PROPOSED AGREEMENT BETWEEN
THE TOWN OF ELSMERE AND COMMUNITY CHAMPIONS

This Agreement is made as of this 18th day of November 2015, by and between Community Champions Corporation, a Florida Corporation, with offices at 6767 N. Wickham Rd., Suite 500, Melbourne, FL 32940 ("CHAMPIONS") and The Town of Elsmere, a municipal corporation, with an address at 11 Poplar Avenue, Elsmere, DE 19805 ("Elsmere").

WITNESSETH:

WHEREAS, because of the number of mortgage foreclosures on residential and commercial properties that are in violation of the Elsmere Code of Ordinances, the care of neglected lawns and exterior maintenance of structures is becoming a health and welfare issue in Elsmere; and

WHEREAS, in order to promptly and efficiently address the issues related to the maintenance of foreclosed residential and commercial properties, Elsmere adopted Ordinance 599, the Registration of Abandoned or Foreclosed Property ("Ordinance"); and

WHEREAS, pursuant to the Ordinance, Elsmere desires to enter into this Agreement with CHAMPIONS in order to provide services authorized pursuant to Ordinance 599, to register vacant, abandoned, and foreclosed properties so that Elsmere can properly address violations of Elsmere's property maintenance codes (hereinafter "foreclosed property"); and

WHEREAS, CHAMPIONS will also provide an electronic registration process that is cost-free and revenue-generating for Elsmere.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other valuable consideration received, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. CHAMPIONS' RESPONSIBILITIES.

   A. CHAMPIONS will cite Elsmere's Ordinance to mortgagees and proactively contact those that file a public notice of default, lis pendens, foreclosure action, and /or take title to real property via foreclosure or other any legal means. CHAMPIONS will electronically provide for registration of foreclosed properties.

   B. CHAMPIONS will pay for all expenses related to registration of all foreclosed property, and all administrative costs and fees related thereto. CHAMPIONS will investigate, report, or take corrective measure monthly to update property status of all foreclosed property electronically registered and in compliance with the relevant Elsmere ordinances.

   C. CHAMPIONS will charge a fee as directed by Elsmere to each Registrant to register all mortgagees who comply with the Ordinance ("Registration Fee"). CHAMPIONS shall retain $100of each collected registration fee and remit the balance to Elsmere in consideration of the services provided. CHAMPIONS shall forward payment of Elsmere's portion of the registration fee to the Elsmere

Finance Department no later than the 15th day of the following month during the term of this Agreement.

D. CHAMPIONS agrees to provide a website for the registration of each foreclosed property in order to enable compliance with Elsmere's ordinances. The website will direct registrants to Elsmere's website, and further direct traffic, via a hyperlink, to www.VacantRegistry.com. The website found at www.VacantRegistry.com will automatically allow lenders and/or responsible parties to comply with Elsmere's Property Registration Codes.

E. CHAMPIONS will execute Elsmere's website link agreement and meet all IT security and anti-viral requirements.

F. CHAMPIONS' responsibilities will commence on the effective date of this agreement.

2. INDEMNIFICATION.

A. CHAMPIONS shall indemnify and save harmless and defend Elsmere, its trustees, elected and appointed officials, agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of error, omission, or negligent act of CHAMPIONS, its agents, servants or employees in the performance of its obligation pursuant to this Agreement, for all costs, losses and expenses, including but not limited to, damages to person or property, judgments, reasonable attorney's fees, paralegal expenses, and court costs at both the trial and appellate levels arising out of or in connection with the operations permitted under this Agreement.

B. The parties recognize that various provisions of this Agreement, including but not necessarily limited to this Section, provide for indemnification by CHAMPIONS and requires a specific consideration be given therefore. The parties therefore agree that the sum of Ten Dollars and 00/100 ($10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnities, and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be provided by CHAMPIONS. Furthermore, the parties understand and agree that the covenants and representations relating to this indemnification provision shall serve the term of this Agreement and continue in full force and effect as to the party's responsibility to indemnify. CHAMPIONS will indemnify and hold Elsmere harmless for any negligent acts of CHAMPIONS or for any violation of any intellectual property laws, contracts or statutes.

3. EFFECTIVE DATE AND TERM. The effective date of this Agreement is the date signed. This Agreement will terminate two (2) years from the effective date. In addition, the parties may agree to renew this Agreement for an additional three (3) – one (1) year term(s) through the execution of a written amendment to this Agreement signed by both parties.

