



Certificate of Public Convenience and  
Necessity Application

Sussex County

Rehoboth Beach District 3

# TIDEWATER

UTILITIES, INC.

A Middlesex Water Company Affiliate

January 14, 2020

Ms. Donna Nickerson  
Public Service Commission  
861 Silver Lake Blvd.  
Suite 100  
Dover, DE 19904

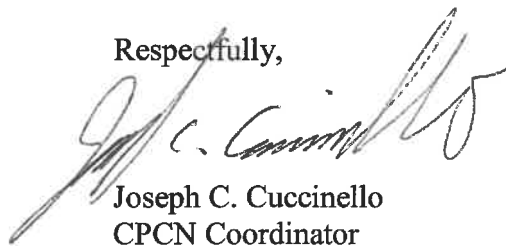
Re: CPCN Application – Rehoboth Beach District 3

Dear Ms. Nickerson;

Enclosed you will find the CPCN application for the Rehoboth Beach District 3 Area project in Sussex County, Delaware.

One original copy the application has been included. If I can be of further assistance upon your review, please do not hesitate to contact me at 302-747-1308.

Respectfully,



Joseph C. Cuccinello  
CPCN Coordinator  
Tidewater Utilities, Inc.

cc: Ms. Christine Galaska, SFMO w/enclosures  
Mr. Ashley Kunder, DPH w/enclosures  
Mr. Steven Smailer, DNREC w/enclosures  
Ms. John Ashman, SC Dept. of Planning w/enclosures

*"Southern Delaware's Premier Water Company Since 1964"*

**Tidewater Utilities, Inc.** 1100 South Little Creek Road, Dover, DE 19901 [www.tuiwater.com](http://www.tuiwater.com)  
(877) 720-9272 (302) 734-7500 Tel. (302) 734-9297 Fax

**APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY  
REQUIRED TO BEGIN OR EXPAND THE BUSINESS  
OF A PUBLIC WATER UTILITY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

Application Fee           \$300 for filing each extension to a CPCN  
                                  \$750 for filing each original application for new water utility 26 Del. C. §114(a)

This form of application must be filed for each new and expanding water system pursuant to 26 Del. C. §203C.

**WATER UTILITIES:**           Rehoboth Beach District 3

1. Basis for application:

- a.       Water in the proposed service area does not meet the Regulations Governing Public Drinking Water Systems of the State Board of Health for human consumption; {26 Del. C., §203C (d)(2)(a)}; or
- b.       Water supply in the proposed service area is insufficient to meet the projected demand; 26 Del. C., §203C (d)(2)(b)}; or
- c.       The applicant is in possession of a signed service agreement with the developer of a proposed subdivision or development, which subdivision or development has been duly approved by the respective county government; {26 Del. C., §203C (e)(1)(a)}; or
- d.       The applicant is in possession of a petition signed by all of the parcel owners of the proposed territory to be served; {26 Del. C., §203C (e)(1)(b)}; or **Exhibit A**
- e.       The applicant is in possession of a duly certified copy of a resolution from the governing body of a county or municipality requesting the applicant to provide service to the proposed territory to be served; {26 Del. C., §203C (e)(1)(c)}.

2. To obtain a Certificate of Public Convenience and Necessity ("CPCN") to provide adequate water service to customers and meet the Regulations Governing Drinking Water Standards of the State Board of Health for human consumption {26 Del. C., §203C(a)}.

3. Tidewater Utilities, Inc. requests an informal fact finding procedure during review of application.

4.           (a.)       Full legal name and address of Applicant:  
                          Tidewater Utilities, Inc.  
                          1100 South Little Creek Road  
                          Dover, Delaware 19901
- (b.)       Full name of the Utility's designated representative:  
                          Joseph C. Cuccinello  
                          Kirsten Higgins
- (c.)       Phone no: 302-734-7500 X1014 or X1024
- (d.)       Fax no: 302-734-9295
- (e.)       Email address: [jcuccinello@Tuiwater.com](mailto:jcuccinello@Tuiwater.com) or [khiggins@tuiwater.com](mailto:khiggins@tuiwater.com)

5. Supporting documentation required by 26 Del. C. §203C(e)(1), including evidence that all landowners of the proposed territory have been notified of application:       **Exhibit B**

6. A complete list of county tax map parcel number(s) for the area covered by the application:   **Exhibit C**

7. A complete list of county tax map parcel number(s) with corresponding names and addresses of property owners and a copy of the tax map(s) for the area: **Exhibit C**
8. The Applicant hereby certifies that the extension will satisfy the provisions of 26 Del. C. §403C, including:
  - (a.) The Applicant is currently furnishing water to its present customers in Delaware in such a fashion that water pressure at every house supplies is at least 25 psi at all times at the service connection.
  - (b.) The Applicant shall furnish water to the house or separate location of each new customer in the Delaware at a pressure of at least 25 psi at each location or house at all times at the connection while continuing also to supply each old customer at a pressure of at least 25 psi at each house at all times at the service connection.
  - (c.) The Applicant is currently not subject to a finding by the appropriate federal or state regulatory authority that we have materially failed to comply with applicable safe drinking water or water quality standards; and
  - (d.) The Applicant is currently not subject to any Order issued by the Commission finding that Tidewater Utilities, Inc. has materially failed to provide adequate or proper safe water services to existing customers.
9. Copies of petitions signed by landowners showing all of the parcel owners of the proposed territory to be served agree with the filing of a CPCN to permit Applicant to provide them with public water. **Exhibit A**
10. Plan of service:
  - (a.) The application includes five parcels located in Sussex County, Delaware. They are as follows:
    - 235-21.00-35.04 is located on the north east side of Cave Neck Rd which is about 1,191 feet from the intersection of Cave Neck Rd and Round Pole Bridge Rd.
    - 335-8.00-29.00 is located on the east side of Old Orchard Rd which is about 1,396 feet from the intersection of Old Orchard Rd and New Rd.
  - (b.) At this in time Tidewater Utilities, Inc. (TUI) is planning on servicing these parcels from extending main or standalone systems. The estimated timetable is not predictable at this time since we are in the early stages of planning.
  - (c.) A map showing the location of the parcels is provided in **Exhibit C**.
11. (a.) A copy of the application must be sent to State Fire Marshall, Public Health Department, Department of Natural Resources and County Engineering/Utility.
  - 1.) The current status of such application is: **Sent**(b.) The Applicant provides the following additional information with this application;
  - 1.) A corporate history including dates of incorporation, subsequent acquisitions and/or mergers, **On PSC File**

- 2.) A chart, which depicts the inter-company relationships, **On PSC File**
- 3.) A map identifying all areas, including all towns, cities, counties and other governments subdivisions to which service is already provided, **On PSC File**
- 4.) All copies of Applicant's annual reports to stockholders and that of its subsidiaries, and parent for the last two years, **On PSC File**
- 5.) Applicant's audited financial statements, 10K's and all proxy material for the last two years, **On PSC File**
- 6.) Any additional information required by PSC Staff will be made available on request.

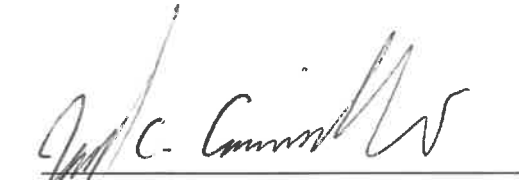
Respectfully submitted,



**Bruce Patrick**  
**Vice President**

## **Certification of Landowner Information Accuracy**

By submitting this application, Tidewater Utilities, Inc. hereby certifies that we have reviewed the appropriate tax or land record documents; and that according to those documents, the landowners identified in the parcel lists are the landowners of record and that the petitions contained in this application have been signed by the landowners of record.



