business Day after deposit with this courier, or (ii) sent by telecopy or similar means, if a copy of the notice is also sent by United States mail or overnight courier, in which case notice shall be deemed delivered on

transmittal by telecopier or other similar means, provided that a transmission report is generated reflecting the accurate transmission of the notices, as follows:

Landlord:	City of Dover 15 E. Loockerman St. Dover, DE 19903 Attention: City Manager Telephone: (302) 736-7005 Facsimile: (302) 270-6246 Email: skoenig@dover.de.us
Tenant:	Calpine Corporation 717 Texas Avenue Suite 1000 Houston, TX 77002 Attn: Legal Department Telephone: 713 830 8667 Facsimile: 713 830 8705 Calpine Corporation VP of Strategic Origination 500 Delaware Avenue Suite 600 Wilmington, DE 19801 Telephone 302 468 5325 Facsimile: 302 468 5401 Email: champe.fisher@calpine.com

(b) These addresses may be changed by written notice to the other Party provided that no notice of a change of address shall be effective until actual receipt by the Parties of the notice.

(c) In the event that Tenant receives notice that it is allegedly in default of any agreement entered into by Tenant with a party other than Landlord directly relating to the Project, Tenant shall notify Landlord of said default within 30 days of Tenant's receipt of said notice.

21. Assignment.

(a) Tenant shall have the right, without Landlord's consent, to assign this Agreement if the assignment is an Excluded Transaction (as defined below). As used in this Agreement, the term "Excluded Transaction" shall mean any of the following: (i) any assignment of this Agreement to any corporation or entity which is directly or indirectly (1) the parent of Tenant, (2) a subsidiary of Tenant, or (3) an affiliate

of Tenant; (ii) any assignment of this Agreement or sublease of all or any part of the Premises to any entity succeeding to substantially all the business and assets of Tenant, whether by merger, consolidation, purchase of assets or otherwise; or (iii) any collateral assignment of this Agreement to a Leasehold Mortgagee. In connection with Tenant's collateral assignment of this Agreement to a Leasehold Mortgagee (as defined in Section 22 below), Landlord shall execute a consent to the collateral assignment in a form and substance reasonably satisfactory to Landlord, Tenant and such Leasehold Mortgagee. Tenant shall be released from its obligations under this Agreement following an Excluded Transaction. No change of stock ownership, partnership interest or control of Tenant or transfer upon partnership or corporate dissolution of Tenant shall constitute an assignment hereunder.

(b) Except as set forth above, Tenant may not assign its rights, title or interest under this Agreement without Landlord's consent, which may not be unreasonably withheld, conditioned or delayed. Landlord shall consent to the assignment if (i) Tenant's assignee has fully assumed all of the obligations of Tenant under this Agreement, (ii) Tenant's assignee has the same, or greater, creditworthiness as Tenant as of the execution of this Agreement, and (iii) Tenant's assignee has the same, or greater, level of experience as Tenant in developing and operating a power plant project. In the event that Landlord does not respond to Tenant's request for consent to its assignment of this Agreement within thirty (30) days after Tenant's delivery of said request to Landlord, Landlord shall be deemed to have consented to the assignment.

(c) In no event shall Landlord sell or assign Landlord's interest in the Premises, unless Tenant has consented to said assignment or sale in writing, which consent shall not be unreasonably withheld or delayed, provided that the transferee has fully assumed all of the obligations of Landlord (including the liability for any existing or uncured defaults) under this Agreement.

22. Leasehold Mortgage Provisions.

(a) Encumbrance by Leasehold Mortgagee. Tenant shall have the right at any time during the Term, without obtaining Landlord's consent, to encumber the leasehold estate created by this Agreement and the Project with a mortgage, deed of trust or other security instrument (each, a "**Leasehold Mortgage**") to secure repayment of any loan or financing to Tenant by any lender (a "**Leasehold Mortgagee**") and to record such Leasehold Mortgage in the public records.

(b) Leasehold Mortgagee Protection Provisions.

(i) Landlord shall deliver to the Leasehold Mortgagee a copy of any written notice relating to Tenant's breach, violation or failure to perform its obligations under this Agreement, concurrently with the delivery to Tenant of such notice. For such purpose, Tenant shall notify Landlord of the name and address for each Leasehold Mortgagee in writing. Landlord

shall only have the obligation to deliver notices to a Leasehold Mortgagee for whom it has received written notification from Tenant pursuant to the terms of this Agreement. There shall be no cancellation, surrender or modification of this Agreement by joint action of Landlord and Tenant without the prior written consent of each Leasehold Mortgagee.

(ii) Upon the receipt of any written notice relating to Tenant's breach, violation or failure to perform its obligations under this Agreement, the Leasehold Mortgagee shall have the right, but not the obligation, to cure such breach, violation or failure within sixty (60) days after the expiration of Tenant's grace period set forth in Section 18(a), if any, given Tenant for such cure under this Agreement. If prior to the expiration of the applicable grace period, the Leasehold Mortgagee shall cure all monetary breaches and give Landlord written notice that Leasehold Mortgagee intends to (A) undertake the cure of any non-monetary breaches, violations or failures, or (B) exercise its rights to acquire the interest of Tenant in this Agreement by foreclosure or otherwise, and shall immediately commence and then proceed with all due diligence to completion, then Landlord shall not terminate or take any action to effect a termination of this Agreement or reenter or take possession of the Premises so long as the Leasehold Mortgagee is diligently effecting such cure or foreclosure (or deed in lieu of foreclosure).

(iii) Landlord shall accept such performance by the Leasehold Mortgagee as though the same had been performed by Tenant, and for such purpose Landlord hereby authorizes the Leasehold Mortgagee to enter upon the Premises and to exercise any of Tenant's rights and duties under this Agreement, so long as the Leasehold Mortgagee complies in all material respects with the terms and conditions of this Agreement as the same relate to the Tenant hereunder.