4. TERMINATION. This Agreement may be terminated by either Party with or without cause, immediately upon thirty (30) calendar days' written notice. Upon termination by Elsmere, CHAMPIONS shall cease all work performed and forward to Elsmere any Registration Fees owed to Elsmere.

5. CONTRACT DOCUMENTS. The following list of documents which are attached hereto as exhibits to this Agreement shall be incorporated into this Agreement, as if fully set forth herein by reference:

A. Elsmere Ordinance 599, dated August 13, 2015.

6. INSURANCE. CHAMPIONS shall provide and maintain in force at all times during the Agreement with Elsmere, such insurance, including Workers' Compensation and Employer's Liability Insurance, Comprehensive General Liability Insurance, Automobile Liability Insurance and Errors and Omissions Insurance as will assure to Elsmere the protection contained in the foregoing indemnification undertaken by CHAMPIONS.

A. Workers' Compensation Statutory limits with $100,000 Employer's Liability.

B. Commercial General Liability Insurance with limits of no less than $1,000,000.00. Bodily injury shall include operations and premises liability, products and completed operations, owners, and contractor's protective liability and personal injury liability.

C. Business Auto Liability coverage is to include bodily injury and property damage arising out of operation, maintenance or use of any auto, including owned, non-owned and hired automobiles and employee non-ownership with limits of not less than $1,000,000.00 per occurrence.

D. Errors and Omissions Insurance limits of liability provided by such policy shall be no less than $1,000,000.00 to assure Elsmere the indemnification specified herein.

E. A Certificate of Insurance acceptable to Elsmere shall be provided listing the above coverages and providing 30 days prior written notice to Elsmere in the case of cancellation. Elsmere shall be named as an additional insured and a certificate holder on the Commercial, General, Automobile, and Professional Liability Policies with a waiver of subrogation on the Workers' Compensation Employer's Liability Policy. A copy of the certificate shall be mailed to the Elsmere Town Manager at the time CHAMPIONS executes this Agreement.

7. OWNERSHIP AND USE OF DOCUMENTS. All information collected by CHAMPIONS from registering parties in connection with the registration of a property pursuant to this Agreement shall be the property of Elsmere and shall be provided to Elsmere upon request. CHAMPIONS shall be permitted to retain copies, including reproducible copies, of drawing and specifications for information, reference and use in connection with CHAMPIONS' endeavors. Champions shall provide Elsmere with a method of accessing the registration information on hand at any time during this agreement.

8. AUDIT AND INSPECTION RIGHTS AND RETENTION OF RECORDS.

A. Elsmere shall have the right to audit the books, records and accounts of CHAMPIONS that are related to this Agreement. CHAMPIONS shall keep, in digital or hard copy format, whichever format CHAMPIONS so chooses, such book, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. CHAMPIONS shall preserve and make available, at reasonable times for examination and audit by Elsmere, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or Title 29 Chapter 5 of the Delaware Code or if neither the Florida or Delaware Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement, unless CHAMPIONS is notified in writing by Elsmere of the need to extend the retention period. Such retention of such records and documents shall be at CHAMPIONS' expense. If an audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Record Act is determined by Elsmere to be applicable to CHAMPIONS' records, CHAMPIONS shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CHAMPIONS.

B. In addition, for a period of six (6) months following the termination of this Agreement, CHAMPIONS shall respond to the reasonable inquiries of any successor companies and allow any successor companies to receive information in digital or hard copy format, whichever format CHAMPIONS so chooses, relating to matters of continuing significance.

9. INDEPENDENT CONTRACTOR. This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that CHAMPIONS is an independent contractor under this Agreement and not Elsmere's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State Unemployment Insurance Law. CHAMPIONS shall

retain sole and absolute discretion in the judgment of the manner and means of carrying out CHAMPIONS' activities and responsibilities hereunder. CHAMPIONS agrees that it is a separate and independent enterprise from Elsmere, that it has full opportunity to find other business, that it makes its own investment in its business, and that it will utilize a high level of skill necessary to perform the work.

This Agreement shall not be construed as creating any joint employment relationship between CHAMPIONS and Elsmere and Elsmere will not be liable for any obligation incurred by CHAMPIONS, including but not limited to unpaid minimum wages and/or overtime premiums.

