

"A Historic Past"



"A Bright Future"

CITY OF DELAWARE CITY
407 Clinton Street – P.O. Box 4159
Delaware City, Delaware 19706
302-834-4573

CITY OF DELAWARE CITY
DELAWARE CITY, DELAWARE

ORDINANCE NO. 10-0222-01

AN ORDINANCE TO AMEND THE
ZONING MAP OF THE CITY OF
DELAWARE CITY SO AS TO REZONE
TAX PARCEL 22-007.00-050 (122
WASHINGTON ST.) FROM C-1L TO C-1
ZONING WITH RESTRICTIONS.

WHEREAS, upon the request of the property owner, the Mayor and Council of the City of Delaware City deem it appropriate to amend a portion of the official zoning map of the City of Delaware City which is incorporated into Chapter 46 of the Code of the City of Delaware City so as to rezone a certain parcel known as 122 Washington Street, N.C.C. Tax. Parcel 22-007.00-050 (the "Property") subject to restrictions;

WHEREAS, the Property is presently subject to a certain Declaration of Restrictions dated March 5, 2004 as recorded with the New Castle County, Delaware Recorder of Deeds office at Instrument No. 20040310-0027176 (the "Restrictions") which limits the permitted uses on the Property.

NOW, THEREFORE, the Mayor and Council of the City of Delaware City do ordain as follows:

SECTION 1. The official zoning map of the City of Delaware City (the “City”), incorporated into the Code of the City (the “Code”) by Section 46-5 of the Code is hereby amended to rezone the following tax parcel to the C-1 zoning classification; provided, however, that the legal owner shall impose lawfully binding and recorded deed restrictions consistent with the following provisions:

22-007.00-050 (122 Washington Street). The use of the Property shall be limited to the following enumerated C-1 uses:

1. All uses permitted in the R-1 District;
2. Social, fraternal, social service, union, historical, and civic organizations;
3. Office, business, professional, business and governmental;
4. Building for instruction of dramatics, musical, craft, art, or cultural activities; and
5. Funeral home, embalming.

The following uses may be permitted on the Property by adoption of a resolution of Mayor and Council of the City of Delaware City permitting same:

1. Retail shop limited to the following: bookstore; gift shop; antique shop; dress or clothing shop (new clothing only), provided, there shall be no outside storage or display of equipment, furniture, or merchandise; and
2. Tea room or “fine dining” restaurant, specifically excluding drive-in service, take-out service, outside dining, fast food restaurants, “family” dining

restaurants, and sports bar restaurants, provided, there shall be no outside storage or display of equipment, furniture, or merchandise.

In addition, the Property must retain the residential and historic character of the neighborhood, as determined by the Historic Preservation Commission (“HPC”). All exterior signage and lighting shall be subject to HPC approval.

SECTION 2. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Mayor and Council hereby declare that they would have passed this Ordinance and each section, subsection, sentence, clause or phrase irrespective of the fact that any one or more thereof is declared unconstitutional or invalid.

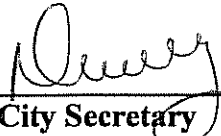
SECTION 6. Ordinances or parts of Ordinances in conflict herewith are hereby repealed; provided that any such repeal shall not abate a right of action already accrued under any repealed Ordinance.

SECTION 7. This Ordinance shall become effective immediately upon passage.

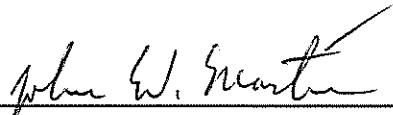
(Signature Page Follows)

ADOPTED BY THE MAYOR AND COUNCIL, this 15th day of March 2010.

ATTEST:

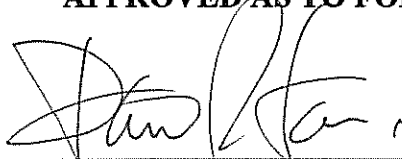


City Secretary




Mayor

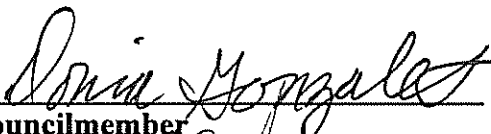
APPROVED AS TO FORM:



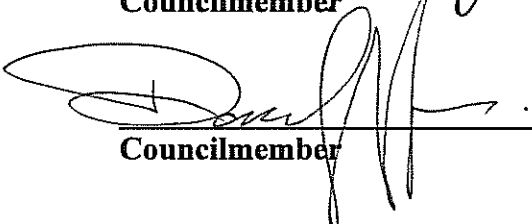
City Solicitor



Councilmember



Councilmember



Councilmember

Councilmember

Councilmember

First Reading: 2/22/10
Second Reading and Passage: 3/15/10

TAX PARCEL: 22-007.00-050

**PREPARED BY: DANIEL R. LOSCO, ESQ.
Losco & Marconi, P.A.
P.O. Box 1677
Wilmington, DE 19899**

**AMENDMENT TO
DECLARATION OF RESTRICTIONS**

THIS AMENDMENT TO DECLARATION OF RESTRICTIONS is made this 15th day of March, 2010 by **DELAWARE HOLDING, LLC**, a Delaware limited liability company, ("Holding"), and **THE CITY OF DELAWARE CITY**, a municipal corporation of the State of Delaware, (the "City").

WHEREAS, Holding is the owner of all that certain tract, piece or parcel of land with improvements thereon erected situated in the City of Delaware City, Red Lion Hundred, New Castle County, State of Delaware, known as 122 Washington Street (New Castle County Tax Parcel No. 22-007.00-050), such lands and premises covered by this Amendment to Declaration of Restrictions being more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (said lands and premises being referred to herein as the "Property"); and

WHEREAS, Holding acknowledges that it did acquire title to the Property in 2006, subject, however, to a certain Declaration of Restrictions imposed by the City as Declarant limiting the types of uses permissible on the Property with such Declaration of Restrictions being recorded in the office aforesaid at Instrument No. 20040310-0027176 (the "Declaration"); and

WHEREAS, pursuant to paragraph 6 of the Declaration, no amendment or modification of the restrictions imposed thereby is permitted with out the advance written consent of the Mayor and Council of the City of Delaware City by an instrument recorded in the office of the Recorder of Deeds in and for New Castle County, Delaware; and

WHEREAS, in connection with Holding's application to rezone the Property from the C-1L (commercial low impact) zoning classification to the C-1 (central commercial) zoning classification, Holding has requested that the City amend the Declaration to permit the use of the Property for purposes of operating a funeral home with embalming; and

WHEREAS, the City is willing to permit such amendment to the Declaration on the terms and conditions herein contained.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that, Holding does hereby covenant and declare that it shall hold and be seized of the Property, under

and subject nevertheless to the following amended covenants, agreements, conditions, easements, reservations and restrictions:

1. **Restrictions Applicable to 122 Washington Street, New Castle County Tax Parcel 22-007.00-050.** The use of the Property shall be limited to the following uses permitted under the C-1 zoning classification as contained in the Code of the City of Delaware City (the "Code"):

- A. All uses permitted in R-1 Districts as described in the Code;
- B. Social, fraternal, social service, union, historical and civic associations;
- C. Professional and governmental offices;
- D. Building for instruction of dramatics, music, crafts, art or other similar cultural activities;
- E. Funeral home, embalming; and
- F. The following uses may be permitted by affirmative resolution of the Mayor and Council of the City of Delaware City:
 - i. Retail shops limited to the following: bookstore; gift shop; flower shop; antique shop; dress or clothing boutique (new clothes only); provided, however, that there shall be no outside storage or display of equipment, furniture, or merchandise; and
 - ii. Tea room or "fine dining" restaurant, specifically excluding drive-in service, take-out service, outside dining, fast food restaurants, "family" dining restaurants and sports bar restaurants; provided, however, that there shall be no outside storage or display of equipment, furniture, or merchandise.

2. **Exterior Facade:** The exterior appearance of any structure now or later erected on the Property must also be consistent with the residential and historic character of the surrounding neighborhood, as determined in the sole discretion of the Historic Preservation Commission of the City of Delaware City (the "HPC"). All exterior renovations, alterations, improvements, landscaping, signage and lighting shall be subject to HPC approval.

3. **Binding Effect:** These amended covenants and restrictions shall run with and bind the Property as well as all current and future owners, tenants, subtenants, mortgagees and occupants thereof in perpetuity and shall inure to the benefit of and be enforceable by the City, and its successors and assigns.

4. **Amendments:** These covenants and restrictions, as amended, may not be further changed, altered or modified, in whole or in part at any time, without the written consent of the Mayor and Council of the City of Delaware City, its successors and assigns by an instrument recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware.