(iv) If this Agreement terminates for any reason prior to the Expiration Date other than for an uncured Tenant Default, or in the event of the rejection of this Agreement by Tenant or a trustee in bankruptcy under the provisions of the Bankruptcy Code, 11 United States Code Section 365, then within sixty (60) days following such termination or such rejection of this Agreement, the Leasehold Mortgagee or any purchaser at a foreclosure sale or any purchaser, grantee, or assignee of a deed in lieu of foreclosure shall have the right, but not the obligation, to receive from Landlord a duly executed and valid and enforceable agreement granting the Leasehold Mortgagee or such purchaser, grantee or assignee the right to use the Premises for the balance of the then-unexpired Term (immediately prior to the termination or rejection) containing provisions identical to the provisions of this Agreement, except such provisions designating the parties thereto, and accompanied by a duly executed memorandum of such new agreement in suitable form for recording. In connection with such new agreement, the ownership of the Project located

on the Premises, if any, shall be deemed to have been transferred to the Leasehold Mortgagee, and in the event of a subsequent assignment by the Leasehold Mortgagee, then to such assignee and its successors and assigns, in each case subject to the provisions of this Agreement relating to title of the Project upon the expiration of the Term or termination of this Agreement. Any new agreement entered into between Landlord and the Leasehold Mortgagee shall have the same relative priority as this Agreement. Leasehold Mortgagee shall have no obligations or liability under any of the terms of this Agreement unless and until Leasehold Mortgagee shall become the owner of the leasehold estate by way of foreclosure, by a deed in lieu of foreclosure or otherwise.

(v) Tenant's interest in this Agreement may be assigned pursuant to judicial or non-judicial foreclosure or a conveyance in lieu of foreclosure (a "**Foreclosure Transfer**"). Any transferee under a Foreclosure Transfer, and any Leasehold Mortgagee that acquires Tenant's interest under this Agreement, may assign this Agreement and shall thereupon be released from all liability as Tenant under this Agreement from and after the date of such assignment.

(vi) The cancellation or surrender of this Agreement by Tenant, or any amendment that shall materially impair Leasehold Mortgagee's security interest in the leasehold estate, shall not be effective as against a Leasehold Mortgagee without the written consent of the Leasehold Mortgagee (which consent may be given or withheld in its reasonable discretion).

(vii) Landlord shall negotiate in good faith with any proposed Leasehold Mortgagee regarding a commercially reasonable amendment to this Agreement or other documents necessary to implement the Leasehold Mortgagee protection provisions contained in this Agreement and allow such Leasehold Mortgagee reasonable means to protect or preserve the lien of the Leasehold Mortgage upon the occurrence of a Tenant Default.

23. Estoppel Certificates.

(a) Estoppel Certificate by Landlord. Within thirty (30) days after written request therefor from a Leasehold Mortgagee or from Tenant, Landlord shall deliver to the Leasehold Mortgagee (and any other party identified by the Leasehold Mortgagee or by Tenant) an estoppel certificate signed by Landlord in form reasonably designated by the Leasehold Mortgagee certifying: (i) that this Agreement is unmodified and in full force and effect, (ii) the Base Rent payable under this Agreement, (iii) the nature of any Tenant Default alleged by Landlord, (iv) that no Landlord Default has occurred and is continuing, and (v) such other matters as are reasonable and customary in a landlord estoppel certificate.

(b) Estoppel Certificate by Tenant. Within thirty (30) days after written request therefore from Landlord, Tenant shall deliver to Landlord (and any other party identified by Landlord) an estoppel certificate signed by Tenant in form reasonably designated by Landlord certifying: (i) that this Agreement is unmodified and in full force and effect, (ii) the Base Rent payable under this Agreement, (iii) the nature of any Landlord Default alleged by Tenant, (iv) that no Tenant Default has occurred and is continuing, and (v) such other matters as are reasonable and customary in a tenant estoppel certificate.

24. Landlord's Representations and Warranties.

(a) Landlord hereby represents and warrants to Tenant, as of the Effective Date:

(i) Landlord has the requisite right, power and authority to execute, deliver and perform the terms and conditions of this Agreement. Landlord has taken all action necessary to authorize the execution, delivery and performance of the terms and conditions of this Agreement, including, but not limited to, obtaining any city council or board approval and any other necessary government approvals. The individual executing this Agreement has been duly authorized to do so. The performance by Landlord of Landlord's obligations and responsibilities under this Agreement will not violate or constitute a default under the terms and provisions of any material agreement, document or instrument to which Landlord is a party or by which Landlord or the Premises is bound or affected. All proceedings required to be taken by or on behalf of Landlord to authorize Landlord to execute, deliver and perform the terms and conditions of this Agreement have been duly and properly taken. No further consent of any person or entity is required in connection with the execution and delivery of, or performance by Landlord of its obligations under this Agreement.

(ii) This Agreement constitutes or shall constitute the valid and binding obligation of Landlord, enforceable against Landlord in accordance with its terms.

(iii) Landlord owns the Premises in fee and has marketable and good title of public record and in fact.

(iv) Landlord has not received written notice from any party of any actions, suits, claims, legal proceedings or any other proceedings affecting the Premises, or any portion thereof, at law or in equity, before any court or governmental agency, domestic or foreign.

(v) Landlord has not received written notice from any governmental agency pertaining to the violation of any law or regulation affecting the Premises.

(vi) Landlord has not received written notice of any pending or threatened governmental proceedings in eminent domain, for rezoning or otherwise, which would affect the Premises or any portion thereof.

(vii) No prior agreements have been entered into or options or rights granted by Landlord to any third parties to purchase or lease any interest in the Premises, or any part thereof.

(viii) Landlord has not received written notice of any default with respect to any of its obligations or liabilities pertaining to the Premises.