10. NOTICES. Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by registered United States mail, with return receipt requested, hand delivery or facsimile transmission with receipt of delivery, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this Section. Notice shall be deemed to have been given upon receipt. For the present, CHAMPIONS and Elsmere designate the following as the respective places for giving of notice:

Town of Elsmere
11 Poplar Avenue
Elsmere, Delaware 19805

CHAMPIONS
Thomas R. Darnell, Vice President
6767 N. Wickham Road, Suite 500
Melbourne, Florida 32940
Telephone No.: (321) 421-6639
Facsimile No.: (321) 396-7776

11. ASSIGNMENT. For purposes of this Agreement, any change of ownership of CHAMPIONS shall constitute an assignment which requires CHAMPIONS to notify Elsmere in advance. This Agreement shall run to Elsmere and its successors and assigns.

12. AMENDMENTS. It is further agreed that no modification, amendment or alternation in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

13. Elsmere acknowledges prior to this Agreement registering properties governed by the original ordinance. On a date agreed upon by CHAMPIONS, prior to the effective date of this Agreement, Elsmere will provide CHAMPIONS a digital file, in format agreeable to CHAMPIONS provided it has the capability to produce the type of format requested by Champions, containing all of the information of all properties registered by Elsmere. All registrations and fees received by Elsmere during the period from the data delivery date to the effective date will be submitted to CHAMPIONS and considered registrations by CHAMPIONS under the terms of this Agreement.

If Elsmere is unable to provide the agreed upon digital file, then Elsmere will provide CHAMPIONS all property registration information, including by not limited to registration forms, to CHAMPIONS for manual entry into the CHAMPIONS' database. If manual entry of this information is required of CHAMPIONS, Elsmere agrees to compensate CHAMPIONS $5.00 per property. Any data entry compensation due CHAMPIONS will be withheld from future registration fees due Elsmere per this Agreement.

14. BINDING AUTHORITY. Each person signing this Agreement on behalf of either party, individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

15. LAWS AND ORDINANCES. CHAMPIONS shall observe all laws and ordinance of Elsmere, county, state, federal or other public agencies directly relating to the operations being conducted pursuant to this Agreement.

16. EQUAL EMPLOYMENT OPPORTUNITY. In the performance of this Agreement, CHAMPIONS shall not discriminate against any firm, employee or applicant for employment or any other firm or individual in providing services because of sex, age, race, color, religion, ancestry or national origin.

17. WAIVER. Any failure by Elsmere to require strict compliance with any provision of this Agreement shall not be construed as a waiver of such provision, and Elsmere may subsequently require strict compliance at any time, notwithstanding any prior failure to do so.

18. SEVERABILITY. If any provision of this Agreement or application thereof to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

19. GOVERNING LAW. This Agreement shall be governed by the laws of the State of Delaware, without regard for its choice of law rules.

20. ENTIRE AGREEMENT. This Agreement represents the entire and integrated agreement between Elsmere and CHAMPIONS and supersedes all prior negotiations, representations or agreements, either written or oral.

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals the day and year first written above.

THE TOWN OF ELSMERE

John S. Giles, Town Manager

Date: 11-18-15

COMMUNITY CHAMPIONS, INC.

NOTARY PUBLIC STATE OF DELAWARE
JACKIE LYNN MOORE
NOTARY PUBLIC
MY COMMISSION EXPIRES JULY 8, 2016

David H. Mulberry

Date: 9-23-15

[Printed Name of Officer]
6767 N. Wickham Rd., Suite 500
Melbourne, FL 32940

Ordinance 599
Amended

An ordinance establishing a new section of the Code of the Town of Elsmere intended to specifically address abandoned property (as defined in this chapter) or real properties located in Elsmere, that are encumbered by a mortgage in default, subject to foreclosure action, subject to a pending tax lien sale, has had the title that was transferred to the beneficiary of a mortgage and any properties transferred under a deed in lieu of foreclosure/sale. This ordinance is intended to supplement, not replace the provisions of Chapter 209 of the Code of The Town of Elsmere.

Sponsored By: Mayor Steve Burg,
1st District Councilman John Jaremchuk.

First and Second Reading: July 09, 2015

Results: Passed 6 In Favor, 0 Opposed with 1 Absent

Third and Final Reading: August 13, 2015

Results: Passed 6 In Favor, 1 Opposed

An ordinance addressing abandoned properties or real property encumbered by a mortgage in some type of default, foreclosure, subject to an application for a tax deed, pending tax lien sale, or has been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale.