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Joseph C. Cuccinello  
CPCN Coordinator

# EXHIBIT

# A

# TIDEWATER

## UTILITIES, INC.

A Middlesex Water Company Affiliate

We the undersigned, request to be included in the water service territory of Tidewater Utilities, Inc. for the following property/properties:

Tax Parcel Number(s): 235-21.00-35.04

Property Owner(s): Richard D. Sweeney, Trustee, Pamela J. Sweeney, Trustee

Mailing Address: 26285 Cave Neck Rd  
Milton, DE 19968

Property Address: NE/Cave Neck Rd, 1132'NW/Round Pole Bridge Rd, Lot 5

Owner's Signature(s):  Richard D. Sweeney Date: 7/21/19

Print Name:  Richard D. Sweeney Title: Trustee

Address: 26285 CAVE NECK RD Phone #: 302 664 7864  
MILTON, DE 19968

Owner's Signature(s):  Pamela J. Sweeney Date: \_\_\_\_\_

Print Name:  PAMELA J SWEENEY Title: Trustee

Address: 26285 CAVE NECK RD Phone #: 302-664-1864  
MILTON DE 19968

**ALL LEGAL OWNERS OF THE PARCEL MUST SIGN FOR THE PETITION TO BE VALID.  
FOR PARCELS OWNED BY INDIVIDUALS SIMPLY INDICATE OWNER AS TITLE.  
FOR PARCELS OWNED BY CORPORATIONS, LLC'S OR OTHER ENTITIES, PLEASE PROVIDE  
DOCUMENTATION OF SIGNER'S AUTHORIZATION.**

I UNDERSTAND THAT BY SIGNING THIS PETITION MY PROPERTY MAY HAVE TO REMAIN IN TIDEWATER UTILITIES, INC. SERVICE TERRITORY PERMANENTLY. I ALSO UNDERSTAND THAT IT MAY AFFECT MY ABILITY TO OBTAIN A PERMIT FOR A NEW WELL. IF YOU HAVE ANY QUESTIONS, COMMENTS, OR CONCERNS, PLEASE CONTACT THE PUBLIC SERVICE COMMISSION AT (302) 736-7500 (in Delaware, call 800-282-8574).

Return to:  
Tidewater Utilities, Inc.  
1100 South Little Creek Road  
Dover, DE 19901  
Attn: Joe Cuccinello

**Property Information**

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Property Location: 26285 CAVE NECK RD  
Unit:  
City: MILTON  
State: DE  
Zip: 19968  
  
Class: RES-Residential  
Use Code (LUC): RS-RESIDENTIAL SINGLE FAMILY  
Town: 00-None  
Tax District: 235 – BROAD KILL  
School District: 6 - CAPE HENLOPEN  
Council District: 3-Burton  
Fire District: 85-Milton  
Deeded Acres: .0001  
Frontage: 203  
Depth: 368.000  
Irr Lot: I  
Zoning 1: AR-1-AGRICULTURAL/RESIDEINTIAL  
Zoning 2: -  
Plot Book Page: /PB  
  
100% Land Value: \$3,500  
100% Improvement Value \$30,500  
100% Total Value \$34,000

**Legal**

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Legal Description NE/CAVE NECK RD  
1132'NW/ROUND POLE  
BRIDGE RD LOT 5

**Owners**

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Owner	Co-owner	Address	City	State	Zip
SWEENEY RICHARD D TRUSTEE	PAMELA J SWEENEY TRUSTEE	26285 CAVE NECK RD	MILTON	DE	19968

# TIDEWATER UTILITIES, INC.

A Middlesex Water Company Affiliate

We the undersigned, request to be included in the water service territory of Tidewater Utilities, Inc. for the following property/properties:

Tax Parcel Number(s): 335-8.00-29.00

Property Owner(s): Old Orchard Ventures, LLC ,

Mailing Address: 10 Adel Dr  
Newark, DE 19702

Property Address: 16773 Old Orchard Rd, Lewes, DE 19958

Owner's Signature(s):  Bj Baker Date: 7/18/2019  
Print Name:  Barr J Baker Title: Member  
Address: 10 A-Adel Dr Newark, DE Phone #: 302-453-8286

Owner's Signature(s):  \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name:  \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_ Phone #: \_\_\_\_\_

**ALL LEGAL OWNERS OF THE PARCEL MUST SIGN FOR THE PETITION TO BE VALID.  
FOR PARCELS OWNED BY INDIVIDUALS SIMPLY INDICATE OWNER AS TITLE.  
FOR PARCELS OWNED BY CORPORATIONS, LLC'S OR OTHER ENTITIES, PLEASE PROVIDE  
DOCUMENTATION OF SIGNER'S AUTHORIZATION.**

I UNDERSTAND THAT BY SIGNING THIS PETITION MY PROPERTY MAY HAVE TO REMAIN IN TIDEWATER UTILITIES, INC. SERVICE TERRITORY PERMANENTLY. I ALSO UNDERSTAND THAT IT MAY AFFECT MY ABILITY TO OBTAIN A PERMIT FOR A NEW WELL. IF YOU HAVE ANY QUESTIONS, COMMENTS, OR CONCERNS, PLEASE CONTACT THE PUBLIC SERVICE COMMISSION AT (302) 736-7500 (in Delaware, call 800-282-8574).

Return to:  
Tidewater Utilities, Inc.  
1100 South Little Creek Road  
Dover, DE 19901  
Attn: Joe Cuccinello

**Property Information**

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Property Location: 16773 OLD ORCHARD RD  
Unit:  
City: LEWES  
State: DE  
Zip: 19958  
  
Class: RES-Residential  
Use Code (LUC): RV-RESIDENTIAL VACANT  
Town: 00-None  
Tax District: 335 – LEWES REHOBOTH  
School District: 6 - CAPE HENLOPEN  
Council District: 3-Burton  
Fire District: 82-Lewes  
Deeded Acres: 10.0300  
Frontage: 0  
Depth: .000  
Irr Lot:  
Zoning 1: AR-1-AGRICULTURAL/RESIDEINTIAL  
Zoning 2: -  
Plot Book Page: /PB  
  
100% Land Value: \$15,000  
100% Improvement Value: \$0  
100% Total Value: \$15,000

**Legal**

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Legal Description: DANIELLE PARK  
SUNSET NE/ RD 269A  
APPROX 1374'RD 266

**Owners**

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Owner	Co-owner	Address	City	State	Zip
OLD ORCHARD VENTURES LLC		10 ADEL DR	NEWARK	DE	19702

# **EXHIBIT**

## **B**



A Middlesex Water Company Affiliate  
December 16, 2019

Certified Mail # 7004 1160 0005 9457 8957

Richard D. Sweeney, Trustee & Pamela J. Sweeney Trustee  
26285 Cave Neck Rd.  
Milton, DE 19968

Dear Richard D. Sweeney, Trustee & Pamela J. Sweeney Trustee:

Tidewater Utilities Inc. (Tidewater) would like to thank you for the receipt of your signed petition requesting Tidewater to provide water service to your property, 235-21.00-35.04 located in Sussex County.

Tidewater will be submitting an application for a Certificate of Public Convenience and Necessity (CPCN) with the Public Service Commission (PSC) on or about January 14, 2020. Included with this letter is information that we are required to provide to all landowners within a proposed service territory prior to filing the application for a CPCN.

When the CPCN is granted, Tidewater will have the permission to provide public water service to your parcel. It is important for you, as the landowner, to know that when water service is made available to your parcel you are not obligated to connect to our water system as long as your current water supply is functioning properly. If you agree to have your property be part of this proposed service area, no action on your part is required at this time. If you do not agree to have your property be part of this proposed service area you will need to complete the enclosed opt out/object form and send it back to the address on top of the form.

If you have any questions in regards to this matter please feel free to contact me at 302-747-1308.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joseph C. Cuccinello".

Joseph C. Cuccinello  
CPCN Coordinator

**PROPERTY OWNER OPT-OUT/OBJECT FORM**

Delaware Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware 19904

Dear Delaware Public Service Commission:

I/We are the recorded property owner(s), according to current tax records, for the following property/properties:

Tax Map Parcel Identification Number(s): 235-21.00-35.04

We received a notice from *Tidewater Utilities, Inc.* that it plans to file an application with the Delaware Public Service Commission for a Certificate of Public Convenience and Necessity (Certificate) to provide water service to a proposed service territory described by Tidewater Utilities, Inc. as *Rehoboth District 3* (hereafter, "Proposed Service Territory").

\_\_\_\_\_ As permitted by applicable law, I hereby opt-out of *Tidewater Utilities, Inc.*'s proposed service territory. I understand that by opting out of the Proposed Service Territory, I may be charged additional fees if I later change my mind and choose to be included in the Proposed Service Territory and receive water service from *Tidewater Utilities, Inc.*

\_\_\_\_\_ I hereby object to the *Tidewater Utilities, Inc.*'s application for the Certificate of Public Convenience and Necessity. I understand that by objecting to the *Tidewater Utilities, Inc.*'s application I am not merely objecting to being included in the Proposed Service Territory (in which case, I may merely opt out as permitted by electing to opt out above), but rather am objecting to the Commission authorizing the *Tidewater Utilities, Inc.* to provide water service to *any territory* within the Proposed Service Territory, including, but not limited to, my own property. The basis of my objection is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Property Owner(s): *Property Owner Name* \_\_\_\_\_  
*Property Owner Address* \_\_\_\_\_  
\_\_\_\_\_

Owner's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## **YOU SHOULD READ THIS NOTICE CAREFULLY.**

Public records list you as a landowner of the property with the following tax map parcel identification number(s):235-21.00-35.04. Within thirty-five (35) days, Tidewater Utilities, Inc. (TUI) plans to file an application with the Delaware Public Service Commission requesting a Certificate of Public Convenience and Necessity (Certificate) to provide water service to a new territory described as Rehoboth District 3.

**TUI HAS INCLUDED YOUR PROPERTY IN THE TERRITORY IT INTENDS TO SERVE. TUI IS UNABLE TO ESTIMATE WHEN IT WILL PROVIDE WATER SERVICE TO YOUR PROPERTY OR REHOBOTH DISTRICT 3.**

**IF YOU DO NOT TAKE ANY ACTION NOW, YOU MAY LOSE YOUR CHOICE OF WHO CAN PROVIDE WATER SERVICE TO YOUR PROPERTY AND WHETHER YOU CAN OBTAIN A WELL PERMIT.**


- 1) You may choose to be included in the utility's proposed service territory. If you signed a petition for water service asking to be included in the utility's proposed service territory, or, if you did not sign a petition for water service but want to be included, you do not have to take any action.
- 2) You have the right to "opt-out" of the utility's proposed service territory. If you "opt-out", your property will not be included in the utility's service territory. You can do this even though others in Rehoboth District 3 might desire water service from the utility. You should understand that being included in a utility's service territory does not mean that public water service will be immediately available to your property or that, when available; you will be required to hook-up to the public water system. However, if your property is included in the utility's water service territory, and later the water from the well providing your drinking water cannot be used, the Department of Natural Resources and Environmental Control might deny you a permit for a new well if public water is available to your property. On the other hand, if you elect to "opt-out" of the utility's service territory, but later change your mind and decide to connect to the utility's public water system, you could be charged additional fees.
- 3) You may object to the Public Service Commission granting a Certificate for Rehoboth District 2. For example, you may object that the water utility does not have the legal right to serve the territory. You should review the law about what a utility must provide in order to obtain a Certificate (contact the Public Service Commission to obtain a copy of the law). If you file such an objection, you will need to tell the Public Service Commission why the utility should not receive the Certificate. Please note that an objection will not remove your property from a proposed service territory. To remove your property from the service territory, you must request to "opt-out."

Attached to this letter is a form which allows you (and other owners of the property) to exercise your options. You have seventy-five (75) days from your receipt of this notice to file your objection with the Commission. Although you may exercise your right to "opt-out" of the utility's service territory at any time before the Certificate is granted, if you choose to opt-out, it is requested that you complete the form and return it to the Public Service Commission at the address listed below within seventy-five (75) days from the date you receive this notice:

Delaware Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware 19904

If you want to “opt-out” or object, you must send the completed form to the Public Service Commission, even if you already informed the utility of your intent to “opt-out” or object.

If you have any questions, comments or concerns, please contact the Public Service Commission at (302) 736-7500 (in Delaware, call 800-282-8574).

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<b>A. Signature</b> <b>X</b> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
<b>1. Article Addressed to:</b> <i>Richard O. Sweeney Trustee            Pamela J. Sweeney Trustee            26285 Cave Neck Rd            Milton, DE 19968</i>	<b>B. Received by (Printed Name)</b>	<b>C. Date of Delivery</b>
<b>2. Article Number (Transfer from service label)</b> <b>7004 1160 0005 9457 8957</b>	<b>D. Is delivery address different from item 1?</b> <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
 9590 9402 5259 9154 9224 87	<b>3. Service Type</b> <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
PS Form 3811, July 2015 PSN 7530-02-000-9053		Domestic Return Receipt

<b>Sent To</b> <i>Richard O. Sweeney Trustee + Pamela J. Sweeney Trustee            Street, Apt. No.: 26285 Cave Neck Rd            or PO Box No.            City, State, ZIP+4            Milton, DE 19968</i>		<b>Postage</b> Certified Fee Return Receipt Fee (Endorsement Required) Restricted Delivery Fee (Endorsement Required) Total Postage & Fees \$ 3.50 \$ 6.85 USPS	<b>U.S. Postal Service™</b> <b>CERTIFIED MAIL™ RECEIPT</b> (Domestic Mail Only; No Insurance Coverage Provided) <b>OFFICIAL USE</b> For delivery information visit our website at www.usps.com® Postmark Here <b>DEC 16 2019</b> <b>POST OFFICE</b> <b>19961</b> <b>CRICK CREEK, DE</b>
PS Form 3800, June 2002 See Reverse for Instructions			

**Certification of Trust for the  
Richard D. Sweeney and Pamela J. Sweeney  
Joint Revocable Trust  
dated April 28, 2017**

Pursuant to 12 Del. C. § 3591, this Certification of Trust is signed by all the currently acting Trustees of the Richard D. Sweeney and Pamela J. Sweeney Joint Revocable Trust dated April 28, 2017, as restated on March 25, 2019, who declare:

1. The Grantors are Richard D. Sweeney and Pamela J. Sweeney. The trust is revocable by the Grantors, acting jointly and not separately.
2. The Trustees of the trust are Richard D. Sweeney and Pamela J. Sweeney. The signature of one Trustee is sufficient to exercise the powers of the Trustee.
3. The tax identification number of the trust is the Social Security number of either Richard D. Sweeney or Pamela J. Sweeney.
4. Title to assets held in the trust will be titled as:  

Richard D. Sweeney and Pamela J. Sweeney, Trustees of the Richard D. Sweeney and Pamela J. Sweeney Joint Revocable Trust dated April 28, 2017, and any amendments thereto.
5. An alternative description will be effective to title assets in the name of the trust or to designate the trust as a beneficiary if the description includes the name of at least one initial or successor Trustee, any reference indicating that property is being held in a fiduciary capacity, and the date of the trust.
6. Excerpts from the trust document that establish the trust, designate the Trustee, and set forth the powers of the Trustee will be provided upon request. The powers of the Trustees include the power to acquire, sell, assign, convey, pledge, encumber, lease, borrow, manage, and deal with real and personal property interests.
7. The terms of the trust provide that a third party may rely upon this Certification of Trust as evidence of the existence of the trust and is specifically relieved of any obligation to inquire into the terms of this trust or the authority of my Trustee, or to see to the application that my Trustee makes of funds or other property received by my Trustee.
8. The trust has not been revoked, modified, or amended in any way that would cause the representations in this Certification of Trust to be incorrect.

Dated: March 25, 2019

Richard D. Sweeney  
Richard D. Sweeney, Trustee

Pamela J. Sweeney  
Pamela J. Sweeney, Trustee

STATE OF DELAWARE

)

COUNTY OF SUSSEX

) ss.

)

This instrument was acknowledged before me on March 25, 2019, by Richard D. Sweeney, as Trustee, and Pamela J. Sweeney, as Trustee.

[Seal]

KRISTEN R. FERENCNIK  
Notary Public  
State of Delaware  
My Commission Expires On  
November 30, 2019

Kristen R. Ferencnik  
Notary Public  
My commission expires: Nov. 30, 2019



A Middlesex Water Company Affiliate  
December 16, 2019

Certified Mail # 7004 1160 0005 9457 8940

Old Orchard Ventures, LLC  
10 Adel Dr.  
Newark, DE 19702

Dear Old Orchard Ventures, LLC:

Tidewater Utilities Inc. (Tidewater) would like to thank you for the receipt of your signed petition requesting Tidewater to provide water service to your property, 335-8.00-29.00 located in Sussex County.

Tidewater will be submitting an application for a Certificate of Public Convenience and Necessity (CPCN) with the Public Service Commission (PSC) on or about January 14, 2020. Included with this letter is information that we are required to provide to all landowners within a proposed service territory prior to filing the application for a CPCN.

When the CPCN is granted, Tidewater will have the permission to provide public water service to your parcel. It is important for you, as the landowner, to know that when water service is made available to your parcel you are not obligated to connect to our water system as long as your current water supply is functioning properly. If you agree to have your property be part of this proposed service area, no action on your part is required at this time. If you do not agree to have your property be part of this proposed service area you will need to complete the enclosed opt out/object form and send it back to the address on top of the form.

If you have any questions in regards to this matter please feel free to contact me at 302-747-1308.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joseph C. Cuccinello".

Joseph C. Cuccinello  
CPCN Coordinator

**PROPERTY OWNER OPT-OUT/OBJECT FORM**

Delaware Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware 19904

Dear Delaware Public Service Commission:

I/We are the recorded property owner(s), according to current tax records, for the following property/properties:

Tax Map Parcel Identification Number(s): 335-8.00-29.00

We received a notice from *Tidewater Utilities, Inc.* that it plans to file an application with the Delaware Public Service Commission for a Certificate of Public Convenience and Necessity (Certificate) to provide water service to a proposed service territory described by Tidewater Utilities, Inc. as *Rehoboth District 3* (hereafter, "Proposed Service Territory").

\_\_\_\_\_ As permitted by applicable law, I hereby opt-out of *Tidewater Utilities, Inc.*'s proposed service territory. I understand that by opting out of the Proposed Service Territory, I may be charged additional fees if I later change my mind and choose to be included in the Proposed Service Territory and receive water service from *Tidewater Utilities, Inc.*

\_\_\_\_\_ I hereby object to the *Tidewater Utilities, Inc.*'s application for the Certificate of Public Convenience and Necessity. I understand that by objecting to the *Tidewater Utilities, Inc.*'s application I am not merely objecting to being included in the Proposed Service Territory (in which case, I may merely opt out as permitted by electing to opt out above), but rather am objecting to the Commission authorizing the *Tidewater Utilities, Inc.* to provide water service to *any territory* within the Proposed Service Territory, including, but not limited to, my own property. The basis of my objection is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Property Owner(s): *Property Owner Name* \_\_\_\_\_

*Property Owner Address* \_\_\_\_\_

\_\_\_\_\_

Owner's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## **YOU SHOULD READ THIS NOTICE CAREFULLY.**

Public records list you as a landowner of the property with the following tax map parcel identification number(s): 335-8.00-29.00. Within thirty-five (35) days, Tidewater Utilities, Inc. (TUI) plans to file an application with the Delaware Public Service Commission requesting a Certificate of Public Convenience and Necessity (Certificate) to provide water service to a new territory described as Rehoboth District 3.

**TUI HAS INCLUDED YOUR PROPERTY IN THE TERRITORY IT INTENDS TO SERVE. TUI IS UNABLE TO ESTIMATE WHEN IT WILL PROVIDE WATER SERVICE TO YOUR PROPERTY OR REHOBOTH DISTRICT 3.**

**IF YOU DO NOT TAKE ANY ACTION NOW, YOU MAY LOSE YOUR CHOICE OF WHO CAN PROVIDE WATER SERVICE TO YOUR PROPERTY AND WHETHER YOU CAN OBTAIN A WELL PERMIT.**

- 1) You may choose to be included in the utility's proposed service territory. If you signed a petition for water service asking to be included in the utility's proposed service territory, or, if you did not sign a petition for water service but want to be included, you do not have to take any action.
- 2) You have the right to "opt-out" of the utility's proposed service territory. If you "opt-out", your property will not be included in the utility's service territory. You can do this even though others in Rehoboth District 3 might desire water service from the utility. You should understand that being included in a utility's service territory does not mean that public water service will be immediately available to your property or that, when available; you will be required to hook-up to the public water system. However, if your property is included in the utility's water service territory, and later the water from the well providing your drinking water cannot be used, the Department of Natural Resources and Environmental Control might deny you a permit for a new well if public water is available to your property. On the other hand, if you elect to "opt-out" of the utility's service territory, but later change your mind and decide to connect to the utility's public water system, you could be charged additional fees.
- 3) You may object to the Public Service Commission granting a Certificate for Rehoboth District 2. For example, you may object that the water utility does not have the legal right to serve the territory. You should review the law about what a utility must provide in order to obtain a Certificate (contact the Public Service Commission to obtain a copy of the law). If you file such an objection, you will need to tell the Public Service Commission why the utility should not receive the Certificate. Please note that an objection will not remove your property from a proposed service territory. To remove your property from the service territory, you must request to "opt-out."

Attached to this letter is a form which allows you (and other owners of the property) to exercise your options. You have seventy-five (75) days from your receipt of this notice to file your objection with the Commission. Although you may exercise your right to "opt-out" of the utility's service territory at any time before the Certificate is granted, if you choose to opt-out, it is requested that you complete the form and return it to the Public Service Commission at the address listed below within seventy-five (75) days from the date you receive this notice:

Delaware Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware 19904

If you want to “opt-out” or object, you must send the completed form to the Public Service Commission, even if you already informed the utility of your intent to “opt-out” or object.

If you have any questions, comments or concerns, please contact the Public Service Commission at (302) 736-7500 (in Delaware, call 800-282-8574).

7004 1160 0005 9457 8940

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Postmark Here: **TITLE CREEK DE 19961 DEC 16 2019**

Sent To: **Old Orchard Venture, LLC**  
 Street, Apt. No. or PO Box No. **10 Adel Dr.**  
 City, State, ZIP+4 **Newark, DE 19702**

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature  <input checked="" type="checkbox"/> <i>Jess Moore</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Jess Moore</i> C. Date of Delivery <i>12/18/19</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes        If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to:</p> <p><i>old orchard venture, LLC</i>  <i>10 Adel Dr.</i>  <i>Newark, DE 19702</i></p> <p>        9590 9402 5259 9154 9224 32</p>	<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®  <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™  <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery  <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™  <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery  <input type="checkbox"/> Insured Mail <input type="checkbox"/> Signature Confirmation Restricted Delivery (over \$500)  <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>
<p>2. Article Number (Transfer from service label)</p> <p>7004 1160 0005 9457 8940</p>	
PS Form 3811, July 2015 PSN 7530-02-000-9053	Domestic Return Receipt

**LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

**OLD ORCHARD VENTURES, LLC**

THIS LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement") is entered into this 29<sup>th</sup> day of March, 2007, by Barry Baker of New Castle County, Delaware.

**EXPLANATORY STATEMENT**

The parties have agreed to form and operate a limited liability company under the Delaware Limited Liability Company Act, 6 Del.C. §18-101 et seq., in accordance with the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the parties, intending legally to be bound, agree as follows:

**SECTION I  
DEFINED TERMS**

The following capitalized terms shall have the meanings specified in this Section I. Other terms are defined in the text of this agreement and throughout this agreement, those terms shall have the meanings respectively ascribed to them.

"ACT" means the Delaware Limited Liability Company Act, 6 Del.C. §18-101 et seq., as amended from time to time.

"AGREEMENT" means this Limited Liability Company Agreement, as amended from time to time.

"CAPITAL ACCOUNT" means the account to be maintained by the Company for each Interest Holder in accordance with the following provisions:

(i) an Interest Holder's Capital Account shall be credited with the Interest Holder's Capital Contributions, the amount of any company liabilities assumed by the Interest Holder (or which are secured by company property distributed to the Interest Holder), the Interest Holder's distributive share of profit, and any item in the nature of income or gain specially allocated to such Interest Holder pursuant to the provisions of Section IV; and

(ii) an Interest Holder's Capital Account shall be debited with the amount of money and the fair market value of any company property distributed to the Interest Holder, the amount of any liabilities of the Interest Holder assumed by the Company (or which are secured by property contributed by the Interest Holder to the Company), the Interest Holder's distributive

share of loss, and any item in the nature of expenses or losses specially allocated to the Interest Holder pursuant to the provisions of Section IV.

If any interest is transferred pursuant to the terms of this agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account is attributable to the transferred interest.

"CAPITAL CONTRIBUTION" means the total amount of cash and the fair market value of any other assets contributed or deemed contributed under the code.

"CASH FLOW" means all cash funds derived from operations of the company (including interest received on reserves), without reduction for any non-cash charges, but less cash funds used to pay current operating expenses and to pay or establish reasonable reserves for future expenses, debt payments, capital improvements, and replacements as determined by the members. Cash flow shall be increased by the reduction of any reserve previously established.

"CERTIFICATE OF FORMATION" means the Certificate of Formation of the Company to be filed with the Office of the Secretary of State of the State of Delaware in accordance with the Act.

"CODE" means the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding law.

"COMPANY" means the limited liability company formed in accordance with this agreement and upon the filing of the Certificate of Formation.

"COMPANY ASSETS" means all property either initially or in the future to be held by the Company.

"DELAWARE SECRETARY OF STATE" means the Office of the Secretary of State of the State of Delaware.

"INTEREST" means an Interest Holder's share of the profits and losses of, and the right to receive distributions from the company.

"INTEREST HOLDER" means any person who holds an interest, whether as a Member or an assignee of a Member who has not been admitted to the company as a Member.

"INVOLUNTARY WITHDRAWAL" means, with respect to any Member, the occurrence of any of the following events:

- (i) the Member makes an assignment for the benefit of creditors;
- (ii) the Member files a voluntary petition of bankruptcy;

(iii) the Member is adjudged bankrupt or insolvent or there is entered against the Member an order for relief in any bankruptcy or insolvency proceeding;

(iv) the Member files a petition or answer seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;

(v) the Member seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Member or of all or any substantial part of the Member's properties;

(vi) the Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding described in (i) through (v) above;

(vii) within 120 days any proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation if the proceeding has not been discharged, or within 90 days after the appointment of a trustee, receiver, or liquidator for the Member of all or any substantial part of the Member's properties without the Member's agreement or acquiescence, which appointment is not vacated or stayed for 90 days or, if the appointment is stayed for 90 days after the expiration of the stay during which period the appointment is not vacated;

(viii) if the Member is an individual, the Member's death or adjudication by a Court of competent jurisdiction as incompetent to manage the Member's person or property.

(ix) if the Member is acting as a Member by virtue of being a trustee of a trust, the termination of the trust;

(x) if the Member is a partnership or another limited liability company, the dissolution and commencement of winding up of the partnership or limited partnership;

(xi) if the Member is a corporation, the dissolution of the corporation or the revocation of its charter; or,

(xii) if the Member is an estate, the distribution by the fiduciary of the entire interest in the limited liability company.

"MEMBER" means each person signing this agreement and any person who subsequently is admitted as a member of the company in accordance with the terms of this agreement.

"MEMBERSHIP RIGHTS" means all of the rights of a Member in the company, including a Member's: (i) interest; (ii) right to inspect the company's books and records; and (iii) right to participate in the management of and vote on matters coming before the company.

"MINIMUM GAIN" has the meaning set forth in Treasury Regulations Section 1.704-2(d) and shall be computed separately for each member, applying principles consistent with both the foregoing definition and the Treasury Regulations promulgated under Section 704 of the Code.

"NEGATIVE CAPITAL ACCOUNT" means a capital account with a balance of less than zero.

"PERCENTAGE" means, as to a Member, the percentage set forth after the Member's name on Exhibit A, as amended from time to time, and as to an Interest Holder who is not a Member, the percentage of the Member's interest that has been acquired by such Interest Holder, to the extent the Interest Holder has succeeded to that Member's interest.

"PERSON" means and includes an individual, corporation, partnership, association, limited liability company, trust, estate, or other entity.

"POSITIVE CAPITAL ACCOUNT" means a capital account with a balance greater than zero.

"PROFIT" and "LOSS" means, for each taxable year of the company (or other period for which Profit or Loss must be computed), the Company's taxable income or loss determined in accordance with Code section 703(a). For this purpose, all items of income, gain, loss or reduction required to be stated separately pursuant to Code sections 703(a)(1) shall be included in taxable income or loss.

"REGULATION" means the income tax regulations, including any temporary regulations, from time to time promulgated under the Code.

"TRANSFER" means, when used as a noun, any voluntary sale, hypothecation, pledge, assignment, attachment, or other transfer, and, when used as a verb, means voluntarily to sell, hypothecate, pledge, assign, or otherwise transfer.

"VOLUNTARY WITHDRAWAL" means a Member's dissociation with the company by means other than a transfer in compliance with this agreement or an involuntary withdrawal.

## **SECTION II FORMATION AND NAME; OFFICE; PURPOSE; TERM**

2.1 Organization. The parties hereby organize a limited liability company pursuant to the Act and the provisions of this agreement and, for that purpose, will cause a Certificate of Formation to be prepared, executed and filed with the Office of the Delaware Secretary of State.

2.2 Name of the Company. The name of the company shall be "Old Orchard Ventures, LLC." The company may do business under that name and under any other name or names upon which 100% of the Members agree. If the company does business under a name other than that set forth in its Certificate of Formation, then the company shall file a fictitious name certificate or any other document as required by applicable law.

2.3 Purpose. The company is organized solely to purchase, acquire, buy, sell, own, trade in, hold, develop, lease, manage, and otherwise deal in and with the company assets and to do any and all things necessary, convenient, or incidental to that purpose.

2.4 Term. The term of the company will begin upon the acceptance of the Certificate of Formation by the office of the Delaware Secretary of State and shall continue in existence in perpetuity, unless its existence is sooner terminated pursuant to a liquidation event as provided in Section VII of this agreement.

2.5 Registered Office. The registered office of the company in the State of Delaware shall be located at 116 W. Water Street, Dover, DE 19904, or at any other place with the State of Delaware upon which 100% of the Members agree. The principal office of the company shall be located at 10 Adel Drive, Newark, DE 19702, or at any other location on which 100% of the Members agree.

2.6 Registered Agent. The name of the company's registered agent in the State of Delaware shall be Parkowski, Guerke & Swayze, Professional Association.

2.7 Members. The name, present mailing address, taxpayer identification number, and percentage of each Member are set forth on Exhibit A hereto.

### SECTION III MEMBERS; CAPITAL; CAPITAL ACCOUNTS

3.1 Initial Capital Contributions. Upon the execution of this agreement, the Members shall contribute to the company cash or property in the amounts respectively set forth on Exhibit A.

3.2 No Additional Capital Contributions Required. No Member shall be required to contribute any additional capital to the company, and no Member shall have any personal liability for any obligations to the company.

3.3 No Interest on Capital Contributions. Interest Holders shall not be paid interest on their capital contributions.

3.4 Return of Capital Contributions. Except as otherwise provided in this agreement, no Interest Holder shall have the right to the return of any capital contribution.

3.5 Form of Return of Capital. If an Interest Holder is entitled to receive a return of a capital contribution, the company may distribute cash, notes, property, or a combination thereof to the Interest Holder in return for the capital contribution.

3.6 Capital Accounts. A separate capital account shall be maintained for each Interest Holder.

3.7 Loans. Any Member may, at any time, make or cause to be made to the company in any amount and on those terms upon which the company and the Member shall agree.

#### SECTION IV PROFIT, LOSS, AND DISTRIBUTIONS

4.1 Distributions of Cash Flow. Cash flow for each taxable year of the company shall be distributed to the Interest Holder in proportion to their percentages no later than 75 days after the end of the taxable year.

4.2 Allocation of Profit and Loss. After giving effect to the special allocations set forth in Section 4.3 for any taxable year of the company, profit or loss shall be allocated to the Interest Holders in proportion to their percentages.

4.3 Regulatory Allocations. With respect to tax matters:

4.3.1 Solely for tax purposes, income, gain, loss and deduction with respect to property contributed to the Company by any Member or Successor shall be allocated in accordance with Section 704(c) of the Code, Treasury Regulations issued thereunder, and Treasury Regulations §1.704-1(b)(2)(iv)(g), so as to take account of any variation between the basis of the property to the Company and its fair market value at the time of contribution.

4.3.2 For purposes of determining shares of nonrecourse liabilities of the Company under Treasury Regulations §1.752-3(a)(3), it is hereby specified (in accordance with such Treasury Regulations) that the percentage interest in Company profits of each Member or Successor is the same as his Distribution Percentage.

4.3.3 If the Company "revalues" its property under the provisions of Treasury Regulations §1.704-1(b)(2)(iv)(f), the Capital Accounts shall be adjusted in accordance with Treasury Regulations §1.704-1(b)(2)(iv)(g) for allocations of depreciation, depletion, amortization and gain or loss, as computed for book purposes, with respect to so much of the Company's property as has been subject to such "revaluation" as that term is used in Treasury Regulations §1.704-1(b)(2)(iv)(f) (the "Revalued Property"). The distributive shares of the Members and Successors of depreciation, depletion, amortization and gain or loss with respect to Revalued Property, as computed for tax purposes, shall be determined so as to take account of the variation between the adjusted tax basis and book value of such Revalued Property in the same manner as under Section 704(c) of the Code.

4.3.4 If during any taxable year of the Company there is a change in the Interest of any Member or Successor in the Company, then the Administrative Member shall cause the allocations of the Company's income, gains, losses, deductions and credits (and items thereof) to be made in a manner which takes into account the varying interests of the Members and Successors in the Company during such taxable year in accordance with Code Section 706(d) and the Treasury Regulations thereunder.

4.4 Liquidation and Dissolution.

4.4.1 If the company is liquidated, the assets of the company shall be distributed to the Interest Holders in accordance with the balances in their respective capital accounts, after taking into account the allocations of profit or loss pursuant to Section 4.2, if any, and distributions, if any, of cash or property pursuant to Section 4.1.

4.4.2 No Interest Holder shall be obligated to restore a negative capital account.

4.5 General.

4.5.1 Except as otherwise provided in this agreement, the timing and amount of all distributions shall be determined by the Members.

4.5.2. The company assets may be distributed in kind to the Interest Holders, and those shall be valued on the basis of their fair market value. Unless the Members otherwise agree, the fair market value of the assets shall be determined by an independent appraiser who shall be selected by the Members. The profit or loss for each unsold asset shall be determined as if the asset had been sold at its fair market value, and the profit or loss shall be indicated as provided in Section 4.2 and shall be properly credited or charged to the capital accounts of the Interest Holders prior to the distribution of the assets in liquidation pursuant to Section 4.4.

4.5.3 All profit and loss shall be allocated, and all distributions shall be made to the persons shown on the records of the company to have been Interest Holders as of the last day of the taxable year for which the allocation or distribution is to be made. Notwithstanding the foregoing, unless the Company's taxable year is separated into segments, if there is a transfer or an involuntary withdrawal during the taxable year, the profit and loss shall be allocated between the original Interest Holder and the successor on the basis of the number of days each was an Interest Holder during the taxable year; provided, however the company's taxable year shall be segregated into two or more segments in order to account for profit, loss or proceeds attributable to any extraordinary non-recurring items of the company.

4.5.4 The Members are hereby authorized, upon the advice of the company's tax counsel, to amend this Article IV to comply with the Code.

**SECTION V**  
**MANAGEMENT; RIGHTS, POWERS AND DUTIES**

5.1 Management. The Company shall be managed by the Members. Except as otherwise provided in this agreement, each Member shall have the right to act for and bind the company in the ordinary course of its business.

5.2 Meetings of and Voting by Members.

5.2.1 A meeting of the Members may be called at any time by any Member. Meetings of Members shall be held at the company's principal place of business or at any other place designated by the person calling the meeting. Not less than 10 nor more than 90 days before each meeting, the person calling the meeting shall give written notice of the meeting to each Member entitled to vote at the meeting. The notice shall state the time, place, and purpose of the meeting. Notwithstanding the foregoing provisions, each Member who is entitled to notice may waive notice before or after the meeting if such Member signs a waiver of the notice which is filed with the records of the Members' meetings, or if such Member is present at the meeting in person or by proxy. Unless this agreement provides otherwise, at a meeting of Members, the presence in person or by proxy of Members holding not less than a majority of the percentages then held by Members constitutes a quorum. A Member may vote either in person or by written proxy signed by the Member or by his or her duly authorized attorney in fact.

5.2.2 Except as otherwise provided in this Agreement, wherever this agreement requires the approval of the Members, the affirmative vote of the Members holding a majority or more of the percentages then held by Members shall be required to approve the matter.

5.2.3 In lieu of holding a meeting, the Members may vote or otherwise take action by a written instrument indicating the consent of Members holding a majority of the percentages then held by Members.

5.4 Duties of Parties.

5.4.1 Each Member shall devote such time to the business and affairs of the company as is necessary to carry out the Member's duties set forth in this agreement.

5.4.2 Except as otherwise expressly provided in Section 5.4.3, nothing in this agreement shall be deemed to restrict in any way the rights of any Member, or of any affiliate of any Member, to conduct any other business or activity whatsoever, and the Member shall not be accountable to the company or to any Member with respect to that business or activity even if the business or activity competes with the company's business. The organization of the company shall be without prejudice to their respective rights (or the rights of their respective affiliates) to maintain, expand, or diversify such other interests and activities and to receive and enjoy profits or compensation therefrom. Each Member waives any rights the Member might otherwise have

to share or participate in such other interests or activities of any other Member or the Member's affiliates.

5.4.3 Each Member understands and acknowledges that the conduct of the Company's business may involve business dealings and undertakings with Members and their affiliates. In any of those cases, those dealings and undertakings shall be at arm's length and on commercially reasonable terms.

#### 5.5 Liability and Indemnification.

5.5.1 A Member shall not be liable, responsible or accountable, in damages or otherwise, to any other Member or to the Company for any act performed by the Member with respect to Company matters, except for fraud, gross negligence, willful misconduct or an intentional breach of this agreement.

5.5.2 The company shall indemnify each Member for any act performed by the Member with respect to company matters, except for fraud, gross negligence, willful misconduct or an intentional breach of this agreement.

#### 5.6 Deadlock/Shotgun Buyout Provision.

5.6.1 If a deadlock arises with respect to a substantial material management decision, including those decisions requiring the consent of either the holders of a majority interest in the Company or all of the Members, and a majority or all of the Members (as the case may be) are unable to agree on such decision, then in such event, a Member (the "Offeror") shall have the right to tender to the other Member(s) (the "Offeree(s)"), a written offer (the "Offer") stating that the Offeror will, at the Offeree's(s) election, either (i) sell all of the interest in the Company owned by the Offeror to the Offeree(s), or (ii) purchase the interest in the Company owned by the Offeree(s), in either case at the price and on the terms and conditions stated in such Offer, as controlled by this Section 5.6.

5.6.2 Prior to rendering such Offer, the Offeror shall give notice to the Offeree(s) of the Offeror's intention to render such Offer, which notice shall include the following:

5.6.2.1 a description of the nature of the dispute and the position of the Offeror with respect thereto and a statement certifying the Offeror's good faith efforts to resolve the deadlock;

5.6.2.2 a statement certifying that the dispute has been reviewed by all Members, with the Company's accountant and the Company's legal counsel.

5.6.2.3 a statement that, not less than thirty (30) days nor more than sixty (60) days after the date of the notice, the Offeror intends to render the Offer (but by stating such intent shall not be obligated to), if, on or before the date of rendering, the Offeree(s) does (do)

not give his/their written agreement to accept the position of the Offeror with regard to the dispute; and

5.6.2.4 the purchase price and other terms and conditions which will be stated in the Offer (if rendered). Upon issuance of the notice of Offer, no other Member(s) shall have the right to issue such a notice or make an Offer unless the Offeror fails to issue the Offer within the time period set forth in Clause (ii) above. The purchase price shall be determined at this time using the following method:

5.6.2.4.1 The purchase price under Section 5.6 shall be determined by ascertaining the total value of the Company assets as of the date and of the month the Offer is to be made, subtracting therefrom the amount of the Company liabilities on the same date, and multiplying the difference by the Percentage owned by each respective Member, identifying the value of the Offeree's Percentage and the Offeror's Percentage, respectively.

5.6.2.4.2 For purposes of ascertaining the total value of the Company assets under the foregoing sentence, the fair market value of the Company shall be calculated and any existing Valuation Addendum shall be ignored, for purposes of this Section 5.6 only.

5.6.2.4.3 For purposes of ascertaining the amount of the Company liabilities under the foregoing clause, the actual amount of such liabilities as shown on the Company's books and records shall be used. Any dispute regarding the Company's liabilities shall be resolved by the Company's accountant, whose determination shall be final and binding on all of the Members, their heirs, personal representatives, guardians, trustees and receivers.

5.6.2.4.4 The fair market value of Company assets shall be (1) for any such real estate assets, the value determined upon appraisal by a real estate appraiser who holds an MAI (or equivalent designation) agreed upon by all of the Members (or their representatives) or, if the Members cannot agree upon a single appraiser within thirty (30) days, by averaging the values of three appraisals by MAI (or equivalent) appraisers, one chosen by each of the Members (or their representatives) and one by the two appraisers so chosen, and (2) for any such non-real estate assets, the value determined by a reputable appraiser agreed upon by all of the Members or, if the Members cannot agree upon a single appraiser within thirty (30) days, by averaging the values of three reputable appraisers, one chosen by each of the Members (or their representatives) and one by the two appraisers so chosen. Non-real estate assets shall include goodwill and any other intangible asset. The Offeror Member shall pay all costs of appraisal.

5.6.3 The Offer when rendered shall provide the following:

5.6.3.1 an Offer to sell all of the Offeror's Percentages to the Offeree(s) or to purchase all of the Offeree's(s') Percentages;

5.6.3.2 the purchase price and other terms and conditions of such Offer, which purchase price, terms and conditions shall be the same for both a sale or purchase, and shall be the same as set forth in the notice referred to in clause (iv) of subsection (b) above; provided, however, that an appropriate adjustment in purchase price shall be provided for in such Offer if the Percentage Interest of the Offeror is not equal to the Percentage Interest(s) of the Offeree(s); and

5.6.3.3 a provision that the Offer shall be irrevocable for a period of thirty (30) days after it is rendered, and that the Offeree(s) may, on or before such thirtieth (30th) day, accept either the Offer to sell or the Offer to purchase (it being acknowledged by the Offeror that the Offeree(s) will be relying on the irrevocability of such Offer and will be substantially and detrimentally harmed if such Offer were revoked.)

5.6.4 If the Offeree(s) shall, within such thirty (30) day period, either (i) fail to agree either to sell all of the Percentages to, or to purchase all of the Percentages from the Offeror, or (ii) agree to sell his/their Percentages to the Offeror, then the Offeror shall have the right and obligation to purchase all of the Percentages of the Offeree(s) for the purchase price stated in the Offer, payable in accordance with the terms and conditions of the Offer.

5.6.5 If the Offeree(s) shall, within such thirty (30) day period, agree to purchase all of the Percentages from the Offeror, then the Offeree(s) shall have the right and obligation to purchase all of the Percentages, for the purchase price stated in the Offer, payable in accordance with the terms and conditions of the Offer.

5.6.6 If there is more than one Offeree who agrees to purchase Percentages, each Offeree shall have the right to purchase that percentage of the Percentages of the Offeror which bears the same relationship to the total Percentages of the Offeror as the total number of Percentages of each Offeree bears to the total number of Percentages then held by all of the Offerees (or in such other proportion as the Offerees may agree among themselves.)

5.6.7 If there is more than one Offeree, and if one Offeree agrees to purchase the Percentages and another Offeree agrees to sell the Percentages, then the Offeree agreeing to purchase the Percentages shall have the right and obligation to purchase all of the Percentages of the selling Offeree as well as those of the Offeror.

5.6.8 The sale of the Percentages of a Member pursuant to Section 5.6, shall be closed on or before 120 days after the Offer is rendered, provided that:

5.6.8.1 the Offeror shall pay all expenses in connection with such purchase and sale; and

5.6.8.2 the selling Member(s) shall execute and deliver such assignments, and other documents as shall be necessary to convey all of his (their) Percentages in the Company to the purchasing Member(s); and

5.6.9 The provisions of this Section 5.6 shall be suspended during the period of any right of first refusal.

## **SECTION VI TRANSFER OF INTERESTS AND WITHDRAWALS OF MEMBERS**

6.1 Transfers. No Member may transfer all, or any portion of, or any interest or rights in, the membership rights owned by the Member, and no Interest Holder may transfer all, or any portion of, or any interest or rights in, any interest. Each Member hereby acknowledges the reasonableness of this prohibition in view of the purposes of the company and relationship of the Members. The transfer of any membership rights or interests in violation of the prohibition contained in this Section 6.1 shall be deemed invalid, null and void, and of no force or effect. Any person to whom membership rights are attempted to be transferred in violation of this Section 6.1 shall not be entitled to vote on matters coming before the Members, participate in the management of the company, act as an agent of the company, receive distributions from the company, or have any other rights in or with respect to the membership rights.

6.2 Voluntary Withdrawal. No Member shall have the right or power to effect a voluntary withdrawal from the company. Any Member who effectuates a voluntary withdrawal in violation of this agreement shall not be entitled to receive the fair value of the Member's interest as of the date of the voluntary withdrawal as otherwise provided in Section 18-604 of the Act.

6.3 Involuntary Withdrawal. Immediately upon the occurrence of an involuntary withdrawal, the successor of the withdrawn member shall thereupon become an Interest Holder but shall not become a Member. If the company is continued as provided in Section 7.1.3, the successor Interest Holder shall have all the rights of an Interest Holder but shall not be entitled to receive the fair market value of the Member's interest as of the date of the involuntarily withdrawal from the Company as otherwise provided in Section 18-604 of the Act.

## **SECTION VII DISSOLUTION, LIQUIDATION, AND TERMINATION OF THE COMPANY**

7.1 Events of Dissolution. The company shall be dissolved upon the happening of any of the following events:

7.1.1 when the period fixed for its duration in Section 2.4 has expired if that period is less than perpetual;

7.1.2 upon the unanimous written agreement of the Members; or

7.1.3 upon the occurrence of an involuntary withdrawal, unless the remaining Members, within 90 days after the event or occurrence of the involuntary withdrawal,

unanimously elect to continue the business of the company pursuant to the terms of this agreement.

7.1.4 the entry of a decree of judicial dissolution under 6 Del.C. §18-802.

7.2 Procedure for Winding Up and Dissolution. If the company is dissolved, the remaining Members shall wind up its affairs. On winding up of the company, the assets of the company shall be distributed first, to creditors of the company, including Interest Holders who are creditors, in satisfaction of the liabilities of the company, and then to the Interest Holders in accordance with Section 4.4.

7.3 Filing of Certificate of Cancellation. Upon the completion of the winding up of the affairs of the company, the Members shall promptly file a Certificate of Cancellation with the office of the Delaware Secretary of State.

## SECTION VIII BOOKS, RECORDS, ACCOUNTING, AND TAX ELECTIONS

8.1 Bank Accounts. All funds of the company shall be deposited in a bank account or accounts opened in the company's name. The Members shall determine the institution or institutions at which the accounts will be opened and maintained, the types of accounts, and the persons who will have authority with respect to the accounts and the funds therein.

8.2 Books and Records. The Members shall keep or cause to be kept complete and accurate books and records of the company and supporting documentation of the transactions with respect to the conduct of the company's business. The books and records shall be maintained in accordance with generally accepted accounting principles and shall be available at the company's principal office for examination by any Member or the Member's duly authorized representative at any and all reasonable times during normal business hours for any purpose related to such Member's interest as a Member.

8.3 Annual Accounting Period. The annual accounting period of the company shall be its taxable year. The company's taxable year shall be selected by the Members, subject to the requirements and limitations of the Code.

8.4 Reports. Within 75 days after the end of each taxable year of the company, the Members shall cause to be sent to each person who was a Member at any time during the taxable year then ended a complete accounting of the affairs of the company for the taxable year then ended. In addition, within 75 days after the end of each taxable year of the company, the Members shall cause to be sent to each person who was an Interest Holder at any time during the taxable year then ended, that tax information concerning the company which is necessary for preparing the Interest Holder's income tax returns for that year. At the request of any Member, and at the Member's expense, the Members shall cause an audit of the company's books and records to be prepared by independent accountants for the period requested by the Member.

## SECTION IX GENERAL PROVISIONS

9.1 Assurances. Each Member shall execute all such certificates and other documents and shall do all such filing, recording, publishing, and other acts as the Members deem appropriate to comply with the requirements of the Act for the formation and operation of the company and to comply with any laws, rules and regulations relating to the acquisition, operation, or holding of the property of the company.

9.2 Notifications. Any notice, demand, consent, election, offer, approval, request, or other communication (collectively, a "notice") required or permitted under this agreement must be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, return receipt requested. A notice must be addressed to an Interest Holder at the Interest Holder's last known address on the records of the company. A notice to the company must be addressed to the company's principal office. A notice delivered personally will be deemed given only when acknowledged in writing by the person to whom it is delivered. A notice that is sent by mail will be deemed given three business days after it is mailed. Any party may designate, by notice to all of the others, substitute addresses or addresses for notices; and, thereafter, notices are to be directed to those substitute addresses or addressees.

9.3 Complete Agreement. This agreement constitutes the complete and exclusive statement of the agreement among the Members. It supersedes all prior written and oral statements, including any prior representation, statement, condition, or warranty. Except as expressly provided otherwise herein, this agreement may not be amended without the written consent of all of the Members.

9.4 Applicable Law. All questions concerning the construction, validity, and interpretation of this agreement and the performance of the obligations imposed by this agreement shall be governed by the internal law, not the law of conflicts, of the State of Delaware.

9.5 Section Titles. The headings herein are inserted as a matter of convenience only, and do not define, limit, or describe the scope of this agreement or the intent of the provisions hereof.

9.6 Binding Provisions. This agreement is binding upon, and inures to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors, and permitted assigns.

9.7 Jurisdiction and Venue. The parties to this agreement consent to the exclusive jurisdiction of the courts of, and the exclusivity of arbitration in, the State of Delaware. If the parties are not residents of Delaware so as to be amenable to its legal process, the parties agree that service shall be by Registered Mail or by direct personal service served personally. The parties may also, by mutual agreement, agree to jurisdiction and venue in a state other than Delaware.

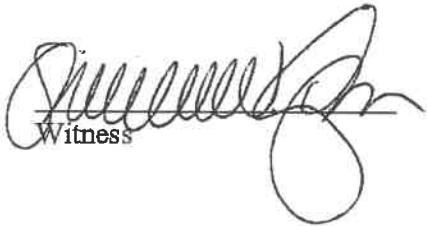
9.8 Terms. Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular, and plural, as the identity of the person may in the context require.

9.9 Separability of Provisions. Each provision of this agreement shall be considered separable; and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this agreement which are valid.

9.10 Counterparts. This agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

IN WITNESS WHEREOF, the parties have executed, or caused to this agreement to be executed, under seal, as of the date set forth hereinabove.

MEMBERS:

  
Witness

 (SEAL)  
BARRY BAKER

as witness to the above agreement

EXHIBIT A  
TO  
LIMITED LIABILITY COMPANY OPERATING AGREEMENT

<u>NAME, ADDRESS &amp; TAXPAYER I.D. NO.</u>	<u>INITIAL CASH CAPITAL CONTRIBUTION</u>	<u>PERCENTAGES</u>
Barry Baker 10 Adel Drive Newark, DE 19702	\$100.00	100%

# **EXHIBIT**

# **C**

**Exhibit C**

<b><u>Proposed Service Area</u></b>	<b><u>Tax Map Parcel Numbers</u></b>	<b><u>Acres</u></b>	<b><u>Owners</u></b>
	235-21.00-35.04	.80	Richard J. & Pamela J. Sweeney Trustee 26285 Cave Neck Rd Milton, DE 19968
	335-8.00-29.00	10.03	Old Orchard Ventures LLC 10 Adel Dr Neward, DE 19702

**Service Area 1**

- 235-21.00-35.04 is located on the north east side of Cave Neck Rd which is about 1,191 feet from the intersection of Cave Neck Rd and Round Pole Bridge Rd.

**Service Area 2**

- 335-8.00-29.00 is located on the east side of Old Orchard Rd which is about 1,396 feet from the intersection of Old Orchard Rd and New Rd.

MSEX Enterprise GIS  
Tidewater Utilities

Enter address

Additional Resources

Aerials Streets

335-8-00-29.00

1000 ft  
500 m

Esri

MSEX Enterprise GIS  
Tidewater Utilities

Enter address

Additional Resources

Aerials Streets

235-21.00-35.04

Cave Neck Rd

Round Pole Bridge Rd

Scale: 1000 ft / 500 m

Esri HERE, Garmin, NGA, USGS, NPS