(b) The representations and warranties set forth in this Section 24 shall survive the expiration or earlier termination of the Term for a period of twelve (12) months.

25. Tenant's Representations and Warranties.

(a) Tenant hereby represents and warrants to Landlord, as of the Effective Date:

(i) Tenant is a limited liability company, duly organized and existing in the State of Delaware, and has the requisite right, power and authority to execute, deliver and perform the terms and conditions of this Agreement and to consummate the transactions contemplated in this Agreement.

(ii) Tenant has taken all action necessary to authorize the execution, delivery and performance of the terms and conditions of this Agreement. The individual executing this Agreement has been duly authorized to do so.

(iii) The performance by Tenant of Tenant's obligations and responsibilities under this Agreement will not violate or constitute a default under the terms and provisions of Tenant's bylaws or any material agreement, document or instrument to which Tenant is a party or by which Tenant is bound or affected.

(iv) All proceedings required to be taken by or on behalf of Tenant to authorize Tenant to execute, deliver and perform the terms and conditions of this Agreement have been duly and properly taken. No further consent of any person or entity is required in connection with the execution and delivery of, or performance by Tenant of its obligations under this Agreement.

(v) There are no suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator or any pending or threatened action or proceeding affecting Tenant or its affiliates before any Governmental Authority or arbitrator (a) that could reasonably be expected to materially and adversely affect the ability of Tenant to perform its obligations under this Agreement or Tenant's ability to operate the Project, or (b) which purports to affect the legality, validity or enforceability of this Agreement.

(vi) It is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt.

(vii) There is no pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(viii) This Agreement is the legal, valid and binding obligation of Tenant, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(b) The representations and warranties set forth in this Section 25 shall survive the expiration or earlier termination of the Term for a period of twelve (12) months.

26. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Delaware, excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

27. No Joint Venture. Nothing contained in this Agreement shall be interpreted as creating a joint venture, partnership, or any other relationship between the Parties, other than the relationship described in this Agreement.

28. Legal Representation. The provisions of and exhibits to this Agreement have been prepared, examined, negotiated and revised by each Party and their respective lawyers, and no implication shall be drawn and no provision shall be construed against any Party hereto by virtue of the purported identity of the drafter of this Agreement, or any portion thereof.

29. Litigation Costs. If either party files any action or brings any proceeding against the other arising from or related to this Agreement, the prevailing party shall be entitled to recover from the other party as an element of its costs of suit, and not as damages, reasonable attorneys' fees, costs and expenses incurred in the action or proceeding, including any appeal thereof. The "**prevailing party**" within the meaning of this Section 29 shall be the party determined to be the prevailing party by a court of law. In the event the action is settled and subsequently dismissed (even in exchange for sums allegedly due) prior to final judgment, each party shall pay their own attorneys' fees.

30. Waiver of Right to Jury Trial. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER TRANSACTION, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF TENANT

OR LANDLORD. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT.

31. Force Majeure. The time periods for the performance of any obligations of each of the Parties under this Agreement, other than financial obligations, shall be extended by one (1) day for every day that such Party is prevented or delayed in performing such obligations by reason of any event or circumstance to the extent beyond the control of, and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome.

32. Memorandum of Lease. Landlord shall execute and deliver a memorandum of lease in the form attached hereto as Exhibit C in order to give notice of this Agreement; provided, however, the relations between Landlord and Tenant with respect to the Premises shall be governed solely by the provisions of this Agreement and not by any such memorandum of lease. The cost of recording such memorandum of lease and any and all state, county, and municipal conveyance and/or transfer or documentary taxes and fees due in connection with this Agreement shall be paid by Tenant.

33. Condemnation.

(a) Landlord hereby waives it right to terminate this Agreement or any portion thereof by condemnation, eminent domain or exercise of a similar power.

(b) If any portion of the Premises is taken pursuant to condemnation, eminent domain or exercise of a similar power, or transfer under threat of such compulsory transfer or taking by Governmental Authority having jurisdiction (other than Landlord, who has waived said rights pursuant to Section 33(a)above), then this Agreement shall terminate as to such portion. Upon a taking of any portion of the Premises, Base Rent shall be reduced by an amount equal to the product of (a) the Base Rent otherwise payable under this Agreement, multiplied by (b) a fraction, the numerator of which is the square footage of the Premises taken and the denominator of which is the square footage of Premises immediately prior to such taking. If the remaining portion of the Premises is insufficient for Tenant's use as determined by Tenant in Tenant's sole and absolute discretion, then Tenant shall have the right to terminate this Agreement upon providing thirty (30) days' written notice thereof to Landlord. In the event of a complete taking, this Agreement shall terminate and be of no further force or effect.

(c) Both Tenant and Landlord shall have the right to participate in any condemnation proceedings. Each shall notify the other promptly of any contemplated or threatened condemnation proceeding of which it shall become aware and shall keep the other informed of developments with respect thereto.

34. No Prior or Other Agreements. The Related Agreements contain all agreements between the parties with respect to any matter mentioned therein, and no other prior or

contemporaneous agreement or understanding shall be effective.

35. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Agreement.

36. Brokers. Tenant and Landlord each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder in connection with the negotiation of this Agreement or the consummation of the transactions contemplated hereby, and that no broker or other person, firm or entity is entitled to any commission or finder's fee in connection with said transactions.

37. Severability. The invalidity of any provision of this Agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof. In the event any such provision of this Agreement is so held invalid, the Parties shall promptly renegotiate in good faith new provisions to restore this Agreement as near as possible to its original intent and effect.

38. Amendment. This Agreement may not be amended, modified or supplemented except by a writing signed by all Parties.

39. Covenants and Conditions. All provisions of this Agreement to be observed or performed by the Parties are both covenants and conditions.

40. Further Assurances. Landlord and Tenant shall promptly sign all further commercially reasonable documents necessary to accomplish the intent of this Agreement.