Ordinance 599
Amended

An ordinance establishing a new section of the Code of the Town of Elsmere intended to specifically address abandoned property (as defined in this chapter) or real properties located in Elsmere, that are encumbered by a mortgage in default, subject to foreclosure action, subject to a pending tax lien sale, has had the title that was transferred to the beneficiary of a mortgage and any properties transferred under a deed in lieu of foreclosure/sale. This ordinance is intended to supplement, not replace the provisions of Chapter 209 of the Code of The Town of Elsmere.

WHEREAS, the present mortgage foreclosing crisis has serious negative implications for all communities trying to manage the consequences of properties that are abandoned, have defaulted mortgages, in foreclosure, foreclosed upon and/or mortgagee owned (hereinafter referred to as "registrable property"; and

WHEREAS, the Town of Elsmere (hereinafter referred to as "Elsmere") recognizes an increase in the number of registrable properties located throughout Elsmere; and

WHEREAS, Elsmere is challenged to identify and locate the parties who can maintain these properties; and

WHEREAS, Elsmere finds that the presence of registrable property can lead to a decline in property value, create attractive nuisances and lead to a general decrease in neighborhood and community aesthetic; and

WHEREAS, Elsmere has already adopted property maintenance codes to regulate building standards for the exterior of structures and the condition of the property as a whole; and

WHEREAS, Elsmere desires to amend Elsmere's code in order to establish a property registration process that will identify a contact person to address safety and aesthetic concerns to minimize the negative impacts and blighting conditions that occur as a result of being abandoned and the foreclosure process; and

WHEREAS, Elsmere has a vested interest in protecting neighborhoods against decay caused by registrable property and concludes that it is in the best interests of the health, safety, and welfare of its citizens and residents to impose registration and certification requirements of registrable property located within Elsmere;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF ELSMERE AS FOLLOWS:

1 – PURPOSE AND INTENT

It is the purpose and intent of the Mayor and Council to establish a process to address the deterioration and blight of neighborhoods caused by an increasing amount of abandoned properties and properties with defaulted mortgages located within Elsmere, and to identify, regulate, limit and reduce the number of these properties located within Elsmere. It is Elsmere's further intent to establish a registration program for these properties as a mechanism to protect neighborhoods from becoming blighted due to the lack of adequate maintenance and security of registrable property.

2 – DEFINITIONS

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Registrable Property – means any abandoned property (as defined in this chapter) or real property located in Elsmere, whether vacant or occupied, that is encumbered by a mortgage in default, is subject to an ongoing foreclosure action by the mortgagee or trustee, is subject to an application for a tax deed or pending tax lien sale, or has been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale. The designation of a property as "registrable" shall remain in place until such time as the property is no longer abandoned or the foreclosure action has been dismissed and any default on the mortgage has been cured.

Accessible Property/Structure – means a property that is accessible through a compromised/breached gate, fence, wall, etc., or a structure that is unsecured and/or breached in such a way as to allow access to the interior space by unauthorized persons.

Annual Registration – shall mean 12 months from the date of the first action that required registration, as determined by the Elsmere Code Enforcement Department, or its designee, and every subsequent 12 months. The date of the initial registration may be different than the date of the first action that required registration.

Applicable Codes – means to include, but not be limited to, the Elsmere Zoning Code, the Property Maintenance Code, and the State, County and Elsmere Building and Fire Codes.

Abandoned Property – means:

a) Properties that are accessible properties or have broken or severely damaged windows, doors, walls, or roofs which create hazardous conditions and encourage trespassing; or

b) Properties that have one or more exterior doors (other than a storm door) or one or more windows where there is a sheet or sheets of plywood or other durable material covering the space intended for such door or window; or

c) Properties cited for a public nuisance pursuant to the Elsmere Code Chapter 145; or

d) Properties that endanger the public's health, safety, or welfare because the properties or improvements thereon are dilapidated, deteriorated, or violate minimum health and safety standards or lack maintenance as required by the applicable codes.

Enforcement Officer – means any law enforcement officer, building official, zoning inspector, code enforcement officer, fire inspector or building inspector, or other person authorized by Elsmere to enforce the applicable code(s).