5. **Remedies:** The City and its successors and assigns shall have the right to enforce the Restrictions, as amended hereby. Enforcement of any of these covenants and restrictions shall be by any proceeding at law or in equity (including proceedings for injunctive and monetary relief) against any persons or entities violating or attempting to violate any covenant or restriction herein contained. Each person or entity who is found by a court of competent jurisdiction, in any action to enforce these restrictions and covenants, to have violated any of these restrictions or covenants shall also be liable for reasonable attorney's fees and other expenses incurred in the prosecution of such action.

Violation of any of the restrictions or conditions, or breach of any covenant herein contained shall give the Mayor and Council of the City of Delaware City, its successors and assigns, in addition to all other remedies available at law or at equity, the right to enter upon the Property or upon such portion of the Property where the violation exists and summarily abate and remove, at the expense of the owners thereof, any structure, improvement, erection, thing or condition that may be or exist thereon which is contrary to the intent and meaning of any of the provisions of these restrictions. The City, its successors, or assigns shall not thereby be deemed guilty of any manner of trespass for such entry, abatement or removal. Failure to enforce any restriction, condition, covenant or agreement herein contained shall in no event be deemed a waiver of the right to do so thereafter.

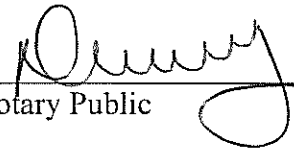
6. **Severability:** Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

7. **Acknowledgment of Consent to Amendment:** The City joins in this Amendment to Declaration of Restrictions to confirm and acknowledge its consent to the amendment of the Restrictions as set forth herein.

(Signature Page Follows)

STATE OF DELAWARE :
: ss.
NEW CASTLE COUNTY :

BE IT REMEMBERED, that on this 15th day of March, 2010, did personally appear before me, a Notary Public for the State and County aforesaid, **Kevin Whittaker, Managing Member** of **DELAWARE HOLDING, LLC**, a Delaware limited liability company, known to me personally to be such, and acknowledged this Amendment to Declaration of Restrictions to be his act and deed and the act and deed of said limited liability company; that the signature affixed is that of the Managing Member thereto, in his own proper handwriting, and the seal affixed is the common and company seal of said limited liability company, and that his act of sealing, executing, acknowledging and delivering said Amendment to Declaration of Restrictions was duly authorized by the members of said limited liability company.

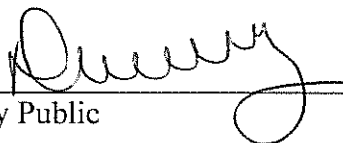


Notary Public (Seal)

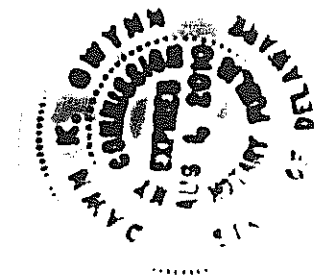


STATE OF DELAWARE :
: ss.
NEW CASTLE COUNTY :

BE IT REMEMBERED, that on this 15th day of March, 2010, did personally appear before me, a Notary Public for the State and County aforesaid, **Daniel Tjaden, City Manager** of **THE CITY OF DELAWARE CITY**, a municipality of the State of Delaware, known to me personally to be such, and acknowledged this Amendment to Declaration of Restrictions to be his act and deed and the act and deed of said municipality; that the signature affixed is that of the City Manager thereto, in his own proper handwriting, and the seal affixed is the common and corporate seal of said municipality and that his act of sealing, executing, acknowledging and delivering said Amendment to Declaration of Restrictions was duly authorized by Mayor and Council of **THE CITY OF DELAWARE CITY**.

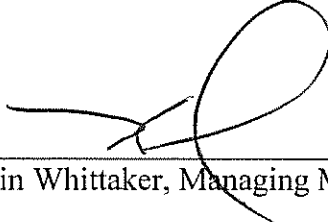


Notary Public (Seal)



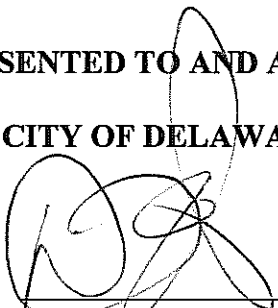
IN WITNESS WHEREOF, Delaware Holding, LLC has caused its name by Kevin Whittaker, its Managing Member, to be hereunto set, and the common and company seal of the said party to be hereunto affixed, the day and year first above written.

**DELAWARE HOLDING, LLC, a
Delaware limited liability company**

By:  _____ (Seal)
Kevin Whittaker, Managing Member

CONSENTED TO AND ACKNOWLEDGED:

THE CITY OF DELAWARE CITY

BY:  _____
Daniel Tjaden, City Manager