41. Sovereign Immunity. By executing this Agreement, Landlord waives any right it may have to assert any defense of sovereign immunity from suit in any proceeding against it in any court or other tribunal of the United States that is based upon a claim arising out of this Agreement.

42. Confidentiality.

(a) Confidentiality Obligations. Except as otherwise expressly agreed in writing by the other Party, and except as otherwise agreed in Section 42(b), each receiving Party shall (i) keep strictly confidential and take reasonable precautions to protect against the disclosure of all Confidential Information, and (ii) use all Confidential Information solely for the purposes of performing its obligations under this Agreement and not for any other purpose; provided that a Party may disclose the Confidential Information to those of its Disclosure Representatives who need to know such information for the purposes of performing the receiving Party's obligations under this Agreement if, but only if, prior to being told of such matters or being given access to Confidential Information, such Disclosure Representatives are informed of the confidentiality thereof and the requirements of this Agreement and are directed to comply with the requirements of this Agreement. Each Party will be responsible for any breach of this Agreement by its Disclosure Representatives.

(b) Disclosures to or by Governmental Authorities. Each Party and its Disclosure Representatives may disclose the terms, conditions or other facts with respect to this Agreement and all Confidential Information furnished or made available by either Party pursuant to this Agreement:

(i) To duly authorized Governmental Authorities; and

(ii) To the extent necessary to comply with any Applicable Law, including the Delaware Freedom of Information Act, Title 29, Chapter 100, of the Delaware Code;

Provided, however, that the disclosing Party shall, prior to any such disclosure by it or its Disclosure Representatives, use reasonable efforts to notify the other Party that a disclosure has been requested to allow said other Party to seek confidential treatment, at its own cost or said other Party's cost, by the Governmental Authority of the Confidential Information or other information disclosed to any of them by the disclosing Party or its Disclosure Representatives under this Section 42.

(c) Ownership and Return of Information. All Confidential Information shall be and remain the property of the Party providing it. Nothing in this Agreement shall be construed as granting any rights in or to Confidential Information to the Party or Disclosure Representatives receiving it, except the right of use in accordance with the terms of this Agreement. Upon the written request of a Party, all Confidential Information, including all written or recorded copies thereof, shall be promptly returned to the requesting Party or destroyed, and if destroyed, such destruction shall be certified in writing to the requesting Party by a responsible officer of the other Party.

(d) Enforcement. The Parties agree that irreparable damage would occur if the confidentiality obligations under this Agreement were not performed in accordance with its terms or were otherwise breached. Accordingly, a Party will be entitled to seek an injunction or injunctions to prevent breaches of this Section 42 and to enforce specifically its provisions in any court of competent jurisdiction, in addition to any other remedy to which the Party may be entitled by law or equity.

(e) Publicity. Intentionally Deleted.

[Signatures on Following Page]

The Parties have read this Agreement, understand it and agree to be bound by its terms as of the dates set forth below.

LESSOR:

The City of Dover, a Delaware municipality

By: _____

Name: _____

Title: _____

Date: _____

LESSEE:

Garrison Energy Center LLC, a Delaware
limited liability company
By: _____

Name: _____

Title: _____

Date:_____

EXHIBIT A

DESCRIPTION & DEPICTION OF THE PROPERTY (Lots 1-15)
Garrison Oak Technical Park

EXHIBIT B

DESCRIPTION & DEPICTION OF THE PREMISES
Lot 7 (86.4211 acres) & Leased Portion of Lot 7 (36.7971 acres)

EXHIBIT C

MEMORANDUM OF LEASE

RECORDING PREPARED BY AND
WHEN RECORDED, RETURN TO:

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, TX, 77002
Attn: Jackie Thomas

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

TAX PARCEL NUMBER: LC-05-068.00-01-03.00-00001 (Portion of)

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE (this "**Memorandum**") is made and entered into as of the _____ day of _____, 2012, by and between _The City of Dover, a Delaware municipality, ("**Landlord**"), and Garrison Energy Center, LLC, a Delaware limited liability company, ("**Tenant**").

FACTUAL CONTEXT

A. Landlord is the owner of certain real property in the City of Dover, County of Kent, State of Delaware (the "**Property**"), which real property is more particularly shown and described in Exhibit A hereto as Lots 1 to 15 in the Garrison Oak Technical Park.

B. Landlord and Tenant are parties to that certain Ground Lease Agreement dated _____ 2012__ (the "**Lease**"), whereby Tenant leases a portion of Lot 7 on the Property (the "**Premises**"), as shown in Exhibit A hereto. All words and phrases used herein, and which are not defined herein, shall have the meaning given thereto in the Lease. As provided in the Lease, Landlord and Tenant desire to evidence the Lease in the Official Records of Kent County, Delaware (the "**Records**").

NOW, THEREFORE, in consideration of the foregoing and TEN DOLLARS ($10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord does hereby demise, lease and let unto Tenant the Premises, as follows:

1. The Term of the Lease shall be for a thirty (30) year period, subject to four (4) renewal terms of five (5) years each and Tenant's early termination option. The initial Term commenced on _____ ___, 2012 and shall expire on _____ ___, 2042.

2. This Memorandum is subject to all conditions, terms and provisions of the Lease (all of which are hereby ratified and affirmed), which agreement is hereby adopted and made a

part hereof by reference to the same in the same manner as if all the provisions thereof were copied herein in full.

3. In the event of a conflict between the terms of the Lease and this Memorandum, the Lease shall prevail. Reference should be made to the Lease for a more detailed description of all matters contained in this Memorandum.

4. The Lease provides that it binds and benefits Landlord and Tenant and their respective successors and assigns.

5. This Memorandum shall be recorded in the Records of Kent County, Delaware.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum effective as of the date first written above.

LANDLORD:	TENANT:
City of Dover , a Delaware municipality	Garrison Energy Center, LLC, a Delaware limited liability company
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

DESCRIPTION & DEPICTION OF THE PROPERTY & PREMISES

Garrison Oak Technical Park

EXHIBIT "A"

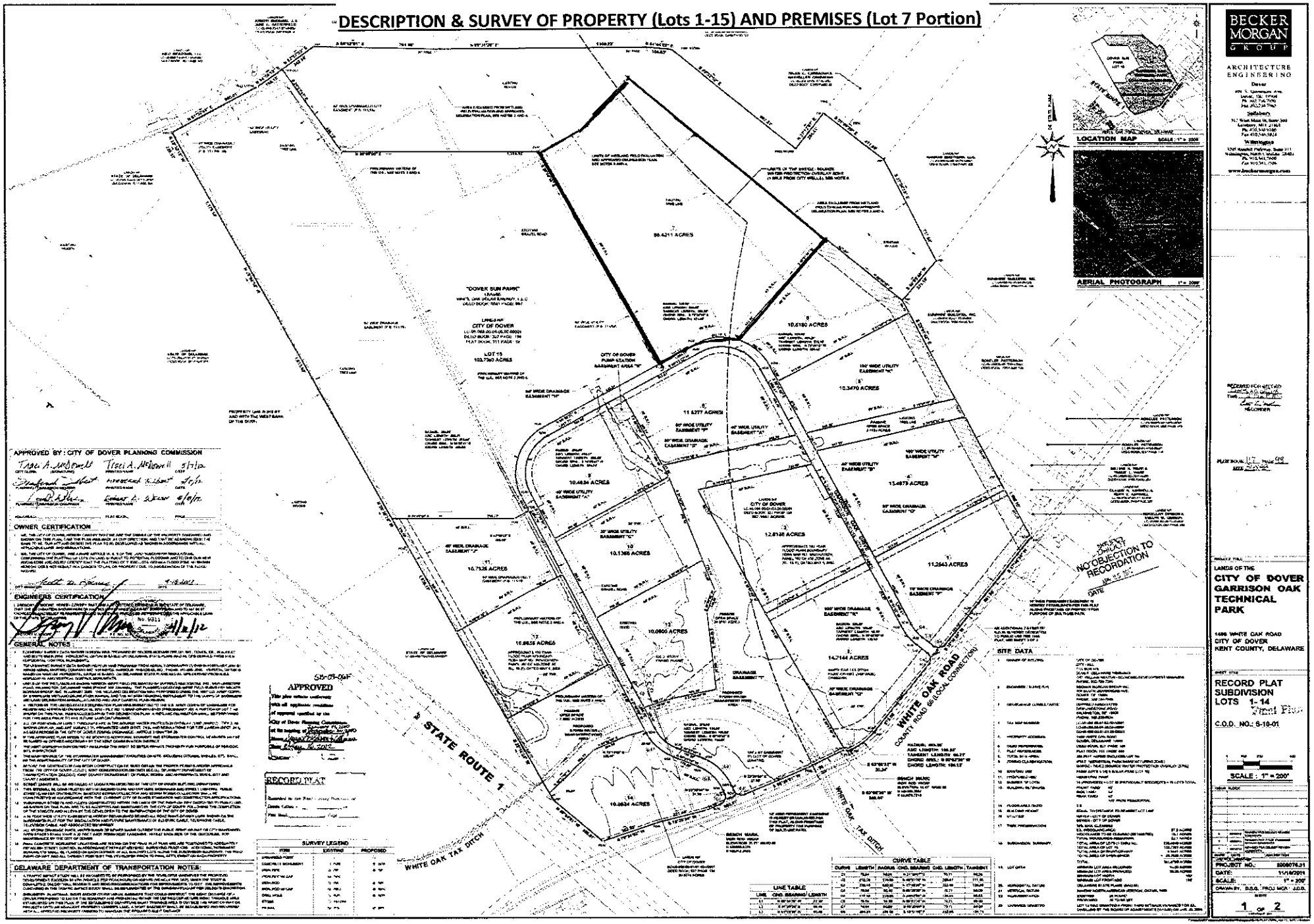
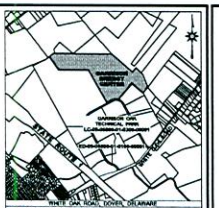
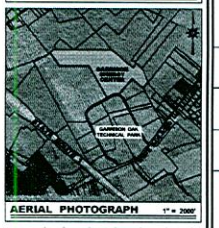

DESCRIPTION & SURVEY OF PROPERTY (Lots 1-15) AND PREMISES (Lot 7 Portion)
LOCATION MAP
AERIAL PHOTOGRAPH
BECKER MORGAN GROUP
ARCHITECTURE ENGINEERING
LANDS OF THE
CITY OF DOVER
GARRISON OAK TECHNICAL PARK
1496 WHITE OAK ROAD
CITY OF DOVER
KENT COUNTY, DELAWARE
RECORD PLAT
SUBDIVISION
LOTS 1-14
C.O.D. NO.: S-10-01
SCALE : 1" = 200'
APPROVED BY : CITY OF DOVER PLANNING COMMISSION
OWNER CERTIFICATION
ENGINEERS CERTIFICATION
GENERAL NOTES :
DELAWARE DEPARTMENT OF TRANSPORTATION NOTES:
SURVEY LEGEND
LINE TABLE
CURVE TABLE
SITE DATA
APPROVED
RECORD PLAT
NO OBJECTION TO RECORDATION
STATE ROUTE 1
WHITE OAK ROAD
COUNTY ROAD 66 (LOCAL CONNECTION)
WHITE OAK TAX DITCH
"DOVER SUN PARK"
CITY OF DOVER
LOT 15
103.7360 ACRES
99.4211 ACRES
10.5180 ACRES
10.3470 ACRES
11.6377 ACRES
10.4824 ACRES
13.4879 ACRES
12.8138 ACRES
11.2543 ACRES
10.1366 ACRES
10.7126 ACRES
10.0600 ACRES
10.8828 ACRES
14.7144 ACRES
10.2634 ACRES
PROJECT NO.: 2005078.01
DATE: 11/14/2011
SCALE: 1" = 200'
DRAWN BY: B.S.G. / PROJ. MGR.: J.D.D.
1 OF 2

EXHIBIT B

DESCRIPTION & DEPICTION OF THE PREMISES

Lot 7 (86.4211 acres) & Leased Portion of Lot 7 (36.7971 acres)





LINE TABLE		
LINE	CHD. BEARING	LENGTH
L1	S 81°23'30" E	90.46

CURVE TABLE					
CURVE	LENGTH	RADIUS	CHD. BEARING	CHD. LENGTH	TANGENT
C1	116.30	216.00	S 36°45'34" W	109.34	59.20

METES & BOUNDS DESCRIPTION

Leased Area – "Lot 7"

All that certain lot, piece or parcel of land situated in the City of Dover, Kent County, Delaware lying on the north side of White Oak Road but not adjacent to and the west side of State Route 1 but not adjacent to, being bounded on the west by lands now or formerly of the City of Dover, on the north by lands now or formerly of Joseph J. McDaniel and Jane E. Satterfield and Lands now or formerly of Harrison D. Brown, Jr., on the east by lands now or formerly of Harrison Brothers, LLC and lands now or formerly of Sunshine Builders, Inc., and on the south by lands now or formerly of the City of Dover (Lot 6) and the northerly right-of-way of Park Reservoir, containing all the lands shown as "Lot 7" on that certain survey entitled "Lands of the City of Dover – ALTA / ACSM Land Title Survey" as prepared by Becker Morgan Group, Inc. dated December 9, 2011, and being described as follows to wit:

Beginning at a point in line with the northerly right of way of Park Reservoir at a corner for this lot and Lot 6, thence running with right of way of Park Reservoir 1) curving to the left on an arc of a circle having a radius of 200.00 feet with an arc length of 262.10 feet, chord bearing and distance of said arc being South 83°38'55" West 244.26 feet to a point of tangency; thence 2) South 42°04'52" West 281.41 feet to a point at a corner for this lot and Lot 10; thence running and bounding with Lot 10 the following three courses and distances 3) North 29°05'08" West 1,840.00 feet to a point thence 4) South 60°05'00" West 1,000.00 feet to a point, thence 5) North 29°05'08" West 1,320.13 feet to a point at a corner for this parcel and lands of Joseph J. McDaniel et ux, thence running with the same, in part, generally continuing with north lands of Allott II) North 52°52'35" East 242.98 feet to a found iron pipe at a corner, thence 6) North 52°52'35" East 1,000.00 feet to a found iron pipe on the west bank of Isaac Branch, thence 7) North 52°52'35" East 1,000.00 feet to a found iron pipe at a corner of lands of Joseph J. McDaniel et ux, thence running and bounding with north lands of Allott the following two courses and distances 8) North 29°05'08" West 1,320.13 feet to a found iron pipe on north lands of Allott I thence 9) North 29°13'36" West 1,340.23 feet to a found iron pipe at a corner for this parcel and lands of Harrison Brothers, LLC thence running with lands of Harrison Brother, LLC generally following the north bank of Allott II) South 84°46'52" East 194.69 feet to a found stone on north bank of Allott II thence continuing with lands of Harrison Brothers, LLC but bending said north bank of Allott the following two courses and distances 10) South 80°52'10" East 992.21 feet to a found stone; thence 11) North 37°27'07" East 284.43 feet to a found iron pipe on west bank of a ditch; thence running and continuing with lands of Harrison Brothers, LLC generally following west bank of ditch 12) South 51°04'29" East 411.26 feet to set iron rod with cap on the west bank of ditch; thence continuing with lands of Harrison Brothers, LLC 13) South 27°04'19" East 717.84 feet crossing over said ditch to a found iron pipe with cap on the south bank of ditch at a corner for this parcel and lands of Sunshine Builders, Inc.; thence running and bounding with lands of Sunshine Builders, Inc. the following two courses and distances 14) South 60°05'00" West 331.30 feet to a found iron pipe on south bank of ditch at a corner for this lot and Lot 6; thence 15) South 29°05'08" East 1,320.13 feet to the point and place of beginning; thence 16) North 60°54'52" West 60.24 feet to a point thence 17) North 42°04'52" West 882.66 feet to the point and place of beginning and containing 86.421 acres of land, be the same or less.

Being the same lands and premises conveyed unto Ronald E. Gardiner and Clara H. Gardiner, his wife, by deed of Anthony B. Carroll, et ux., dated October 19, 1956 and of record in the Office of the Recorder of Deeds in and for Kent County, at Dover, Delaware, in Deed Book A15, page 40.

SURVEY CERTIFICATION

To CALIBRE CORPORATION, LLC and SITE SMART TITLE GUARANTY COMPANY, its successors and assigns:

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1, 2, 3, 4(a)(b), 7(a)(b), 13, 16, 20(a)(b), 22 and 23 of Table A thereof. The field work was completed on November 30, 2011.

JEFFREY C. DODD P.L.S. NO. 782 DATE

TITLE COMMITMENT NO. 8876 SCHEDULE B PART II - SURVEY EXCEPTIONS

1. 24 FOOT WIDE STRIP OF LAND CONVEYED FROM ROLAND E. AND CLARA J. GARRISON TO THE STATE OF DELAWARE FOR THE PURPOSE OF CREATING WHITE OAK ROAD RIGHT OF WAY, DATED JULY 5, 1949, AND FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR KENT COUNTY AT DOVER, DELAWARE, IN DEED BOOK VOLUME W16 PAGE 36. (NOT LOCATED ON LOT 7 – SHOWN ON SURVEY)
2. PERMANENT EASEMENT AGREEMENT FROM ROLAND E. AND CLARA J. GARRISON TO THE CITY OF DOVER FOR THE PURPOSE OF UTILITY MAINTENANCE, DATED MARCH 8, 1988 AND FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR KENT COUNTY AT DOVER, DELAWARE, IN DEED BOOK VOLUME 1644 PAGE 41. (NOT LOCATED ON LOT 7 – SHOWN ON SURVEY)
3. ORDERS REGARDING A RIGHT OF WAY ASSESSMENT OF THE WHITE OAK TAX DITCH AS CONTAINED IN DEED BOOK 2004, PAGE 171 DATED JANUARY 29, 2007 AND DEED BOOK 4060 PAGE 104 DATED MARCH 26, 2009 AND FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR KENT COUNTY AT DOVER, DELAWARE. (NOT LOCATED ON SUBJECT PROPERTY – SHOWN ON SURVEY)
4. MEMORANDUM OF OPTION AGREEMENT BETWEEN THE CITY OF DOVER AND GARRISON ENERGY CENTER, L.L.C. DATED APRIL 16, 2010 AND FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR KENT COUNTY AT DOVER, DELAWARE, IN DEED BOOK 3285 PAGE 26. (NOT SHOWN ON SURVEY)
5. MEMORANDUM OF LEASE AGREEMENT BETWEEN THE CITY OF DOVER AND WHITE OAK SOLAR ENERGY, L.L.C. DATED SEPTEMBER 14, 2010 AND FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR KENT COUNTY AT DOVER, DELAWARE, IN DEED BOOK 3681 PAGE 47. (NOT LOCATED ON SUBJECT PROPERTY – SHOWN ON SURVEY)
6. RECORD PLAT CREATING LOT 15 OF THE GARRISON OAK TECHNICAL PARK, DATED SEPTEMBER 21, 2010 AND FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR KENT COUNTY AT DOVER, DELAWARE, IN DEED BOOK 3681 PAGE 61 (NOT LOCATED ON SUBJECT PROPERTY – SHOWN AS ALL OF LOT 15)

SURVEY LEGEND

ITEM	EXISTING	PROPOSED
UNMARKED POINT	○	○
CONCRETE MONUMENT	□ PCM	■ SCM
IRON PIPE	● IPF	● IPF
IRON PIPE W/ CAP	● PIPC	
IRON ROD	● PIR	● SIR
IRON ROD W/ CAP	● PIRC	● SIRC
DRILL HOLE	● PDH	● SDH
STONE	○ PSTONE	
PK NAIL	● PPK	● SPK

GENERAL NOTES :

1. BOUNDARY AND TOPOGRAPHIC SURVEY DATA SHOWN HEREON WAS PREPARED BY BECKER MORGAN GROUP, INC., DOVER, DE., IN NOVEMBER 2011. VERTICAL DATUM IS BASED ON NAVD 88. DERIVED FROM RTK/GL VERTICAL MONUMENTS. HORIZONTAL DATUM IS BASED ON DELAWARE STATE PLANE NAD 83, GPS DERIVED FROM RTK/GL HORIZONTAL CONTROL MONUMENTS.
2. LIMITS OF THE WETLANDS AS SHOWN HEREON WERE FIELD DELINEATED BY DUFFIELD ASSOCIATES, INC. 5400 LIMESTONE ROAD, WILMINGTON, DELAWARE 19808 (PHONE 302-239-6434). THE FLAGGED LOCATIONS WERE FIELD SURVEYED BY BECKER MORGAN GROUP, INC. IN AUGUST 2006. THE "WETLAND DELINEATION WAS PERFORMED USING THE 1987 U.S. ARMY CORPS OF ENGINEERS WETLAND DELINEATION MANUAL AND THE ATLANTIC AND GULF COASTAL PLAIN REGION.
3. A WATERS OF THE UNITED STATES DELINEATION PLAN WAS SUBMITTED TO THE U.S. ARMY CORPS OF ENGINEERS FOR REVIEW AND APPROVED ON MARCH 16, 2010 (FILE NO.: CENAP-OPR-2010-00142-23 (PREVIOUSLY 20)).

SITE DATA: GARRISON OAK TECHNICAL PARK - LOT 7

1.	OWNER OF RECORD:	CITY OF DOVER CITY HALL P.O. BOX 475 DOVER, DELAWARE 19903-0475 C/O: ANTHONY DEPRIMA - CITY MANAGER PHONE: 302-736-7000
2.	LESSEE:	GARRISON ENERGY CENTER, LLC NORTHERN REGION BUSINESS OFFICE 500 DELAWARE AVENUE SUITE 600 WILMINGTON, DELAWARE C/O: CHARPIE FISHER PHONE: 302-456-5225
3.	ENGINEER / SURVEYOR:	BECKER MORGAN GROUP, INC. 309 SOUTH GOVERNORS AVE. DOVER, DE. 19904 PHONE: 302-734-7950
4.	GEOSCIENCES CONSULTANTS:	DUFFIELD ASSOCIATES 5400 LIMESTONE ROAD WILMINGTON, DE 19808 PHONE: 800-239-6434
5.	TAX PARCEL NUMBER(S):	LC-05-048L00-01-5L00-00001 (PORTION OF)
6.	PROPERTY ADDRESS:	1499 WHITE OAK ROAD DOVER, DELAWARE 19901
7.	DEED REFERENCES:	DEED BOOK: 327 PAGE: 139
8.	PLAT REFERENCE:	PLATBOOK 111 PAGE 19
9.	TOTAL SITE AREA:	341.5817 ACRES (INCLUDES LOT 15)
10.	EXISTING USE:	VACANT LAND
11.	PROPOSED USE:	INDUSTRIAL PARK
12.	ZONING CLASSIFICATION:	PHLI (INDUSTRIAL PARK MANUFACTURING ZONE) SPROZ – TIER 2 (SOURCE WATER PROTECTION OVERLAY ZONE)
13.	BUILDING SETBACKS:	FRONT YARD: 50' SIDE YARD: 10' REAR YARD: 10' 100' FROM RESIDENTIAL
14.	LOT COVERAGE:	SPRZ ZONING - PERMITTED 85% OF EACH LOT
15.	BUILDING HEIGHT:	PERMITTED NO LIMIT
16.	UTILITIES:	WATER – CITY OF DOVER SEWER – CITY OF DOVER
17.	TREE PRESERVATION:	NON, NWI, DELAWARE R/A, WOODLAND AREAS: 55.36 ACRES ±.
18.	HORIZONTAL DATUM:	DELAWARE STATE PLANE (NAD 83)
19.	VERTICAL DATUM:	NAVD88, NORTH AMERICAN VERTICAL DATUM, 1988
20.	MONUMENTATION:	EXISTING: 31 POINTS PROPOSED: 3 TO BE SET ON LOT 7

ITEM NO. 12 AS TAKEN FROM THE CITY OF DOVER ZONING ORDINANCE FOR ZONE IPHLI AND AS SHOWN ON THE RECORD PLAN ENTITLED "LANDS OF THE CITY OF DOVER – RECORD PLAT SUBDIVISION LOT 15 OF GARRISON OAK TECHNICAL PARK" (PB. 111 PG. 19).

BECKER MORGAN GROUP

ARCHITECTURE
ENGINEERING

Dover
309 S. Governors Ave.
Dover, DE 19904
Ph. 302.734.7950
Fax 302.734.7965

Salisbury
312 West Main St. Suite 300
Salisbury, MD 21801
Ph. 410.546.9100
Fax 410.546.5824

Wilmington
3295 Randall Parkway, Suite 211
Wilmington, North Carolina 28403
Ph. 910.341.7600
Fax 910.341.7506

www.beckermorgan.com

PROJECT TITLE

LANDS OF THE
CITY OF DOVER
PREPARED FOR
GARRISON ENERGY CENTER
"GARRISON OAK TECHNICAL PARK"
1499 WHITE OAK ROAD
CITY OF DOVER
KENT COUNTY, DELAWARE

SHEET TITLE

ALTA / ACSM LAND TITLE SURVEY
GARRISON ENERGY CENTER - LEASE AREA
LOT 7 OF GARRISON OAK TECHNICAL PARK

SCALE : 1" = 200'

ISSUE BLOCK

MARK	DATE	DESCRIPTION

PROJECT NO.: 2010017.01
DATE: 12/09/11
SCALE: 1" = 200'
DRAWN BY: DJL/BJL CHKD. BY: PHOL/MGP, JJG/JL

SHEET
1 OF 1

MEMORANDUM OF GROUND LEASE **Execution Copy**

RECORDING PREPARED BY AND
WHEN RECORDED, RETURN TO:

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, TX, 77002
Attn: Jackie Thomas

_____

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

TAX PARCEL NUMBER: LC-05-068.00-01-03.00-00001 (Portion of)

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE (this "**Memorandum**") is made and entered into as of the _____ day of _____, 2012, by and between The City of Dover, a Delaware municipality, ("**Landlord**"), and Garrison Energy Center, LLC, a Delaware limited liability company, ("**Tenant**").

FACTUAL CONTEXT

A. Landlord is the owner of certain real property in the City of Dover, County of Kent, State of Delaware (the "**Property**"), which real property is more particularly shown and described in Exhibit A hereto as Lots 1 to 15 in the Garrison Oak Technical Park.

B. Landlord and Tenant are parties to that certain Ground Lease Agreement dated _____ 2012 (the "**Lease**"), whereby Tenant leases a portion of Lot 7 on the Property (the "**Premises**"), as shown in Exhibit B hereto. All words and phrases used herein, and which are not defined herein, shall have the meaning given thereto in the Lease. As provided in the Lease, Landlord and Tenant desire to evidence the Lease in the Official Records of Kent County, Delaware (the "**Records**").

NOW, THEREFORE, in consideration of the foregoing and TEN DOLLARS ($10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord does hereby demise, lease and let unto Tenant the Premises, as follows:

1. The Term of the Lease shall be for a thirty (30) year period, subject to four (4) renewal terms of five (5) years each and Tenant's early termination option. The initial Term commenced on _____ ___, 2012 and shall expire on _____ ___, 2042.

2. This Memorandum is subject to all conditions, terms and provisions of the Lease (all of which are hereby ratified and affirmed), which agreement is hereby adopted and made a part hereof by reference to the same in the same manner as if all the provisions thereof were copied herein in full.

3. In the event of a conflict between the terms of the Lease and this Memorandum, the Lease shall prevail. Reference should be made to the Lease for a more detailed description of all matters contained in this Memorandum.

4. The Lease provides that it binds and benefits Landlord and Tenant and their respective successors and assigns.

5. This Memorandum shall be recorded in the Records of Kent County, Delaware.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum effective as of the date first written above.

LANDLORD:

City of Dover , a Delaware municipality

By: _____

Name: _____

Title: _____

TENANT:

Garrison Energy Center, LLC, a Delaware limited liability company

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

State of _____)
) ss.
County of _____)

On this _____ day of _____, 2012, before me, _____ personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____
Print Name: _____
Title: Notary Public
Expiration Date: _____ **(Seal)**

ACKNOWLEDGMENT

State of _____)
) ss.
County of _____)

On this _____ day of _____, 2012, before me, _____ personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of _____ that the foregoing paragraph is true and correct.

WHITNESS my hand and official seal.

Signature: _____
Print Name: _____
Title: Notary Public
Expiration Date: _____ **(Seal)**