Foreclosure – shall mean the legal process by which a mortgagee, or other lien holder, terminates a property owner's equitable right of redemption to obtain legal and equitable title to the real property pledged as security for a debt or the real property subject to the lien. This definition shall include, but is not limited to, public notice of default, a deed-in-lieu of foreclosure, sale to the mortgagee or lien holder, certificate of title and all other processes, activities and actions, by whatever name, associated with the described process. The process is not concluded until the property obtained by the mortgagee, lien holder, or their designee, by certificate of title, or any other means, is sold to a non-related bona fide purchaser in an arm's length transaction to satisfy the debt or lien.

Local Property Management Company – means a property manager, property maintenance company or similar entity responsible for the maintenance and security of registrable real property within 20 driving miles of Elsmere's limits. Upon review of credentials the Town Manager, or his designee, may allow a non-local property manager to be listed.

Mortgagee – means the creditor, including but not limited to, trustees; mortgage service companies; lenders in a mortgage agreement; any agent, servant, or employee of the creditor; any successor in interest; or any assignee of the creditor's rights, interests or obligations under the mortgage agreement.

Owner – means any person, legal entity or other party having any ownership interest, whether legal or equitable, in real property. This term shall also apply to any person, legal entity or agent responsible for the construction, maintenance or operation of the property involved.

Property Management Company – means a local property manager, property maintenance company or similar entity responsible for the maintenance of registrable real property.

Real Property – means any improved residential or commercial land, buildings, leasehold improvements and anything affixed to the land, or portion thereof identified by a property parcel identification number, located in the limits of Elsmere.

Vacant – means any building or structure that is not legally occupied. Occupants of properties subsequent to a foreclosure sale without a valid lease are considered illegal occupants.

3 – APPLICABILITY

These sections shall be considered cumulative and not superseding or subject to any other law or provision for same, but rather be an additional remedy available to Elsmere above and beyond any other state, county or local provisions for same.

4 – ESTABLISHMENT OF A REGISTRY

Elsmere or its designee shall establish a registry cataloging each Abandoned Property or Real Property subject to foreclosure within Elsmere, containing the information required by this article.

5 – REGISTRATION OF DEFAULTED MORTGAGE REAL PROPERTY AND ABANDONED PROPERTY

a) Any mortgagee who holds a mortgage on real property located within Elsmere shall perform an inspection of the property to determine vacancy or occupancy, upon default by the mortgagor. Any owner of any abandoned property shall perform an inspection of the property to determine if it is classified as abandoned. The mortgagee or owner of any abandoned property shall, within ten (10) days of the inspection, register the property with the Elsmere Code Office or its designee, on forms or other manner as directed, and indicate whether the property is vacant or occupied. A separate registration is required for each property, whether it is found to be abandoned or under foreclosure.

b) Registration pursuant to this section shall contain the name, direct mailing address, a direct contact name, telephone number, and e-mail address for the owner of abandoned property, mortgagee, and the servicer, and the name and twenty-four (24) hour contact phone number of the local property management company responsible for the security and maintenance of the property.

c) Mortgagees or owners who have existing registrable property on the effective date of this ordinance have 30 calendar days from the effective date to register the property with the Code Enforcement Department, or its designee, on forms or other manner as directed, and indicate whether the property is vacant or occupied. A separate registration is required for each property, whether it is abandoned or under foreclosure.

d) If the mortgage on a registrable property is sold or transferred, the new mortgagee is subject to all the terms of this article and within 5 days of the transfer register the property and pay a registration fee in accordance with this article. Any previous unpaid annual registration fees are the responsibility of the new mortgagee or trustee and are due and payable with their initial registration.

e) If the owner of a foreclosed or abandoned real property sells or transfers the property to a non-arm's length related person or entity, the transferee is subject to all the terms of this article and within 5 days of the transfer register the property and pay a registration fee in accordance with this article. Any previous unpaid annual registration fees are the responsibility of the new registrable property owner and are due and payable with their initial registration.

f) As long as the property is registrable it shall be inspected by the mortgagee, or designee, monthly. If an inspection shows a change in the property's occupancy status the mortgagee shall, within ten (10) days of that inspection, update the occupancy status of the property registration.

An ordinance addressing abandoned properties or real property encumbered by a mortgage in some type of default, foreclosure, subject to an application for a tax deed, pending tax lien sale, or has been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale.

g) A non-refundable annual registration fee established by resolution of the Elsmere Council shall accompany each registration pursuant to this section.

h) All registration fees must be paid directly from the mortgagee, trustee, servicer, or owner. Third party registration fees are not allowed without the consent of Elsmere and/or its authorized designee.

i) Properties subject to this section shall remain under the annual registration requirement, and the inspection, security and maintenance standards of this section as long as they are registrable.

j) Until the mortgage or lien on the property in question is satisfied, or legally discharged, the desire to no longer pursue foreclosure, the filing of a dismissal of *lis pendens* and/or summary of final judgment and/or certificate of title, voluntary or otherwise, does not exempt any mortgagee holding the defaulted mortgage from all the requirements of this article as long as the borrower is in default.

k) Any person or legal entity that has registered a property under this section must report any change of information contained in the registration within ten (10) days of the change.

l) Failure of the mortgagee or owner of abandoned property to properly register or to modify the registration form from time to time to reflect a change of circumstances as required by this article is a violation of the article and shall be subject to enforcement and any resulting monetary penalties.

m) Pursuant to any administrative or judicial finding and determination that any property is in violation of this article, Elsmere may take the necessary action to ensure compliance with and place a lien on the property for the cost of the work performed to benefit the property and bring it into compliance.

6 – MAINTENANCE REQUIREMENTS

a) Properties subject to this chapter shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspaper circulars, flyers, notices, except those required by federal, state or local law, discarded personal items including, but not limited to, furniture, clothing, large and small appliances, printed material or any other items that give the appearance that the property is abandoned.

b) The property shall be maintained free of graffiti or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior structure.

c) Front, side, and rear yards, including landscaping, shall be maintained in accordance with the applicable code(s) at the time registration was required.

d) Yard maintenance shall include, but not be limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for residential installation. Acceptable maintenance of yards and/or landscape shall not include weeds, gravel, broken concrete, asphalt or similar material.

e) Maintenance shall include, but not be limited to, watering, irrigation, cutting and mowing of required ground cover or landscape and removal of all trimmings.

f) Pools and spas shall be maintained so the water remains free and clear of pollutants and debris, have pool covers and security fencing and shall comply with the regulations set forth in the applicable code(s).

g) Failure of the mortgagee and/or owner to properly maintain the property may result in a violation of the applicable code(s) and issuance of a citation or Notice of Violation in accordance with the applicable code of Elsmere. Pursuant to a finding and determination by Elsmere's code enforcement officer, magistrate or a court of competent jurisdiction, Elsmere may take the necessary action to ensure compliance with this section.

h) In addition to the above, the property is required to be maintained in accordance with the applicable code(s) of Elsmere.

7 – SECURITY REQUIREMENTS

a) Properties subject to these sections shall be maintained in a secure manner so as not to be accessible to unauthorized persons.

b) A "secure manner" shall include, but not be limited to, the closure and locking of windows, doors, gates and other openings of such size that may allow a child or animal to access the interior of the property or structure. Broken windows, doors, gates and other openings of such size that may allow a child to access the interior of the property or structure must be repaired. Broken windows shall be secured by re-glazing of the window.

c) If a property is registrable, a local property manager shall be designated by the mortgagee or owner to perform the work necessary to bring the property into compliance with the applicable code(s), and the property manager must perform regular inspections to verify compliance with the requirements of this article, and any other applicable laws.

8 – PUBLIC NUISANCE

All abandoned property is hereby declared to be a public nuisance, the abatement of which is hereby declared to be necessary for the health, welfare and safety of the residents of Elsmere.

9 – INSPECTIONS FOR VIOLATIONS

Adherence to this article does not relieve any person, legal entity or agent from any other obligations set forth in any applicable code(s), which may apply to the property.

10 – ADDITIONAL AUTHORITY

a) If the enforcement officer has reason to believe that a property subject to the provisions of this article is posing a serious threat to the public health, safety and welfare, the code enforcement officer may temporarily secure the property at the expense of the mortgagee and/or owner, and may bring the violations before the magistrate as soon as possible to address the conditions of the property.

b) The code enforcement officer or magistrate shall have the authority to require the mortgagee or owner affected by this section to implement additional maintenance and/or security measures including, but not limited to, securing any and all doors, windows or other openings, employment of an on-site security guard or other measures as may be reasonably required to help prevent further decline of the property.

c) If there is a finding that the condition of the property is posing a serious threat to the public health, safety and welfare, then the code enforcement officer may have Elsmere abate the violations and charge the mortgagee or trustee or owner with the cost of the abatement.

d) If the owner or mortgagee does not reimburse Elsmere for the cost of temporarily securing the property, or of any abatement directed by the code enforcement officer or magistrate, within thirty (30) days of Elsmere sending the owners, mortgagee or trustee the invoice, then Elsmere may lien the property with such cost, along with an administrative fee as determined in Elsmere's fee ordinance, to recover the administrative personnel services. In addition to filing a lien, Elsmere can pursue financial penalties against the mortgagee.

11 – OPPOSING, OBSTRUCTING ENFORCEMENT OFFICER; PENALTY

Whoever opposes, obstructs or resists any enforcement officer or any person authorized by the enforcement office in the discharge of duties as provided in this chapter shall be punishable as provided in the applicable code(s) or a court of competent jurisdiction.

12 – IMMUNITY OF ENFORCEMENT OFFICER

Any enforcement officer or any person authorized by Elsmere to enforce the sections here within shall be immune from prosecution, civil or criminal, for reasonable, good faith entry upon real property while in the discharge of duties imposed by this article.

13 – ENFORCEMENT AND PENALTIES

A. Enforcement – The requirements of this ordinance may be enforced as follows:

1) By citation for civil penalties pursuant or to appear in Justice of the Peace Court;

2) By an action for injunctive relief, civil penalties, or both, through a court of competent jurisdiction;

3) By exercise of Elsmere's powers of eminent domain, or by condemnation and demolition, or by the nuisance abatement process;

4) By revocation or temporary suspension of necessary permits and/or certificates or occupancy and/or licenses; and

5) By any other process permitted at law or equity, such as but not limited to those set forth in Chapter 204-26 of the Code of the Town of Elsmere. The use of one enforcement process or theory does not preclude Elsmere from seeking the same, different, or additional relief through other enforcement methods.

B. Separate offenses. A violation of this ordinance shall constitute a separate offense for each day it shall continue or recur. Each condition which exists in violation of this ordinance is a separate violation.

1) Each day a property remains unregistered when required to be registered by this ordinance is a separate offense for each day it shall continue or recur.

2) Each day a property is not inspected as required by this ordinance is a separate offense.

3) Each day a property is not secured as required by this ordinance is a separate offense.

4) Each day a condition violating the Town's minimum housing codes or property maintenance codes exists on a property subject to registration under this ordinance is a separate offense.

C. Persons responsible for violations. The owner, mortgagee, trustee or servicer, as those terms are defined in this ordinance, and their duly authorized officers, employees or agents employed in connection therewith who have assisted in the commission of the violation or failed to perform as required by the ordinance, shall be guilty of the violation.

SECTION 3 – AMENDMENTS

Registration and penalty fees outlined in this article may be modified by a resolution passed and adopted by the Elsmere Council.

SECTION 4 – SEVERABILITY

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 5 – REPEALER

All ordinances or parts of ordinances in conflict herewith are, and the same are, hereby repealed. It is the intent of the Mayor and Council that this Ordinance work in conjunction with and not in conflict with Chapter 209 of the Code of The Town of Elsmere. Should the provisions of the two be inconsistent, it is the intent of the Mayor and Council that the more restrictive provision shall apply.

SECTION 6 – CODIFICATION

It is the intention of the Town Council that the provisions of this ordinance shall become and be made part of the Town Code of Ordinances; and that the sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 7 – EFFECTIVE DATE

This ordinance shall take effect ten (10) days after final passage.

First and Second Reading
July 09, 2015

Steve Burg, Mayor

Third and Final Reading
August 13, 2015

Joann I. Personti, Secretary

Approved as to form:

Town Solicitor

An ordinance addressing abandoned properties or real property encumbered by a mortgage in some type of default, foreclosure, subject to an application for a tax deed, pending tax lien sale, or has been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale.

SYNOPSIS

This Ordinance establishes a new section of the Code of the Town of Elsmere intended to specifically address abandoned property (as defined in this chapter) or real properties located in Elsmere, that are encumbered by a mortgage in default, subject to foreclosure action, subject to a pending tax lien sale, has had the title that was transferred to the beneficiary of a mortgage and any properties transferred under a deed in lieu of foreclosure/sale. This ordinance is intended to supplement, not replace the provisions of Chapter 209 of the Code of The Town of Elsmere.

Fiscal Impact

NONE

An ordinance addressing abandoned properties or real property encumbered by a mortgage in some type of default, foreclosure, subject to an application for a tax deed, pending tax lien sale, or has been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale.