

# Kent County Planning Commission

TELEPHONE 410-778-7475

Kent County Government Center  
400 High Street  
Chestertown, Maryland 21620

FACSIMILE 410-810-2932

## County Commissioners Hearing Room **MEETING TO BE HELD VIRTUALLY via CONFERENCE CALL**

### AGENDA

June 4, 2020

1:30 p.m.

#### *COVID-19 Special Announcement Regarding Meeting Attendance*

In response to the State of Emergency, individuals must refrain from attending meetings. Planning Commission meetings are live streamed, and citizens may call in with questions when the Chair opens the floor for comment.

To access the Kent County conference bridge service off site:

1. Call 410-810-2213.
2. Enter PIN number **55266** when prompted.
3. Announce yourself to the group. Please mute your phone / device until the Chair opens the floor for comment.

Visit the County's website at <https://www.kentcounty.com> for the most up to date information regarding County Government operations.

### MINUTES

May 7, 2020

### APPLICATIONS FOR REVIEW

#### **20-20 John E. and Susan M. Rutkowski - Buffer Variance**

22086 Harrington Park Road - Fifth Election District – Zoned Critical Area Residential “CAR” .....Rec to BOA

#### **20-21 Fifth Investments, LLC, and Emily C. McCoy and Christopher A. Delahanty – Major Subdivision (Concept Review) and Road Waiver**

Tolchester Road - Sixth Election District - Zoned Agricultural Zoning District “AZD” .....PC Decision

### STAFF REPORTS

### GENERAL DISCUSSION

### ADJOURN

Meetings are conducted in Open Session unless otherwise indicated. All or part of the Planning Commission meetings can be held in closed session under the authority of the MD Open Meetings Law by vote of the members. Breaks are at the call of the Chairman. Meetings are subject to audio and video recordings.

Projects will not be reviewed prior to their scheduled time. All applications will be given the time necessary to assure full public participation and a fair and complete review of all projects. Therefore, the time each application is heard may be later than the time indicated on the agenda. Agenda items are subject to change due to cancellations.

Other business without assigned times may be discussed during the course of the meeting.



## MINUTES

The Kent County Planning Commission met in regular session on Thursday, May 7, 2020, virtually in the County Commissioners' Hearing Room at 400 High Street, Chestertown, Maryland, with the following members attending via audio/video conference: Elizabeth Morris, Chairman; William Sutton, Vice Chairman; F. Joseph Hickman; Kim Kohl; Commissioner P. Thomas Mason; B. Douglas Megargee; James Saunders; Cynthia L. McCann, Esq., Planning Commission Attorney; Staff in attendance were Carla Gerber, GIS Specialist; William Mackey, Director; Robert Tracey, Community Planner; Sandy Adams, Clerk; and Brian Jones, Clerk.

The following attended and participated in the meeting: Mr. Kevin Shearon of DMS & Associates, LLC; Mr. Rick Carter of Delmarva Craft; and Mr. Richard Keaveney, Kent County Humane Society.

Ms. Morris called the meeting to order at 1:34 p.m.

## MINUTES

The minutes of the meeting on April 2, 2020, were approved as written and distributed.

## PUBLIC HEARING

Ms. Morris closed the meeting at 1:37 pm and opened the public hearing.

### **20-17 Richard Carter – Zoning Text Amendment - Microbreweries**

Mr. Tracey, describing the proposal, said the applicant, proposes an amendment to the Kent County Land Use Ordinance Article V, Section 10, Crossroads Commercial District, 10.2 Permitted Principal Uses and Structures, by adding 10.2.21, Microbrewery as defined by the State of Maryland, and by adding 10.2.22, Class D Alcohol retail business as defined by the State of Maryland.

Testimony was not offered by the audience; therefore, Ms. Morris closed the public hearing and re-opened the meeting at 1:41 p.m.

## APPLICATIONS FOR REVIEW:

### **20-17 Richard Carter – Zoning Text Amendment – Microbreweries**

Present and duly sworn in by Ms. Morris was the applicant, Mr. Carter.

Mr. Tracey gave a brief overview of the proposal, citing relevant issues, the applicable laws and staff comments. The applicant proposes to amend Article V, Section 10, Crossroads Commercial District, by adding 10.2.21, Microbreweries as defined by the State of Maryland, and by adding 10.2.22, Class D Alcohol retail business as defined by the State of Maryland.

Mr. Tracey said Microbreweries are a permitted use in the Commercial zoning district; the proposed amendment would expand this use to the Crossroads Commercial District. The proposed text amendment proposes two new uses in this zoning district. The first proposed new use would allow for the brewing and consumption of beer produced on-site.

Mr. Tracey further noted the second proposed use, Class D Alcohol retail business, as defined by the State of Maryland, would allow a license holder to sell alcoholic beverages, not produced on-premises, to adults over the age of 21.

Mr. Tracey said the proposed text amendment is consistent with the Kent County Comprehensive Plan's strategies to promote the development of businesses, and microbreweries support tourism by creating another activity to draw visitors to the community.

Mr. Tracey said staff recommends sending a favorable recommendation to the Kent County Commissioners.

Mr. Tracey said no correspondence has been received.

Mr. Carter said the primary mission of his business is to bring more tourism and economic development to Kent County and the Upper Eastern Shore. He said the craft beer industry is the fastest growing industry in the United States. Mr. Carter said his business has already been working with other businesses in Kent County. Mr. Carter further noted the purpose of having his business near Rock Hall is to establish a small nano brewery, brewing only 200-300 barrels of beer per year.

Mr. Carter explained the purpose of the brewery license is to brew beer in Kent County. He further noted that the purpose of the Class D Tavern License is so they can stock wines from local wineries and beer from other breweries on the Eastern Shore. He said their goal is to draw people to Kent County and Rock Hall.

No public input was received.

After further discussion and additional questions by the Commission, Mr. Hickman made a motion to send a favorable recommendation for the proposed Zoning Text Amendment to the County Commissioners based on the following findings:

- It would establish a locally owned business in the county and provide jobs.
- It complies with the Comprehensive Plan.
- The suitability of the property with the district in question will be in the public interest and not solely for the interest of the applicant.

Ms. Kohl seconded the motion, and the motion passed unanimously.

### **19-30 The Animal Care Shelter of Kent County**

Present and duly sworn in were Kevin Shearon and Richard Keaveney representing the Animal Care Shelter of Kent County.

Mr. Tracey gave a brief overview of the proposal, citing relevant issues, the applicable laws, and staff and TAC comments. The applicants are requesting preliminary approval to construct a 10,648 square-foot facility for the care and boarding of domestic animals. The minor subdivision which created the five-acre parcel, was recorded on April 4, 2020. The facility will include an animal enrichment training center as well as a veterinary office. The property is located on Worton Road between Worton and Chestertown in the Third Election District and is zoned Industrial (I). The parcel is comprised of an open field with a hedgerow along the edge of Route 297. The surrounding area is agricultural land and housing.

Mr. Tracey said staff recommends granting preliminary site plan approval but that the following would need to be addressed in order to receive final site plan approval:

- Stormwater management and sediment control plans must be approved, and any required sureties must be submitted.
- The Forest Conservation Plan and Forest Conservation Deed Restrictions must be approved, and any required sureties must be submitted.
- The final landscaping plan and any required sureties must be submitted.

Mr. Tracey said no correspondence has been received.

Mr. Shearon said the general site plan at the preliminary level has not changed much from the concept plan other than more details have been added and the design has been done. He said the layout remains the same. He said the property has been transferred, and the Humane Society currently owns the property. He said the storm water management has been reviewed by Soil Conservation on two occasions. He said they received three comments which will be addressed before final site plan review. He said the attorneys are currently working on the forest conservation document that will be submitted for the Planning Commission to review prior to final site plan review. Mr. Shearon said he will be working with staff in order to develop cost estimates to provide sureties. He said he anticipates returning to the Planning Commission in July for final site plan approval.

No public input was received.

After further discussion and additional questions, Mr. Hickman made a motion to grant preliminary site plan approval based on the following findings:

- The project fits the standards of existing growth and supports economic development.
- The plan meets the required setbacks.
- In the Industrial performance standards, the engineers have adequately provided reports and narratives regarding noise and reduction of sound in the building.

- The project fits the performance standards of the county regulations with respect to traffic; it has one entrance.
- The site will be used during normal business hours.
- The site is on public water and sewer.
- The applicant will have sediment and storm water plan approval.
- The landscaping plans for the project are attractive and provide buffering.
- Adequate parking will be provided on site.
- The project conforms with the Comprehensive Plan.

Ms. Kohl seconded the motion, and the motion passed unanimously.

## **STAFF REPORTS**

Carla Gerber:

- Ms. Gerber reminded everyone of the 2020 Census.
- Ms. Gerber said the Maryland Agricultural Land Preservation Foundation has decided to move forward with an easement cycle this year. She said there are over 25 applications so far to be ranked and turned over to the Agricultural Preservation Advisory Board.

Ms. Morris acknowledged the planning staff for their hard work.

## **GENERAL DISCUSSION**

Mr. Saunders encouraged everyone to stay safe and to utilize safety precautions during the State of Emergency.

## **ADJOURN**

There being no further business for the good of the organization, the meeting was adjourned at 2:26 p.m.

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Elizabeth Morris, Chairman

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Brian Jones, Clerk

## PRELIMINARY STAFF REPORT

To: Kent County Planning Commission  
Subject: John and Susan Rutkowski  
Buffer Variance  
Date: May 27, 2020

### Description of Proposal

The applicants wish to install a 50-foot long privacy fence beginning 80 feet from the shoreline. The 0.441-acre property is located on Harrington Park Road in the Fifth Election District adjacent to a public landing. The fence will be 8-foot long panels with the end posts set in concrete. The end posts will overlap but have a 4-inch gap between them. The panels will have 6 inches of clearance off the ground. The property is improved with a single-family dwelling and a small shed and is zoned Critical Area Residential, "CAR." The surrounding area is characterized by single-family residential development.

### BUFFER VARIANCE

#### Relevant Issues

#### I. Area, Height, Width and Yard Requirements

- A. *Applicable Law:* Article V, Section 5.5 of the Kent County Land Use Ordinance requires the minimum yard:
- |            |                        |
|------------|------------------------|
| Front      | 50 ft                  |
| Side       | 15 ft                  |
| Rear       | 30 ft                  |
| Waterfront | Minimum 100 ft buffer* |
- B. *Staff and TAC Comments:* A variance is required to place 20 feet of fence within the buffer.

#### II. Buffer Requirements

- A. *Comprehensive Plan:* "Maintain, enforce, and if necessary, strengthen regulations for floodplains and buffers." (Page 86)
- B. *Applicable Law:* Article V, Section 5.7.B.3.a of the Kent County Land Use Ordinance addresses development in the buffer:
- i. Development activities, including structures, roads, parking areas, and other impervious surfaces, mining, and related activities, or septic systems shall not be permitted within the minimum 100-foot buffer. This restriction does not apply to water-dependent facilities that meet the criteria set forth below.
  - ii. New or expanded development activities may be permitted in the minimum 100-foot buffer, provided:
    - a) The use is water dependent.

- b) The project meets a recognized private right or public need.
- c) Adverse effects on water quality and fish, plant, or wildlife habitats are minimized.
- d) In so far as possible, non-water dependent structures or operations associated with water dependent projects or activities are located outside the minimum 100-foot buffer.

C. *Staff and Comments:* The applicants have applied for a variance to construct 20 feet of their proposed 50-foot fence within the buffer. The fence will be along the property line and will provide the applicants some privacy from users of the adjacent public landing. The Land Use Ordinance specifies that fences are structures within the definition of “structure,” and structures are not permitted in the buffer.

### III. Variance

A. *Applicable Law:* Article IX Section 2.2 of the Kent County Land Use Ordinance authorizes the Board of Appeals to grant variances from the yard (front, side, or rear), height, bulk, parking, loading, shoreline cliff, 15% slope, pier length, impervious surface, stream protection corridor, and buffer requirements so as to relieve practical difficulties or other injustices arising out of the strict application of the provisions of this Ordinance.

Such granting of a variance shall comply, as nearly as possible, in every respect to the spirit, intent, and purpose of this Ordinance.

In the Critical Area, for a variance of 15% slope, impervious surface, or buffer requirements, it being the purpose of this provision to authorize the granting of variation only for reasons of demonstrable and exceptional unwarranted hardship as distinguished from variations sought by applicants for purposes or reasons of convenience, profit, or caprice.

In order to grant a variance, the Board of Appeals must find all of the following:

- a. That the variance will not cause a substantial detriment to adjacent or neighboring property.
- b. That the variance will not change the character of the neighborhood or district.
- c. That the variance is consistent with the Comprehensive Plan and the general intent of this Ordinance.
- d. That the practical difficulty or other injustice was caused by the following:
  - i. Some unusual characteristic of size or shape of the property.
  - ii. Extraordinary topographical or other condition of the property.
  - iii. The use or development of property immediately adjacent to the property, except that this criterion shall not apply in the Critical Area.
- e. That the practical difficulty or other injustice was not caused by the applicant’s own actions.
- f. That within the Critical Area for variances of 15% slope, impervious

surface, or buffer requirements:

- i. The granting of a variance will be in harmony with the general spirit and intent of the Critical Area Law and the regulations adopted by Kent County.
- ii. That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat.
- iii. That the application for a variance will be made in writing with a copy provided to the Critical Area Commission.
- iv. That the strict application of the Ordinance would produce an unwarranted hardship.
- v. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- vi. The authorization of such variance will not be a substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
- vii. That a literal interpretation of this Ordinance deprives the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of Kent County.
- viii. That the granting of a variance will not confer upon an applicant any special privilege that would be denied by this Ordinance to other lands or structures.
- ix. Due to special features of a site, or special conditions or circumstances peculiar to the applicant's land or structure, a literal enforcement of this Ordinance would result in unwarranted hardship to the applicant.
- x. The Board of Appeals finds that the applicant has satisfied each one of the variance provisions.
- xi. Without the variance, the applicant would be deprived of a use of land or a structure permitted to others in accordance with the provisions of the critical area program.
- g. In considering an application for a variance, the Board shall consider the reasonable use of the entire parcel or lot for which the variance is requested.
- h. In considering an application for a variance, the Board of Appeals shall presume that the specific development activity in the Critical Area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of this Ordinance and the Critical Area Law.
- i. The Board may consider the cause of the variance request and if the variance request is the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed.

- B. *Staff and TAC Comments:* It is staff's opinion that granting a variance will not cause a substantial detriment to neighboring properties or change the character of the neighborhood or district. The dwelling is approximately 13 feet from the property line which is adjacent to the parking area for users of the public landing. The house across Harrington Park Road from the applicant has a fence adjacent to the parking area that runs all the way to the shoreline. This fence appears to pre-date the Critical

Area Buffer requirements. The applicant has tried to maintain a living fence, but due to the nature of the property, he has had to replace the plantings more than once. Some of the evergreens need to be replaced again, and the applicant would prefer to install a fence. The evergreens will be removed and the hardwood trees, which are mixed in with the evergreens, will remain.

The proposed intrusion in the 100-foot buffer is minimal and adjacency to the public landing creates special conditions that are shared by only one other property owner, who has a fence. Furthermore, the Critical Area Commission does not regulate fences without footers in the Buffer and does not oppose the variance request. Although this fence has footers, the applicant has attempted to be sensitive to the environment by raising the panels 6 inches off of the ground and using 8-foot long sections that will be staggered. Water and wildlife should be able to pass under or through the fence.

*Staff Recommendation:* Staff recommends granting the variance with conditions for mitigation. If the board is inclined to grant approval, staff recommends that mitigation be set at a ratio of 1:1 for removal of the existing vegetation and that the areas of mitigation be planted with native cultivars. A Critical Area Forest Clearing Plan and a Buffer Management Plan shall be approved by the Department of Planning, Housing, and Zoning during building permit review.

BOARD OF APPEALS APPLICATION

Kent County Department of Planning, Housing and Zoning
Kent County Government Center
400 High Street • Chestertown, MD 21620
410-778-7475 (phone) • 410-810-2932 (fax)

IN THE MATTER OF THE APPLICATION OF:
(Name, Address and Telephone Number of Applicant)

JOHN & SUSAN RUTKOWSKI
22086 HARRINGTON PARK RD
ROCK HALL, MARYLAND 21661
Email: HEAVLYHALL@YAHOO.COM

For Office Use Only:
Case Number/Date Filed:
Filed by:
Applicant:
Planning Commission:
Date of Hearing:
Parties Notified:
Notice in Paper:
Property Posted:

TO THE KENT COUNTY BOARD OF APPEALS: In accordance with Article Section
of the Kent County Zoning Ordinance, as amended, request is hereby made for:

Appealing Decision of Kent County Zoning Administrator Variance
Special Exception Non-conforming Use

DESCRIPTION OF PROPERTY INVOLVED:

Located on: (Name of Road, etc.) HARRINGTON PARK ROAD

In the Election District of Kent County.

Size of lot or parcel of Land:
Map: 55 Parcel: 38 Lot #: Deed Ref:

List buildings already on property: HOME - 2 SHEDS

If subdivision, indicate lot and block number: N/A

If there is a homeowners association, give name and address of association: N/A

PRESENT ZONING OF PROPERTY:

DESCRIPTION OF RELIEF REQUESTED: (List here in detail what you wish to do with property that requires the Appeal Hearing.)

If appealing decision of Zoning Administrator, list date of their decision:

Present owner(s) of property: JOHN & SUSAN RUTKOWSKI Telephone: 410-639-9952

If Applicant is not owner, please indicate your interest in this property: N/A

Has property involved ever been subject to a previous application? NO

If so, please give Application Number and Date: N/A

**PLEASE FILL IN BELOW, OR ATTACH HERETO, A SKETCH OF THIS PROPERTY.**  
List all property measurements and dimensions of any buildings already on the property.

**Put distances between present buildings or proposed buildings and property lines.**

**NAMES OF ADJOINING PROPERTY OWNERS:**

Owner(s) on the North: JOHN S. HUBACHER

Owner(s) on the South: RON BUTLER

Owner(s) to the East: N/A

Owner(s) to the West: ELWOOD MERCHANT

Homeowners Association, name and address, if applicable: N/A

**BY SIGNING THIS APPLICATION I GRANT MEMBERS AND ALTERNATE OF THE BOARD OF ZONING APPEALS THE RIGHT TO ENTER ONTO THE PROPERTY FOR THE PURPOSE OF VIEWING THE SITE OF THE APPLICATION OR APPEAL.**

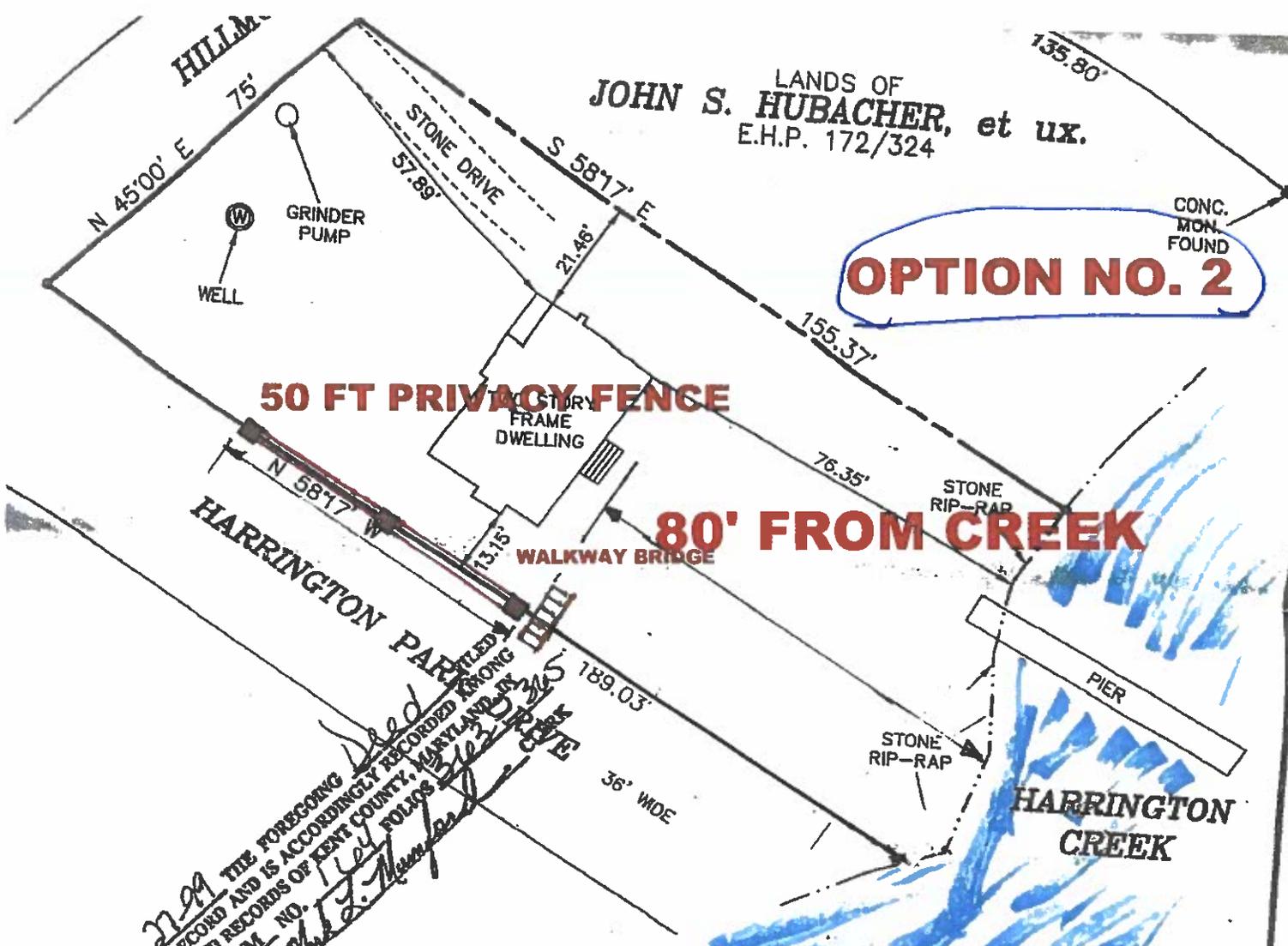
John Gutowski  
Signature of Owner/Applicant/Agent or Attorney

04/21/2020  
Date

Please file this form at 400 High Street, Chestertown, MD 21620 accompanied by **\$350.00** filing fee made payable to the Board of Appeals. If you have any questions, contact Clerk at 410-778-7467.

**NOTICE: Neither the Board of Appeals or the Planning Office is required to make out this Application. Application should be filled in by applicant or its agent. If the Planning Office assists you, they cannot be held responsible for its contents.**

**Applicants arriving more than 10 minutes after the scheduled hearing will not be heard and will be re-scheduled at the applicant's expense.**



LANDS OF  
**JOHN S. HUBACHER, et ux.**  
 E.H.P. 172/324

**OPTION NO. 2**

**50 FT PRIVACY FENCE**

**80' FROM CREEK**

*1-27-99* THE FOREGOING  
 FOR RECORD AND IS ACCORDINGLY RECORDED AMONG  
 THE LAND RECORDS OF KENT COUNTY, MARYLAND IN  
 LIBER. PLAT. NO. *1144* FOLIO *262*  
*John S. Hubacher*

NOTES:  
 FOR DEED REFERENCE SEE, E.H.P. 53/60.  
 FOR PLAT REFERENCE SEE, W.H.G. 10-605.  
 PROPERTY ADDRESS = 22086 HARRINGTON PARK DRIVE,  
 ROCK HALL, MARYLAND 21661



THIS IS TO CERTIFY THAT TO THE BEST OF MY KNOWLEDGE  
 AND BELIEF THE IMPROVEMENTS INDICATED HEREON ARE  
 LOCATED AS SHOWN. THIS IS NOT A PROPERTY LINE SURVEY.

*Michael A. Scott*  
 REGISTERED SURVEYOR

LOCATION DRAWING  
 ON THE LANDS OF  
**JOHN & SUSAN RUTKOWSKI**  
 FIFTH ELECTION DISTRICT, KENT COUNTY,  
 MARYLAND

**MICHAEL A SCOTT INC.**  
 207 MAPLE AVENUE CHESTERTON, MD 21620 (410) 778-2310

DRAWN BY SCHRADER  
 SCALE 1"=30'  
 DATE 11-13-98  
 JOB NO. 1657  
 FOLDER K-516

John and Susan Rutkowski  
22086 Harrington Park Road



Source: Kent County Department of Planning, Housing, and Zoning.  
Aerial taken Spring 2019. Map prepared May, 2020.

1 inch = 100 feet

5'x5" Posts set in concrete



6" gap at bottom

4" gap

12:41  64°



## PRELIMINARY STAFF REPORT

TO: Kent County Planning Commission  
SUBJECT: Fifth Investments, LLC – Road Waiver and Major Subdivision  
DATE: May 28, 2020

### Description of Proposal

Fifth Investments, LLC, requests concept review for a major subdivision of its 10.712-acre parcel into 24 lots and a common area lot. The purpose of the subdivision is to terminate the existing Delta Heights Condominium Regime and create fee-simple lots for each existing dwelling. The remainder of the property will be a common area lot owned by the Delta Village Townhouses Community Association, Inc. The property is located on Tolchester Road. It is in the Sixth Election District and is zoned “AZD,” Agricultural Zoning District.

### History

The Delta Heights Condominium Regime was created in 1982 by a previous owner of the property. The current owner purchased the property in 2012 and began work to renovate and update the dwelling units and infrastructure on the property. Once the work was completed, the owner began marketing the units for sale, but due to various mortgage requirements was only able to sell one unit. Upon the advice of an attorney, the owner sought a text amendment to allow the subdivision of the units onto individual lots. The text amendment was adopted on May 19, 2020, and became effective on May 29.

### Relevant Issues

#### I. Permitted Uses and Structures

- A. Comprehensive Plan: **Goal:** Provide a wide range of housing opportunities to meet the needs of Kent County residents. *Strategy:* Foster opportunities to collaboratively implement approaches, methods, and programs to provide diverse housing options for all levels of household income. (Page 90)
- B. Applicable Law: Article V, Section 10.5 of the Kent County Land Use Ordinance establishes Multi-family and two-family dwellings as a permitted use provided:
- a. The multi-family or two-family dwellings existed on the property prior to August 1, 1989.
  - b. The sale or lease of at least 50% of the multi-family or two-family dwellings is restricted to an amount affordable to individuals or families earning no greater than 100% of the County median income as determined by the United States Census Bureau.
  - c. The dwellings are served by public water and sewerage service.
  - d. The minimum site area shall be five (5) acres.
  - e. If subdivision approval is sought:
    1. Minimum lot size, setback and yard requirements, maximum height of structure, and off-street parking requirements shall be determined by the Planning Commission.
    2. Open space shall be provided as required in Section 1.6(4) of this Article.

3. Forest Conservation requirements shall be satisfied; and
4. Site access standards of Section 1.8(B)(1) and (3) of this Article shall be met in so far as possible.

C. Staff Comments: The dwellings existed on the property prior to August 1, 1989, and the parcel is over 5 acres. Public water and sewerage service is provided. The open space requirement of 1/10 acre per lot will be met and both active and passive open space areas are included. Forest Conservation will be satisfied by including all of the forested areas under a protective easement. Site access is from Tolchester Road via existing entrances. The entrances and parking areas will remain private.

As part of the discussion with the applicant, the Planning Commission will need to determine appropriate setbacks for alterations/additions to the existing units and for accessory structures. The duplex lots range in size from 6,232 square feet to 7,380 square feet and have front yards of 33-37 feet deep (as measured to the storage area/concrete pad. The townhouse lots are smaller and range in size from 2, 120 square feet to 2,882 square feet with front yards of approximately 25 feet deep. The outside walls of the end units and duplexes have a 5-foot side setback.

## II. General Standards

- A. Applicable Law: Article V, Section 1.6 sets forth the general standards: Open space, playgrounds, or other recreational areas shall be set aside at a rate of 1/10 acre per dwelling unit...Recreational land required within a subdivision shall be located so as to be reasonably accessible from all lots in the subdivision in accordance with the following:
- a. Steep slopes, streams, lakes, watercourses, and floodplains may constitute up to 40% of the recreational land.
  - b. At least 60% of the recreational land shall be suitable for dry ground recreational use.
- B. Staff Comments: The 24-lot subdivision requires 2.4 acres of open space. The applicants are proposing to dedicate the 8.777-acre remainder as an area of common ownership. The property currently has a playground, basketball court, and some walking trails. Before final approval, the applicant needs to provide the calculations for the total amount of open space and the amount suitable for recreational use. Staff is of the opinion that the property will meet or exceed the requirements.

## III. Environmental Standards

- A. Applicable Law: Article V, Section 1.7 sets forth environmental standards. These standards address species protection, buffers, habitat protection, forest conservation, and water quality.
- B. Staff Comments: Forest conservation will be addressed by deed restricting all the existing forest on-site. A simplified forest stand delineation will be required. A draft forest conservation protective agreement has been submitted. The agreement will need to be approved by the Planning Commission attorney prior to final approval.

#### IV. Subdivision Design Standards

##### A. Applicable Law: Article V, Section 1.8.B(1) and (3) sets forth design standards related to site access. These standards address the physical appearance of the proposal.

1. *Site access* shall be subject to the following *regulations* to help ensure vehicle and pedestrian safety and alleviate congestion:
  - a. Where a proposed road is designated on an approved County or State map, *site plans* for *development* adjacent to the designated *roadway* shall include provisions for future access to the *roadway*.
  - b. All new lots must abut upon and have access to a public or approved *private road*.
  - c. Access shall be consolidated whenever possible.
  - d. Whenever possible, *roads* shall be constructed above the elevation of the *100-year floodplain*.
3. *Subdivision*
  - a. Proposed *street* layout, blocks, and parcels shall be suitable in area and dimension for the type of *development* anticipated.
  - b. The total area shall be sufficient to provide adequate space for *off-street parking*, loading, landscaping, and other facilities.
  - c. Whenever possible, the *subdivision* should be designed to minimize *adverse impacts* on the agricultural operation.
  - d. The *lot* arrangement, design, and orientation shall be such that all lots will provide satisfactory building *sites*, properly related to *topography* and the character of surrounding *development*.
  - e. Every *lot* shall abut upon and have access to a public road or approved *private road*.
  - f. Lots adjoining *major thoroughfares* and railroad lines should be designed with extra depth and provision for an appropriate means of buffer or deeper building *setbacks*.
  - g. Where land in a *subdivision* adjoins a railroad line, the *street* layout shall make allowance for future grade separated railroad crossings at appropriate locations by providing extra *street right of way* widths for such crossings and by restricting intersecting *streets* at locations where they would cause interference with necessary approaches to such crossings.
  - h. Proposed *streets* in the *subdivision* shall provide for the continuation of existing, planned, or platted *streets* on adjacent tracts, unless such continuation shall be prevented by *topography* or other physical feature or unless such extension is found by the *Planning Commission* to be unnecessary for the coordination of *development* between the *subdivision* and such adjacent *tract*.
  - i. Where the *Planning Commission* deems it desirable or necessary to provide access to adjacent tracts not presently subdivided, proposed *streets* in the *subdivision* shall be extended to the boundary lines with such tracts.
  - j. Where a *subdivision* adjoins or embraces any part of a *major thoroughfare* as designated on the Kent County Major Thoroughfare Map, the layout of such *subdivision* shall provide for the platting and dedication of such part of the *major thoroughfare* in the location and at the width indicated on the *major thoroughfare*

plan, except that the *subdivider* shall not be required to dedicate that part of such *major thoroughfare* that is in excess of eighty (80) feet in width.

- k. Where deemed desirable to the layout of the *subdivision* and adjoining area, the *Planning Commission* may require the platting and dedication of one or more *collector streets* or parts thereof, to serve the *subdivision*.
- l. Subdivisions shall be in full compliance with the provisions of this Ordinance.
- m. *Private roads* are permitted in minor subdivisions and are subject to the following conditions:
  - i. Each road shall serve no more than seven parcels. In the event that an eighth parcel is created, the eighth parcel and all further divisions of land shall front on a public road.
  - ii. The *subdivision* shall provide a 50-foot *right of way* for each *private road*.
  - iii. The construction of all lanes and *private roads* shall adhere to the requirements established by the Kent County Department of Public Works and sediment control and *stormwater management regulations*.
  - iv. The deed and contract of sale of all lots in the *subdivision* shall state: “The road is private and not the responsibility of Kent County.”
  - v. The plat shall identify all *private roads* and shall state: “The road is private and not the responsibility of Kent County.”

- B. Staff Comments: The Tolchester Village development has an entrance off Tolchester Road for each section of the development, and parking for the units is provided in the common area. The existing street layout is appropriate for the development. Staff recommends that a 50-foot right-of-way be established for each entrance road and that the applicant consider naming each road in order to assign unique addresses to each unit to replace the single street number with unit designations that exists now.

Adequate parking is provided. The duplex parking area has 12 spaces which meets the parking standards of 2 spaces per unit. Because some of the duplex spaces fall within the proposed lots, the applicant will be including an easement on the plat and language in the deed restrictions to maintain those spaces as part of the common parking area. The townhouse parking area has 38 spaces which is one space short of the required parking. The parking standards require one space per unit plus ½ space for each bedroom in the dwelling. Six of the townhouse units have 3 bedrooms and twelve units have 2 bedrooms. Therefore, 39 spaces are required.

The applicant and the Planning Commission may agree to a reduced number of parking spaces below the number required with the agreement and condition that if more spaces are required in the future because of miscalculation, unanticipated growth, or other error, those spaces and associated maneuvering area shall be provided by the applicant. The Planning Commission may require that additional open space be kept for this purpose. An agreement shall be drafted to this effect.

Because the proposed lots do not abut upon a public road, the applicant has applied for a road waiver to allow the roads to remain private.

V. Road Waiver

A. Applicable Law: Article IX, Section 3 sets forth the requirements for granting waivers of certain standards.

The Kent County Planning Commission may authorize waivers of the subdivision, private road, road front lots, protected lands lot line setback, and certain designated design standard provisions of this Ordinance so as to relieve extraordinary hardship or other injustices arising out of the strict application of these provisions.

Such granting of a waiver shall comply, as nearly as possible, in every respect to the spirit, intent, and purpose of this Ordinance; it being the purpose of this provision to authorize the granting of variation only for reasons of demonstrable extraordinary hardship as distinguished from variations sought for purposes or reasons of convenience, profit, or caprice.

Such granting of a waiver shall not have the effect of nullifying the intent and purpose of these provisions or be contrary to the goals and objectives of the Kent County Comprehensive Plan and, where applicable, the Village Master Plans. In no case shall any waiver be more than a minimum easing of the requirements and shall not result in a conflict with the proposals of the adopted Major Thoroughfare Map for the County or other provisions of this Ordinance.

In order to grant a waiver, the *Planning Commission* must find all of the following:

- a. That the waiver will not cause a substantial detriment to adjacent or neighboring property.
- b. That the waiver is consistent with the *Comprehensive Plan*, the Village Master Plan, and the general intent of this Ordinance.
- c. That the extraordinary hardship or other injustice was caused by the following:
  - i. Unusual *topography*.
  - ii. The strict application of these provisions would result in inhibiting the achievement of the goals and objectives of the *Comprehensive Plan*, the Village Master Plan, and this Ordinance.
- d. That the extraordinary hardship or other injustice was not caused by the applicant's own actions.

Waivers from the subdivision provision of this Ordinance shall be granted only by the affirmative vote of two-thirds of the members of the Planning Commission. Each case shall be decided and a decision issued no later than 30 days after the meeting is concluded. The decision granting or denying the waiver shall be in writing and shall be signed by the Chairman of the Planning Commission. The Department of Planning and Zoning shall mail a copy of the decision to the applicant. The decision shall be made a part of the public record of the proceedings on file in the Department of Planning and Zoning.

B. Staff Comments: The request for a road waiver is due to the pre-existing conditions of the development. The County Engineer has stated that the County does not wish to maintain a private parking lot. Granting a waiver will not cause a substantial detriment to adjacent or neighboring properties and it supports goals of the Comprehensive Plan to provide a wide

range of housing types. The property was developed many years ago and the need for a waiver was not caused by the applicant's actions.

## VI. Subdivision

- A. Applicable Law: Article VI, Section 6.3.B.15 sets forth that the *Planning Commission* shall prepare findings of fact concerning the reasonable fulfillment of the objectives listed below.
- a. Conformance with the *Comprehensive Plan* and, where applicable, the Village Master Plan.
  - b. Conformance with the provisions of all applicable rules and *regulations* of county, state, and federal agencies.
  - c. Convenience and safety of both vehicular and pedestrian movement within the *site* and in relation to adjoining ways and properties.
  - d. Reasonable demands placed on public services and infrastructure.
  - e. Adequacy of methods for sewage and refuse disposal, and the protection from pollution of both surface waters and groundwater. This includes minimizing *soil erosion* both during and after construction.
  - f. Minimizing the area over which existing vegetation is to be removed. Where *tree* removal is required, special attention shall be given to planting of replacement trees.
  - g. The applicant's efforts to integrate the proposed *development* into the existing landscape through design features such as vegetative buffers, roadside plantings, and the retention of *open space* and agricultural land.
- B. Staff comments: The application is consistent with the Comprehensive Plan. Adequate water and sewer is available. An easement for the pump station on the property will be included on the plat. Existing vegetation will not be removed. Staff is recommending that the requirement for a citizen participation plan be waived as the only purpose for the subdivision is to change the ownership structure of the existing dwellings.

By approving the subdivision of land on the proposed plat, Kent County and the Kent County Planning Commission are in no way representing that the existing structures on the property meet life/safety codes, or current fire safety separation standards, or any standards, other than those related to land subdivision and the location of structures related to zoning.

May 7, 2020

Carla Gerber  
Department of Planning, Housing and Zoning  
400 High Street  
Chestertown, Maryland 21620

**Re: Major Subdivision Delta Heights (Tax Map 42, Grid 2A, Parcel 155) located on Tolchester Road, Chestertown, Maryland. – Kirby & Associates, Inc. Job #Q-20-049.**

Dear Mrs. Gerber;

Attached please find our original submittal for the above referenced project. The owner/applicant (Fifth Investments, LLC), is proposing to terminate the existing condominium regime of Delta Heights Condominium (Termination Agreement Attached) and create 6 Duplex units and 18 Townhouse units, utilizing the Major Subdivision development technique in accordance with a proposed text amendment of Article V, Section 1.2 (Permitted Uses) of Kent County Land Use Ordinance: Article V, 1.2 (10.5)(a-f).

The Delta Heights Condominium Regime was established in 1982 per Declaration recorded among the land records of Kent County in Liber E.H.P. 140, Folio 1. The Condominium Regime is also shown on a plat prepared by J.R. McCrone, Jr. and recorded among the plat records of Kent County in plat book Liber E.H.P. 2, Folios 38 & 39.

This subdivision plan does not propose any additional development to the existing conditions as indicated on the attached subdivision plats, which are consistent with the original condominium plats. The proposed Duplex and Townhouse units currently take access off of Tolchester Road via two (2) existing interior road accesses and are each serviced by a parking lot. The applicant will be requesting a Road Waiver for the creation of a Public or Private Road. Both roads and parking lots will be owned and maintained by a Homeowners Association. We have attached a copy of the Covenants and Restrictions that cover the maintenance. The Duplex units are serviced by 12 parking spaces and the Townhouse units are serviced by 38 parking spaces. This proposed subdivision plan does not propose any additional parking spaces and we will be prepared to request a waiver for any additional spaces, unless the Planning Commission has the ability to establish the amount of parking required. There is currently no landscaping for the existing parking lots and we are prepared to request a waiver for any required landscaping, unless the Planning Commission has the ability to establish the landscaping requirements.

All Duplex and Townhouse units are currently being serviced by public water and public sanitary sewer. This subdivision plan does not propose any additional units or development that would require additional water or sewer service.

At this point we are not proposing to provide a Forest Conservation Plan, as there is no additional development proposed and there will be no proposed forest disturbance or clearing. The applicant will place 2.142 Ac.+/- (20%) of the net tract area into long term protection and will provide the necessary Long-Term Forest Protection Agreement prior to Planning Commission review. We have attached a Forest Conservation Worksheet for your review. Should your department require a plan we will provide one prior to Planning Commission review.

The applicant has provided Deed Restricted Open Space of 2.142 Ac.+/- (20%) per the requirements of the above referenced Text Amendment. The applicant will provide the Deed of Open Space Covenant for review prior to Planning Commission review.

At this point we have not indicated any topography of the site. There is no significant topographical change and there is no proposed development, therefore, we would request relief from providing this information on the subdivision plats.

The proposed subdivision also includes Condominium Unit B4, owned by Emily C. McCoy and Christopher A. Delahanty. They will enjoin in the Termination of the Condominium Regime and will sign all necessary agreements and plats, as their unit will become Lot 4 of the attached Subdivision Plats.

We have calculated the application review fee as follows:

Major Subdivision – Concept Plan - \$200.00 + 24 lots @ 50.00 ea. = 1,400.00

Per your review and approval of this fee, we will provide the fee prior to the May 14, 2020 TAC meeting.

This submittal contains the following:

- 2 copies of this cover letter
- 2 copies of the subdivision application
- 2 copies of the subdivision plat
- 2 copies Condominium Termination Agreement
- 2 copies of Declaration of Covenants and Restrictions
- 2 copies of current property deeds
- 1 copy of Forest Conservation Worksheet
- 1 copy of Authorization Letter

Should you have any questions regarding this original submittal please contact me at (410) 758-2726.

Sincerely,



John P. Kirby, Prof. L.S.



# ROAD WAIVER APPLICATION

File No. \_\_\_\_\_ Date: \_\_\_\_\_ Amount Paid: \_\_\_\_\_

NAME OF ROAD: \_\_\_\_\_

District: 6 Map: 42 Parcel: 155 Lot Size: 10.712 Ac<sup>±</sup> Deed Ref: MLM 740/347 Zoning: A2D

## OWNER OF LAND:

Name: FIFTH INVESTMENTS, LLC Telephone: 410-268-6608

Address: 77 WEST ST, SUITE 205, Email: MIKGBREWINKIS@  
ANNAPOLIS, MD 21401 GMAIL.COM

## APPLICANT:

Name: SAME AS OWNER Telephone: \_\_\_\_\_

Address: \_\_\_\_\_ Email: \_\_\_\_\_

## AGENT/ATTORNEY (if any):

Name: CHRISTOPHER DRUMMOND Telephone: 410-758-0030

Address: 119 LAWYER ROW, CENTREVILLE, MD Email: CHRISDRUMMONDLAW@GMAIL.COM  
21617

## REGISTERED ENGINEER OR SURVEYOR:

Name: JACK KIRBY, KIRBY & ASSOCIATES, INC Telephone: 410-758-2726

Address: P.O. Box 27, CENTREVILLE, MD 21617 Email: JKIRBYP@GMAIL.COM

List property owners and parcel numbers of lots abutting road: N/A  
NOTE: ROAD CONSISTS OF ACCESS TO TOLLESTER ROAD; PARKING LOT

List parcels using road: PARCEL 155

Who owns road/right-of-way: ~~FIFTH INVESTMENTS, LLC~~ FIFTH INVESTMENTS, LLC

RESTRICTIONS OR COVENANTS:  None  Yes -  Copies Attached

A COPY OF THE LAND DESCRIPTION AS SET FORTH IN THE DEED SHALL BE ATTACHED.



Signature of Applicant

5/7/20

Date

## WAIVER APPROVAL

Approving Authority: \_\_\_\_\_ Date: \_\_\_\_\_

# FIFTH INVESTMENTS, LLC

---

**Mike Brewrink**  
77 West Street  
Suite 205  
Annapolis, MD 21401  
410-707-7965  
May 6, 2020

**William Mackey**  
Kent County Department of Planning & Zoning  
400 High Street  
Chestertown, MD 21620

**I, Mike Brewrink, hereby authorize Jack Kirby to sign all documents related to the Delta Heights subdivision application. Please contact me if you have any questions.**

Sincerely,



**Mike Brewrink**  
Fifth Investments, LLC

**NOTES:**

- FOR DEED REFERENCE TO SUBJECT PROPERTY SEE:  
PARCEL 155 - M.L.M. 740/347  
UNIT B4 - M.L.M. 1028/96
- CURRENT ZONING - AZD - AGRICULTURAL ZONING DISTRICT
- CURRENT USE - RESIDENTIAL
- SITE IS NOT LOCATED WITHIN THE CRITICAL AREA.
- THE OUTLINE COURSES AND DISTANCES SHOWN HEREON FOR PARCEL 55 WERE TAKEN FROM A PLAT ENTITLED "DELTA HEIGHTS CONDOMINIUM" DATED 8-82, PREPARED BY JR MCCOY & ASSOCIATES, INC. AND RECORDED AMONG THE PLAT RECORDS OF KENT COUNTY IN PLAT BOOK LIBER E.H.P. 2, FOLIOS 38 & 39. KIRBY & ASSOCIATES, INC. HAVE FIELD VERIFIED EXISTING MONUMENTATION AS INDICATED HEREON.
- THE OUTLINE COURSES AND DISTANCES SHOWN HEREON FOR LOTS 1-24 ARE BASED ON A CURRENT FIELD SURVEY BY KIRBY & ASSOCIATES, INC. IN MARCH 2020.
- THE PROPOSED LOT DOES NOT CONTAIN ANY STEEP SLOPES.
- THERE DOES NOT APPEAR TO BE ANY HISTORIC FEATURES LOCATED ON THE PROPERTY.
- ALL LOTS WILL UTILIZE PUBLIC WATER AND SEWER.
- STORMWATER MANAGEMENT FOR ANY FUTURE DEVELOPMENT ON PARCEL 155 WILL BE ADDRESSED WITH PREFERENCE TO ENVIRONMENTAL SITE DESIGN (ESD) PRACTICES IN ACCORDANCE WITH THE KENT, CO., STORMWATER ORDINANCE.
- NO NEW NON-CONFORMITIES ARE BEING CREATED AS A RESULT OF THIS SUBDIVISION.
- IN THE FUTURE SHOULD ANY DISTURBANCE OCCUR WITHIN THE MAPPED WETLANDS, WOODS, OR STREAM AREA A NON-TIDAL WETLAND JURISDICTIONAL DETERMINATION WILL BE REQUIRED FROM THE U.S. ARMY CORPS OF ENGINEERS.
- THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION, OR DISTURBANCE OF VEGETATION EXCEPT AS APPROVED BY THE DEPARTMENT PLANNING AND ZONING.
- THIS SUBDIVISION HAS BEEN PREPARED WITHOUT THE BENEFIT OF A REVIEW OF AN ABSTRACT OF TITLE.

**SITE STATISTICS**

GROSS AREA	=	10,712 Ac.±
OPEN SPACE REQUIRED	=	2,142 Ac.± (20%)
OPEN SPACE PROVIDED	=	2,142 Ac.± (20%)
FOREST CONSERVATION REQUIRED	=	2,142 Ac.± (20%)
FOREST CONSERVATION PROVIDED	=	2,142 Ac.± (20%)
TOTAL NUMBER OF MULTI-FAMILY UNITS EXISTING	=	24
TOTAL NUMBER OF LOTS PROPOSED	=	24
TOTAL EXISTING PARKING SPACES FOR DUPLEX	=	12
TOTAL EXISTING PARKING SPACES FOR TOWNHOMES	=	38

**IMPERVIOUS COVERAGE TABLE**

LOT 1 = 1,727 Sq. Ft.± (25%)	LOT 13 = 1,018 Sq. Ft.± (35%)
LOT 2 = 2,208 Sq. Ft.± (31%)	LOT 14 = 887 Sq. Ft.± (42%)
LOT 3 = 1,633 Sq. Ft.± (26%)	LOT 15 = 874 Sq. Ft.± (41%)
LOT 4 = 1,892 Sq. Ft.± (26%)	LOT 16 = 881 Sq. Ft.± (41%)
LOT 5 = 1,879 Sq. Ft.± (30%)	LOT 17 = 895 Sq. Ft.± (42%)
LOT 6 = 2,018 Sq. Ft.± (27%)	LOT 18 = 998 Sq. Ft.± (35%)
LOT 7 = 1,019 Sq. Ft.± (35%)	LOT 19 = 1,018 Sq. Ft.± (35%)
LOT 8 = 884 Sq. Ft.± (42%)	LOT 20 = 886 Sq. Ft.± (42%)
LOT 9 = 880 Sq. Ft.± (41%)	LOT 21 = 874 Sq. Ft.± (41%)
LOT 10 = 876 Sq. Ft.± (41%)	LOT 22 = 877 Sq. Ft.± (41%)
LOT 11 = 892 Sq. Ft.± (42%)	LOT 23 = 891 Sq. Ft.± (42%)
LOT 12 = 999 Sq. Ft.± (35%)	LOT 24 = 999 Sq. Ft.± (35%)

**OWNER**

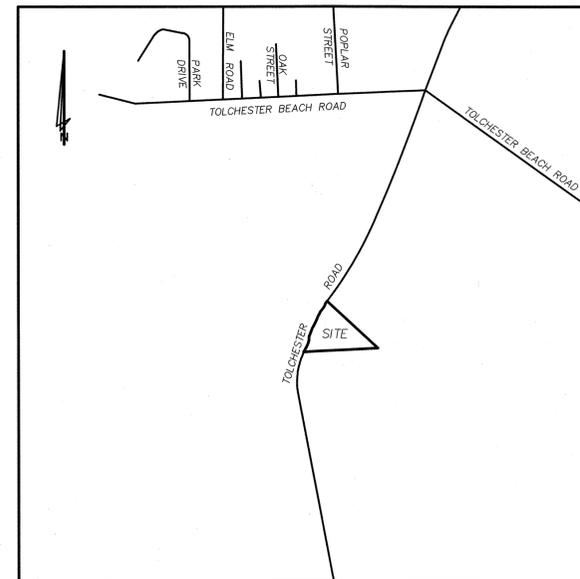
FIFTH INVESTMENTS, LLC  
77 WEST STREET #77  
ANNAPOLIS, MARYLAND 21401

**OWNER**

EMILY C. MCCOY &  
CHRISTOPHER A. DELAHANTY  
STREET  
CHESTERTOWN, MD 21617

**SURVEYOR**

KIRBY & ASSOCIATES, INC.  
P.O. BOX 27  
CENTREVILLE, MARYLAND 21617



VICINITY MAP

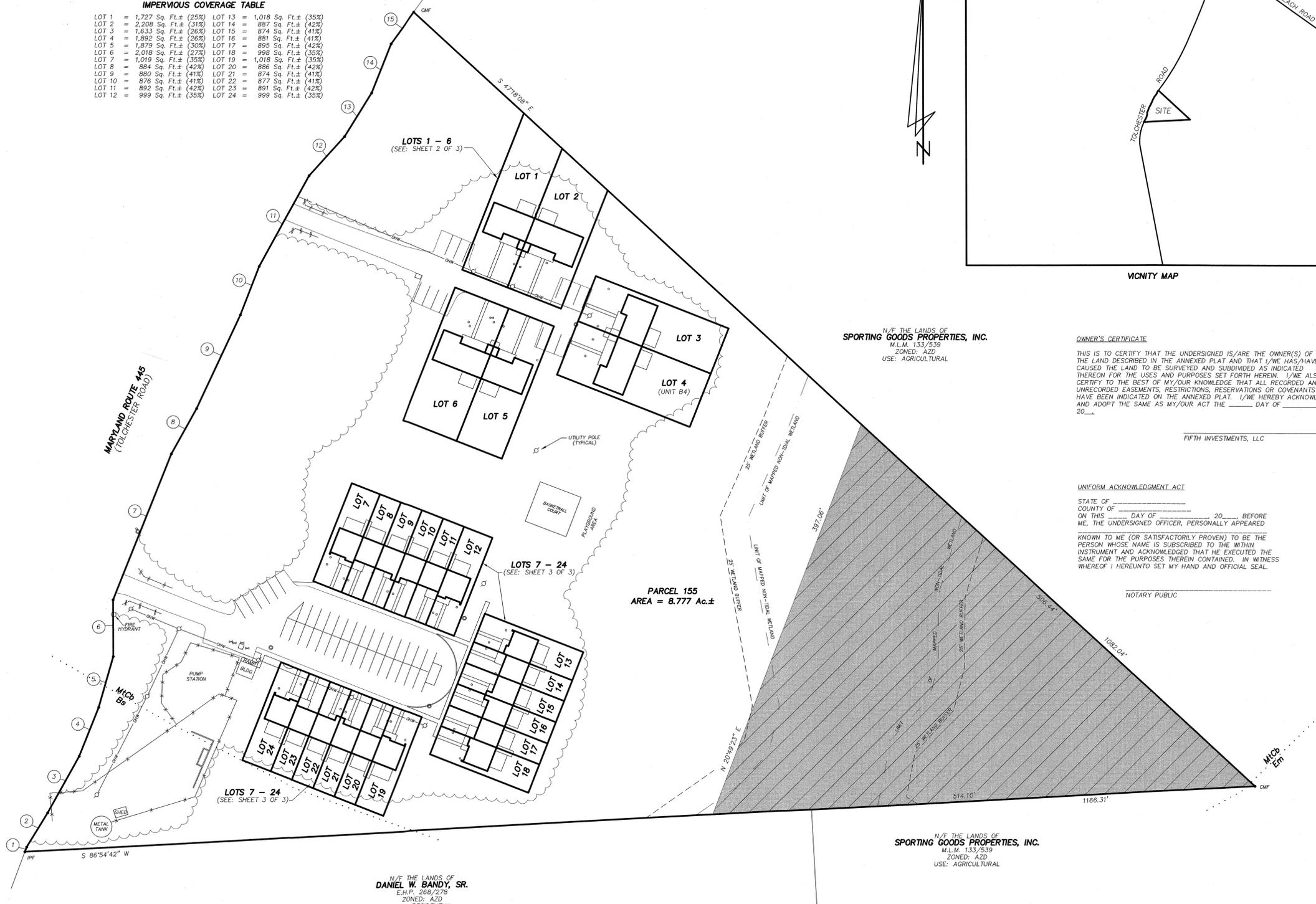


**LEGEND**

- DENOTES COMPUTED POINT UNLESS OTHERWISE SPECIFIED
- DENOTES EDGE OF WOODS
- DENOTES EXISTING FENCE
- DENOTES CHAIN LINK FENCE
- DENOTES MAPPED NON-TIDAL WETLAND AND 25' WETLAND BUFFER
- DENOTES EXISTING SOIL AND SOIL TYPE
- DENOTES 2.142 Ac.± OF AG CLUSTER OPEN SPACE
- DENOTES 2.142 Ac.± OF PROTECTED FOREST RETENTION AREA
- IRS DENOTES CAPPED IRON ROD TO BE SET
- IPF DENOTES IRON PIPE FOUND
- CMF DENOTES CONCRETE MONUMENT FOUND
- BRL DENOTES BUILDING RESTRICTION LINE
- R/W DENOTES RIGHT-OF-WAY
- N/F DENOTES NOW OR FORMERLY
- SMH DENOTES SEWER MANHOLE
- WM DENOTES WATER METER
- C/O DENOTES SEWER CLEANOUT
- WV DENOTES WATER VALVE
- CONC. DENOTES CONCRETE

**RIGHT TO FARM STATEMENT**

THERE SHALL BE NO BASIS, UNDER THE KENT COUNTY ZONING ORDINANCE, FOR RECOURSE AGAINST THE EFFECTS OF ANY NORMAL FARMING OPERATIONS CONDUCTED IN ACCORDANCE WITH STANDARD AND ACCEPTABLE BEST MANAGEMENT PRACTICES. NORMAL AGRICULTURAL EFFECTS INCLUDE, BUT ARE NOT LIMITED TO NOISE, ODOR, VIBRATION, FUMES, DUST, SPRAY DRIFT OR GLARE.



N/F THE LANDS OF  
**SPORTING GOODS PROPERTIES, INC.**  
M.L.M. 133/539  
ZONED: AZD  
USE: AGRICULTURAL

**OWNER'S CERTIFICATE**

THIS IS TO CERTIFY THAT THE UNDERSIGNED IS/ARE THE OWNER(S) OF THE LAND DESCRIBED IN THE ANNEXED PLAT AND THAT I/WE HAS/HAVE CAUSED THE LAND TO BE SURVEYED AND SUBDIVIDED AS INDICATED THEREON FOR THE USES AND PURPOSES SET FORTH HEREIN. I/WE ALSO CERTIFY TO THE BEST OF MY/OUR KNOWLEDGE THAT ALL RECORDED AND UNRECORDED EASEMENTS, RESTRICTIONS, RESERVATIONS OR COVENANTS HAVE BEEN INDICATED ON THE ANNEXED PLAT. I/WE HEREBY ACKNOWLEDGE AND ADOPT THE SAME AS MY/OUR ACT THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

FIFTH INVESTMENTS, LLC

**UNIFORM ACKNOWLEDGMENT ACT**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_, BEFORE ME, THE UNDERSIGNED OFFICER, PERSONALLY APPEARED

KNOWN TO ME (OR SATISFACTORILY PROVEN) TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED THAT HE EXECUTED THE SAME FOR THE PURPOSES THEREIN CONTAINED. IN WITNESS WHEREOF I HERETO SET MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC

N/F THE LANDS OF  
**DANIEL W. BANDY, SR.**  
E.H.P. 268/278  
ZONED: AZD  
USE: RESIDENTIAL

N/F THE LANDS OF  
**SPORTING GOODS PROPERTIES, INC.**  
M.L.M. 133/539  
ZONED: AZD  
USE: AGRICULTURAL

**OWNER'S CERTIFICATE**

THIS IS TO CERTIFY THAT THE UNDERSIGNED IS/ARE THE OWNER(S) OF THE LAND DESCRIBED IN THE ANNEXED PLAT AND THAT I/WE HAS/HAVE CAUSED THE LAND TO BE SURVEYED AND SUBDIVIDED AS INDICATED THEREON FOR THE USES AND PURPOSES SET FORTH HEREIN. I/WE ALSO CERTIFY TO THE BEST OF MY/OUR KNOWLEDGE THAT ALL RECORDED AND UNRECORDED EASEMENTS, RESTRICTIONS, RESERVATIONS OR COVENANTS HAVE BEEN INDICATED ON THE ANNEXED PLAT. I/WE HEREBY ACKNOWLEDGE AND ADOPT THE SAME AS MY/OUR ACT THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

EMILY C. MCCOY

CHRISTOPHER A. DELAHANTY

**SURVEYOR'S CERTIFICATE**

THIS IS TO CERTIFY THAT THE UNDERSIGNED, REGISTERED MARYLAND SURVEYOR NO. 21151, HAS SURVEYED AND SUBDIVIDED THE PROPERTY AS DESCRIBED AND SHOWN ON THE ANNEXED PLAT AND THAT SUCH PLAT IS A CORRECT REPRESENTATION OF THAT SURVEY AND SUBDIVISION. ALL DISTANCES ARE SHOWN IN FEET AND DECIMALS THEREOF. ALL LOTS MEET THE REQUIREMENTS OF THE KENT COUNTY ZONING ORDINANCE IN REGARD TO LOT AREA, WIDTH, AND BUILDABLE AREA.

AS WITNESS MY HAND AND SEAL THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

JOHN P. KIRBY  
PROFESSIONAL LAND SURVEYOR #21151  
LICENSE EXPIRATION: 01/28/2021

LINE	BEARING	DISTANCE
1	N 20°29'48" E	4.74
2	N 31°22'13" E	38.17
3	N 29°10'40" E	61.36
4	N 21°41'08" E	50.00
5	N 15°58'30" E	50.25
6	N 00°56'57" W	33.85
7	N 21°47'52" E	145.37
8	N 29°01'42" E	49.33
9	N 25°05'08" E	98.03
10	N 21°08'55" E	49.33
11	N 28°50'03" E	98.25
12	N 42°14'26" E	50.03
13	N 31°57'39" E	48.91
14	N 21°40'51" E	50.03
15	N 36°04'09" E	36.70

PLANNING COMMISSION CHAIRMAN	DATE
PLANNING DIRECTOR	DATE
ENVIRONMENTAL HEALTH OFFICER	DATE
DIRECTOR WATER AND WASTEWATER SERVICES	DATE

**UNIFORM ACKNOWLEDGMENT ACT**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_, BEFORE ME, THE UNDERSIGNED OFFICER, PERSONALLY APPEARED

KNOWN TO ME (OR SATISFACTORILY PROVEN) TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED THAT HE EXECUTED THE SAME FOR THE PURPOSES THEREIN CONTAINED. IN WITNESS WHEREOF I HERETO SET MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC

**KIRBY & ASSOCIATES, INC.**  
Professional Land Surveying Services  
P.O. Box 27  
206A Banjo Lane  
Centreville, Maryland 21617  
(410) 758-2726 Fax (410) 758-

DATE	SCALE	DATE	REVISION
APRIL 2020	1"=50'		
JOB NO. K-20-049	DRAWN BY KIRBY	DESIGNED BY KIRBY	APPROVED BY K-100
FOLDER REF. K-100			

PRELIMINARY SUBDIVISION PLAT  
OF THE LANDS OF  
**FIFTH INVESTMENTS, LLC & CHRISTOPHER A. DELAHANTY**  
EMILY C. MCCOY & CHRISTOPHER A. DELAHANTY  
SIXTH ELECTION DISTRICT, KENT COUNTY, MARYLAND  
PREPARED FOR: FIFTH INVESTMENTS, LLC

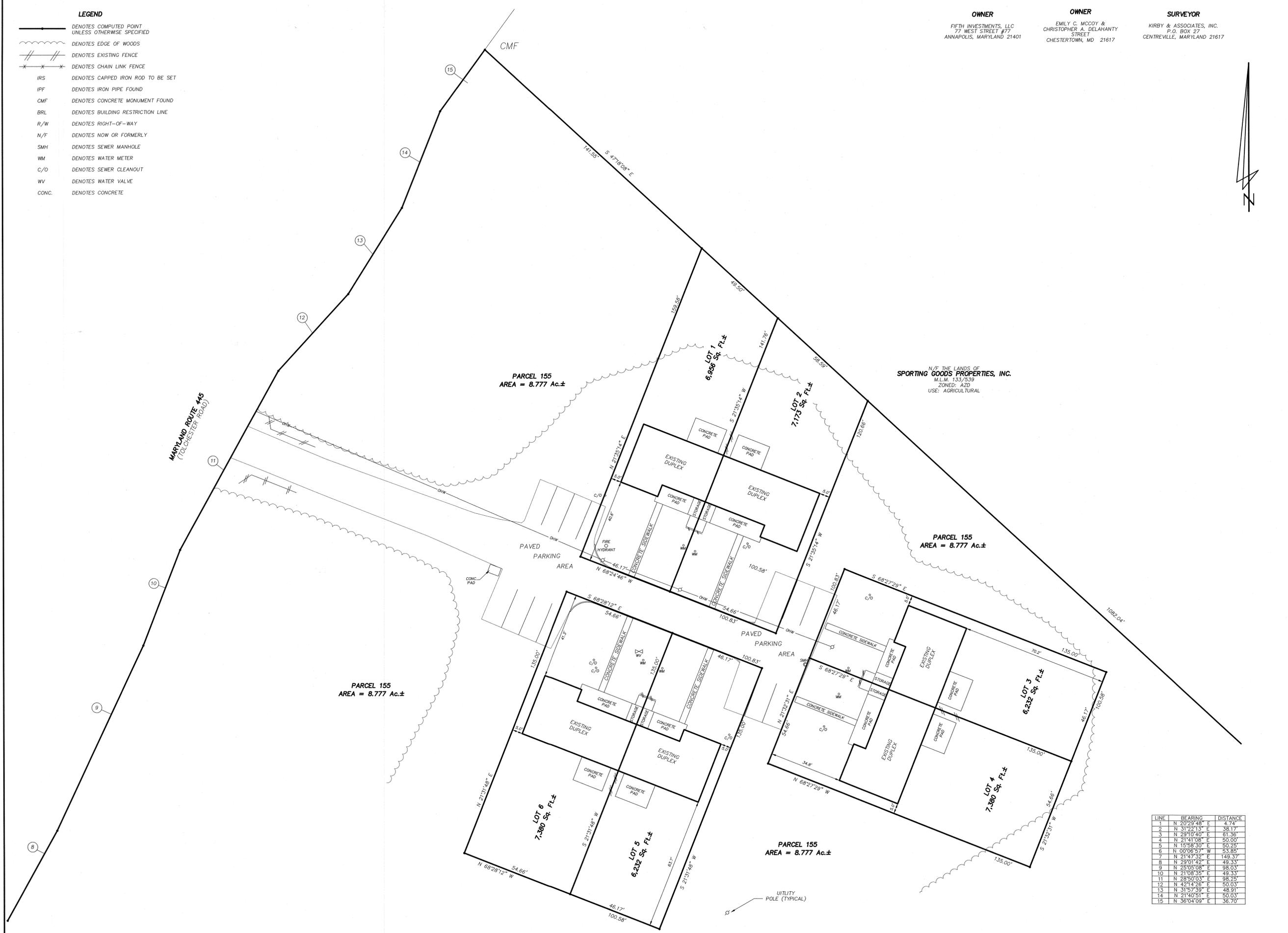
**LEGEND**

- DENOTES COMPUTED POINT UNLESS OTHERWISE SPECIFIED
- DENOTES EDGE OF WOODS
- DENOTES EXISTING FENCE
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- WV DENOTES WATER VALVE
- CONC. DENOTES CONCRETE

**OWNER**  
 FIETH INVESTMENTS, LLC  
 77 WEST STREET #77  
 ANNAPOLIS, MARYLAND 21401

**OWNER**  
 EMILY C. MCCOY &  
 CHRISTOPHER A. DELAHANTY  
 STREET  
 CHESTERTOWN, MD 21617

**SURVEYOR**  
 KIRBY & ASSOCIATES, INC.  
 P.O. BOX 27  
 CENTREVILLE, MARYLAND 21617



LINE	BEARING	DISTANCE
1	N 20°29'48" E	4.74'
2	N 31°22'13" E	38.17'
3	N 29°10'40" E	61.38'
4	N 21°41'08" E	50.00'
5	N 15°58'30" E	50.25'
6	N 00°06'57" W	53.85'
7	N 21°47'32" E	149.37'
8	N 29°01'42" E	49.33'
9	N 25°05'08" E	98.03'
10	N 21°08'35" E	43.33'
11	N 28°50'03" E	98.25'
12	N 42°14'26" E	50.03'
13	N 31°57'39" E	48.91'
14	N 21°40'51" E	50.03'
15	N 36°04'09" E	36.70'



**KIRBY & ASSOCIATES, INC.**  
 Professional Land Surveying Services  
 P.O. Box 27  
 206A Banjo Lane  
 Centreville, Maryland 21617  
 (410) 758-2726 Fax (410) 758-

DATE	SCALE	APPROVED BY:	REVISION
APRIL 2020	1"=20'	KIRBY	
JOB NO. K-20-049		DESIGNED BY:	
FOLDER REF. K-100		APPROVED BY:	

PRELIMINARY SUBDIVISION PLAN  
 OF THE LANDS OF  
**FIFTH INVESTMENTS, LLC & CHRISTOPHER A. DELAHANTY**  
 SIXTH ELECTION DISTRICT, KENT COUNTY, MARYLAND  
 PREPARED FOR: FIFTH INVESTMENTS, LLC



**ARTICLES OF INCORPORATION OF  
DELTA HEIGHTS TOWNHOUSE COMMUNITY ASSOCIATION  
A Nonstock Corporation**

**THIS IS TO CERTIFY:**

**FIRST:** That I, **CHRISTOPHER F. DRUMMOND**, whose post office address is 119 Lawyers Row, Centreville, Maryland 21617, being at least eighteen (18) years of age, do hereby form a nonstock corporation under and by virtue of the General Laws of the State of Maryland.

**SECOND:** The name of the Corporation (which is hereinafter called the "Corporation") is:

**DELTA HEIGHTS TOWNHOUSE COMMUNITY ASSOCIATION**

**THIRD:** The purposes for which the Corporation is formed are:

(1) To own, operate, and manage the common area within the residential community known as Delta Village Townhouses in Kent County, Maryland, including taking all necessary steps and entering into such legal agreements as may be reasonable and necessary to carry out such purposes.

(2) To engage in any other related businesses and any other lawful purposes and/or business.

(3) To do anything permitted by Section 2-103 of the Corporations and Associations Article of the Annotated Code of Maryland, as amended from time to time.

**FOURTH:** Pursuant to Section 5-202, *et. seq.* of the Corporations and Associations Article of the Annotated Code of Maryland, as amended from time to time, the Corporation shall have no authority to issue capital stock and shall be a corporation consisting of members whose qualifications, rights, and privileges shall be governed by the Bylaws of the corporation to be adopted at the organizational meeting of the Corporation.

**FIFTH:** The post office address of the principal office of the Corporation in this State is located at 77 West Street, Suite 210, Annapolis, Maryland 21401. The name and the post office address of the Resident Agent of the Corporation in this State is Christopher F. Drummond, Esq., 119 Lawyers Row, Centreville, Maryland 21617 in Queen Anne's County. Said Resident Agent is a citizen of the State of Maryland and actually resides in Maryland.

**SIXTH:** The initial number of Directors of the Corporation shall be three (3). The names of the directors of the Corporation are: M. Kate Weaver, Christopher F. Drummond, and \_\_\_\_\_ who shall serve until the organizational meeting of the corporation.

**SEVENTH:** The following provisions are adopted for the purpose of defining, limiting and regulating the powers of the corporation and of the directors and members.

(1) The Board of Directors of the Corporation is hereby empowered to adopt Bylaws regulating the affairs of the Corporation and the qualifications for membership at the organizational meeting of the Corporation. Subsequent to the organizational meeting, the members of the Corporation are hereby empowered to make amendments to the Bylaws as provided therein.

EIGHTH: No contract or other transaction between the Corporation and any other person, corporation or firm, and no act of this Corporation shall in any way be ineffective or invalidated by the fact that any member, director or officer of the Corporation is pecuniarily interested in such contract or transaction, or is a member, stockholder, director, or member of such other corporation or firm; provided the fact that such interest, office or membership exists shall be disclosed or shall have been known to the Board of Directors, and subsequent to the organizational meeting, the members prior to any vote with respect to such contract or transaction. In the event of such disclosure, a member or director who is so interested, or holds such an office or membership, may be counted in determining the existence of a quorum at the meeting of the Board of Director or members, but may not vote thereat authorizing any such contract or transaction.

NINTH: (1) As used in this Article NINTH, any word or words that are defined in Section 2-418 of the Corporations and Associations Article of the Annotated Code of Maryland (the "Indemnification Section"), as amended from time to time, shall have the same meaning as provided in the Indemnification Section.

(2) The Corporation shall indemnify a present or former member, director or officer of the Corporation in connection with a proceeding to the fullest extent permitted by and in accordance with the Indemnification Section.

(3) With respect to any corporate representative other than a present or former member, director or officer, the Corporation may indemnify such corporate representative in connection with a proceeding to the fullest extent permitted by and in accordance with the Indemnification Section; provided, however, that to the extent a corporate representative other than a present or former member, director or officer successfully defends on the merits or otherwise any proceeding referred to in subsections (b) or (c) of the Indemnification Section or any claim, issue or matter raised in such proceedings, the Corporation shall not indemnify such corporate representative other than a present member, director, or officer under the Indemnification Section unless and until it shall have been determined and authorized in the specific case by an affirmative vote, at a duly constituted meeting of a majority or all the votes cast by members who were not parties to the proceeding, that indemnification of such corporate representative other than a present or former director or officer is proper in the circumstances.

IN WITNESS WHEREOF, I have signed these Articles of Incorporation this \_\_\_\_ day of \_\_\_\_\_, 2020 and I acknowledge the same to be by my act.

WITNESS:

\_\_\_\_\_

(Print Name)

\_\_\_\_\_  
(SEAL)  
Christopher F. Drummond

**BYLAWS OF DELTA VILLAGE  
TOWNHOUSES COMMUNITY ASSOCIATION, INC.**

**ARTICLE I**

**NAME AND LOCATION**

The name of the association is Delta Village Townhouses Community Association, Inc., hereinafter referred to as the "Association". The principal office of the Association shall be located in Annapolis, Maryland, as determined by the Board of Directors, but the meetings of the Lot Owners and Directors may be held at such places as may be designated by the Board of Directors.

**ARTICLE II**

**DEFINITIONS**

Section 1. "Association" shall mean and refer to Delta Village Townhouses Community Association, Inc., and its successors and assigns.

Section 2. "Common Facilities" shall mean any improvements to the Common Area, if any, which are owned or leased by the Association for the common use and enjoyment of the Lot Owners.

Section 3. "Common Area" shall mean and refer to Parcel 155 owned by the Association.

Section 4. "Declaration" shall mean and refer to the Declaration of Covenants And Restrictions and recorded among the Land Records of Kent County.

Section 5. "Developer" shall mean and refer to the Declarant, Fifth Investments, LLC, its successors or its assigns who sell units for the first time to members of the public.

Section 6. "Lot Owner" shall mean all persons with a fee simple interest in Lots 1 through 24 as shown on the "Final Subdivision Plat of the Lands of Fifth Investments, LLC" recorded among the Land Records of Kent County.

**ARTICLE III**

**A. LOT OWNERS**

Section 1. Owners Every person, group of persons, corporation, trust or other legal entity, or any combination thereof, which owns a lot within Delta Village Townhouses as the same is constituted from time to time, shall be a member of the Association ; provided, however, that any

person, group or persons, general partnership, limited partnership, corporation, trust or other legal entity, or any combination thereof, which holds such interest solely as security for the performance of an obligation shall not be deemed a Unit Owner.

Section 2. Bylaws Applicability These Bylaws are applicable to the twenty four (24) townhouse lots and Common Area shown on the Final Subdivision Plat. In construing these Bylaw, and the governance of the Association pursuant thereto, the provisions of the Corporations and Associations Article of the Annotated Code of Maryland, as amended, pertaining to the governance of nonstock corporations, shall be considered as governing to the extent not inconsistent with the provision of the Act, the Declaration and these Bylaws; the Association being considered the Corporation and the Lot Owners being considered its members.

## B. MEETINGS

Section 1. Place of Meetings Meetings of the Association shall be held at the principal office or place of business of the Association or at such other suitable place convenient to the Association as may be designated by the Board of Directors. The Chairman of the Board of Directors shall preside at all meetings of the Association.

Section 2. Annual Meetings The Organizational and First Meeting of the Association shall be held within sixty (60) days after the date of which fifty percent (50%) of the lots as established on the Final Subdivision Plat have been conveyed to Purchasers for value. Thereafter, annual meetings of the Association shall be held during the month of January of each succeeding year, such date and time as decided by the Board of Directors. At such meeting, members of the Board of Directors shall be elected by ballot of the Lot Owners, in accordance with the requirements of Article V of these Bylaws. The Association shall adopt an annual budget as proposed by the Board of Directors and may transact such other business may properly come before it. All meetings of the Association shall be open except as otherwise permitted by the Open Meetings Act. Minutes of all meetings of the Association shall be kept and maintained by the Secretary who need not be a member, but who shall be appointed from year to year by a majority vote of the Board of Directors.

Section 3. Special Meetings It shall be the duty of the President to call a special meeting of the Association as directed by resolution of the Board of Directors or upon a petition signed by Lot Owners representing at least twenty-five (25%) of the total voters, as then constituted, having been presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 4. Notice of Meetings It shall be the duty of the Secretary or his agent to deliver or send, by first class mail, a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Lot Owner of record, at his address as it appears on the current roster of the Association on date of the notice, or if no such address

appears, at his last known address, not less than ten (10) and nor more than ninety (90) days prior to such meeting unless the Act provides for a shorter time in which case the Act will control. Service may also be accomplished by the delivery of any such notice to the Lot Owner at his Condominium Lot or at his last known address. Notice by either such method shall be considered as notice served. Attendance by a Lot owner at any meeting of the Association shall be a waiver by him of notice of the time, place and purpose thereof.

Section 5. Quorum The presence in person or by proxy at the meeting of the Lot Owners entitled to cast twenty-five (25%) of the votes of the Lot Owners shall constitute a quorum for any action except as otherwise required in the Articles of Incorporation, the Declaration or these ByLaws. If, however, such a quorum shall not be present or represented at any meeting, the Lot Owners in attendance and entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until the quorum as aforesaid shall be present or represented.

Section 6. Voting At every meeting of the Association, each of the Lot Owners shall have the right to cast one vote for each Lot which he owns on each question. The votes established in Paragraph 14 of the Declaration shall be applicable to voting rights. The majority vote of the Lot Owners present and voting at that meeting shall decide the question presented, unless the question is one upon which, by express provision of the Act, the Declaration or these Bylaw, a different vote is required, in which case such express provision shall govern and control. No Lot Owners shall be eligible to vote at any annual or special meeting of the Association, or be elected to an office or to the Board of Directors, if a Statement of Condominium Lien has been recorded against his Lot and the amount necessary to release the lien has not been paid at the time of the meeting. Votes shall be counted by the Chairman of the Board of Directors.

Section 7. Proxies At all meetings of Lot Owners, each Lot Owner may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable, shall be valid only for the meeting for which it is given, and shall automatically cease upon conveyance by the Lot Owner of his Lot.

## ARTICLE IV

### BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

Section 1. Number After the first annual meeting, the affairs of this Association shall be managed by a Board of Directors consisting of Three (3) Directors. The initial Directors, who need not be Lot Owners, shall be M. Kate Weaver, Christopher F. Drummond, and \_\_\_\_\_ . Following the initial meeting of the Association, at least one (1) Director shall be a Lot Owner.

Section 2. Term of Office At the first annual meeting the Lot Owners shall elect three (3)

Directors for terms of two (2) years.

Section 3. Removal; Vacancies After the first annual meeting of the Association, any Director may be removed from the Board of Directors, with or without cause, by a majority vote of the Association. In the event of death, resignation or removal of a Director, his successor shall be selected by the remaining Directors on the Board of Directors (whether or not they constitute a quorum) and shall serve for the unexpired term of this predecessor.

Section 4. Compensation No remuneration shall be paid to any Director for services performed by him unless a resolution authorizing such remuneration shall have been adopted by the Board Directors before the services are undertaken.

Section 5. Action Taken Without a Meeting To the greatest extent permitted by law, the Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Board of Directors.

## ARTICLE V

### NOMINATION OF ELECTION OF DIRECTORS

Section 1. Nomination Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall be appointed by the Board of Directors and shall consist of a Chairman, who may be a member of the Board of Directors, and two or more Lot Owners. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nomination may be a made from among that Lot Owners or non-members, subject to Article IV, Section 1 hereof.

Section 2. Election Election to the Board of Directors shall be by secret written ballot. At such election, the Lot Owners or their proxies may cast, in respect to each vacancy, as many voters as they are entitled to exercise under the provisions of the Declaration. The eligible persons receiving the largest number of votes shall be elected, as provided by Section 2 of Article IV of these Bylaws. Cumulative voting is not permitted.

## ARTICLE VI

### MEETING OF DIRECTORS

Section 1. Regular Meetings Regular meeting of the Board of Directors shall be held at least annually and otherwise as needed. Notice of regular meetings shall be sent to the Directors via newsletter or by any other reasonable means, as required by law. Meetings shall be at such

place and hour as may be fixed from time to time by resolution of the Board of Directors. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday. At each annual meeting, the Board of Directors shall appoint a chairman.

Section 2. Special Meetings Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two Directors, after not less than three (3) days notice to each Director, and upon such notice to the Lot Owners as required by law.

Section 3. Quorum A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present, shall be regarded as the act of the Board of Directors. Each Director of the Board of Directors shall be entitled to cast one vote on each issue being decided by the Board of Directors. There shall be no voting by proxy at meetings of Board of Directors.

## ARTICLE VII

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS; LIABILITY AND INDEMNIFICATION

Section 1. Management and Common Expenses. The Board of Directors shall manage, operate and maintain the Common Area and enforce the provisions of the Declaration and, for the benefit of the Lots and the Lots Owners thereof, shall enforce the provisions hereof and may pay out of the Association budget, herein-elsewhere provided for, the following, which itemization shall not act as a limitation on the Board of Directors:

(a) The cost, if any, of providing water, sewer, garbage and trash collection, electrical (including street lighting), and other necessary utility services for the Common Area and, to the extent that the same are not separately metered or billed to each Lot.

(b) The cost of public liability, fire, flood and extended coverage insurance on the Common Area and the cost of such other insurance as is required by the Declaration or the Bylaws or as the Board of Directors or the Association may deem necessary or appropriate.

(c) The cost of the services of a person or firm to manage the Common Area to the extent deemed advisable by the Board of Directors, together with the services of such other personnel as the Board of Directors shall consider necessary for the operation of the community.

(d) The cost of providing such legal and accounting services as may be considered necessary to the operation of the Association.

(e) The cost of painting, maintaining, replacing, repairing, improving, altering, and

landscaping the Common Area, and of any dredging or filling which may be undertaken by the Association, including such furnishings and equipment for the Common Area as the Board of Directors shall determine are necessary and proper, and the Board of Directors shall have the exclusive right and duty to acquire or provide for the same.

(f) The cost of any and all other materials, supplies, labor, services, maintenance, repairs, takes, assessments or the like which the Association is required to secure or to pay for by law, or otherwise, or which in the direction of the Board of Directors shall be necessary or proper for the operation of the Common Area, provided, however, that if any of the aforementioned are provided or paid for the benefit of a particular lot, other than as required by the Declaration, the cost thereof shall be assessed only to the Lot Owner or Owners thereof, provided that the Board of Director shall have given notice thereof, in advance, to the Lot Owner or Owners affected a statement for the amount due.

(g) Any amount necessary to discharge any lien or encumbrance levied against the Common Area or any portion thereof, which may, in the opinion of the Board of Directors, constitute a lien against any of the Common Area rather than the interest of the Lot Owner of any individual lot.

(h) The cost of maintaining, replacing and repairing any improvements erected by the Developer on, from, or as part of the Common Area.

(i) The cost of all permits or licenses required in connection with any functions of the Association (including but not limited to any licenses or permits required for dredging, filling or construction, installation, repair or alteration or improvements made into the adjacent waters), and the cost of complying with any governmental requirement imposed with respect to the Association and the adjacent waters and any actively undertaken by the Association thereon.

Section 2. Management Agent. The Board of Directors may delegate such of its duties, powers, or functions to a Management Agent as the Directors shall authorize, provided that such delegation may be terminated by either party without cause or payment of a termination fee on a maximum of ninety (90) days written notice.

Section 3. Duty To Maintain. Except for maintenance requirements imposed upon the Association by the Declaration or Bylaws, if any, the Lot Owner of each lot shall, at his own expense, maintain any and all equipment, appliances or fixtures forming part of his lot and its other appurtenances in good order, condition and repair, and in a clean and sanitary condition.

Section 4. Limitation of Liability. The Association shall not be liable for any failure of water supply or other utilities or services to be obtained by the Association or paid for out of the Association's budget, or for injury or damage to persons or property caused by the elements or by any Lot Owner or any other person, or resulting from electricity, water, snow, or ice which may leak or flow from any portion of the Common Area. The Association shall not be liable to any

Lot Owners for loss or damage, by theft or otherwise of articles which may be stored upon any of the Common Area.

Section 5. Liability and Indemnification of Officers and Directors. The Association shall indemnify every Officer and Director of the Association against and any all expenses, including counsel fees, reasonably incurred by or imposed upon any Officer or Director in connection with any action suit or other proceeding, including the settlement of any such suit or proceeding, if approved by the then Board of Directors, to which he may be made a party by reason of being or having been an Officer or Director of the Association, whether or not such person is an Officer or Director at the time such expenses are incurred. The Officers and Directors of the Association shall be liable to the Association and the Lot Owners for any wilful misconduct or bad faith, but shall not be liable for mistakes of judgment or otherwise if made in good faith. The Officers and Directors of the Association shall not have any personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association shall indemnify and forever hold each such Officer and Director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Officer or Director of the Association, or former Officer or director of the Association, may be entitled.

Section 6. Common or Interested Directors

(a) The Directors shall exercise their powers and duties in good faith and with a view to the interests of the Association.

(b) No contract or other transaction between the Association and one or more of its Directors, or between the Association and any corporation, firm or association, including the Developer, in which one or more of the Directors are Directors or Officers, are pecuniarily or otherwise interest, is either void or voidable because such Director or Directors are present at the meeting of the Board of Directors, or any committee thereof, which authorizes or approves the contract or other transaction, or because his of their votes are counted for such purpose, if any of the conditions specified in any of the following sub-paragraphs exist:

(1) The fact of the common directorate, office or interest is disclosed or known to the Board of Directors, or a majority thereof, or noted in the Minutes, and the Board of Directors authorizes, approves or ratifies such contract or other transaction in good faith by a vote sufficient for the purpose; or

(2) The fact of the common directorate, office or interest is disclosed or known to the Directors, or a majority thereof, and they approve or ratify the contract or other transactions in good faith by a vote sufficient for the purpose; or

(3) The contract or other transaction is commercially reasonable to the

Association at the time it is authorized, ratified, approved or executed.

(c) Common or interested Directors may be counted in determining the presence of a quorum at any meeting of the Board of Directors, or any committee thereof, which authorizes, approves or ratifies any contract or other transaction, and may vote thereat to authorize any contract or other transaction with like force and effect as if he were not such Director or Officer of such other corporation or not so interested.

Section 7. Preparation of Annual Budget. The Board of Directors shall prepare a proposed annual budget for the following fiscal year by December 15<sup>th</sup>. The proposed budget shall be delivered to all Unit Owners by December 31<sup>st</sup> of each year for consideration and approval at the annual meeting of the Association.

## ARTICLE VIII

### ASSOCIATION FEES/ASSESSMENTS

#### Section 1. Annual Fees/Assessments.

(a) From and after the recordation of the Declaration and these Bylaws, each Lot Owner shall pay to the Association, in advance, a monthly sum (hereinafter called "Assessments") equal to one-twelfth (1/12) of the Lot Owner's proportionate share of the sum required by the Association to meet its annual budget, including, but in no way limited to, the following:

(1) The cost of all operating expenses of the Association as the same may be constituted from time to time, and services furnished, including charges by the Association for facilities and services furnished by it;

(2) The cost of necessary management and administration, including fees paid to any Management Agent;

(3) The amount of all taxes and assessments levied against the Association or upon any property which it is otherwise required to pay, if any;

(4) The cost of public liability, fire, floods, and extended coverage insurance on the Common Area maintained by the Association and the cost of such other insurance as the Association or the Board of Directors may effect;

(5) The cost, if any, of furnishing water, electricity, heat, gas, garbage, and trash collection and/or utilities, to the extent furnished by the Association;

(6) The cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve and/or reserve for replacements;

(7) In addition, each Lot Owner shall pay to the Association, monthly, the amount of any fine levied by the Board of Directors in accordance with the procedures in these Bylaws, and such fine shall be a lien in the same manner as if it were a common expense.

(b) The Board of Directors shall determine the amount of the assessment annually by preparation and adoption of an annual budget. The budget shall be amended only in accordance with the other requirements of law.

(c) The omission of the Board of Directors, before the expiration of any budget period, to adopt a budget hereunder for that or the next period shall not be deemed a waiver or modification preceding in any respect of the provisions of this Article, or a release of assessment installment thereof, for that or any subsequent budget period, but the budget fixed for the period shall continue until a new budget is fixed. No Lot Owner may exempt himself from liability for assessments by a waiver of the use or enjoyment of the Common Area, or by abandonment of any Lot belonging to him. Expenditures increasing the annual assessment in excess of fifteen percent (15%) shall be levied as provided herein.

Section 2. Special Assessments. In addition to the regular assessment authorized by this Article, the Association may levy in any assessment year a special assessment or assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement on or to the Common Area, as then constituted, including the necessary fixtures and personal property related thereto, or for such other purpose as the Board of Directors may consider appropriate, provided that a meeting of the Lot Owners shall be duly called for the purpose of approving such special assessment, written notice of which shall be sent to all Lot Owners at least ten (10) days, but not more than ninety (90) days, in advance of such meeting, and which notice shall set forth the purpose of the meeting, and provided further that at such meeting the special assessment shall be approved by a majority of Lot Owners present, in person or by proxy.

Section 3. Reserve for Replacements. The Association shall establish and maintain a reserve fund for replacements by the allocation and payment monthly to such reserve fund of an amount to be designated, from time to time, by the Board of Directors, which shall not be less than five percent (5%) of the aggregate monthly installments levied pursuant to the provisions of this Article. Such fund shall be conclusively deemed to be a common expense. Such funds shall be deposited in a special account with a financial institution, the accounts of which are insured by an agency of the United States of America, or may, in the discretion of the Board of Directors, be invested in the obligations of, or fully guaranteed as to principal by, The United States of America, states, municipalities, or counties thereof. The reserve for replacements may be expended only for the purpose of effecting the replacement or substantial repair of improvements on or to the Common Area or for operating contingencies of a non-recurring nature. The proportionate interest of any Lot Owner in any reserve for replacements shall be considered an appurtenance of his lot and shall not be separately withdrawn, assigned, transferred or otherwise separated from the Lot to which it appertains, and shall be deemed to be transferred with such lot.

Section 4. Non-Payments of Assessments.

(a) A Lot Owner shall be liable for all assessments, or installments thereof, and fines or other charges coming due while he is the Owner of a lot. In a voluntary grant, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments, fines or other charges against the grantor for his share of the common expenses up to the time of the voluntary grant for which a Statement of Lien is recorded, without prejudice to the rights of the grantee to recover from grantor the amounts paid by the grantee for such assessments.

(b) All assessments, fines, or other charges, until paid, together with interest at the maximum rate permitted on them, actual costs of collection, reasonable attorneys' fees or attorneys' fees of twenty-five percent (25%), whichever is greater, and late charges at the maximum rate permitted by law, constitute a lien on the lots on which they are assessed, which may be established and enforced as provided by law. On full payment of the assessment and/or fine for which the lien is claimed the Lot Owner shall be entitled to a recordable satisfaction of the lien.

(c) Any assessment, fine or other charge, or installment thereof, not paid within 15 days of the due date shall bear interest, from the date when due until paid, at the rate of 18% per annum.

(d) The Association shall, upon written demand, notify the holder of any mortgage on any lot for which any assessment levied pursuant to these Bylaws becomes delinquent for a period in excess of thirty (30) days, and in any other case, where the Lot Owner is in default with respect to the performance of any other obligation hereunder for a period in excess of thirty (30) days.

Section 5. Assessment Certification. The Association shall, upon demand, furnish to any Lot Owner liable for any assessment, fine, or other charge levied pursuant to the Bylaws (or to any other party legitimately interested in the same), a certificate in writing signed by an officer of the Association or its agent, setting forth the status of the assessment, *i.e.*, whether the same is paid or unpaid. Such certificate shall be conclusive evidence of the payment of any assessment thereafter stated to have been paid. A charge not to exceed twenty-five (\$25.00) dollars or the actual cost of preparing such certificate, whichever is higher, may be levied in advance by the Association for each certificate so delivered.

Section 6. Acceleration of Installments. Upon default in the payment of any one or more monthly installments of any assessment, fine, or other charge levied pursuant to those Bylaws, the entire balance of said assessment and/or fine may be accelerated at the option of the Board of Directors, and be declared due and payable in full.

Section 7. Enforcement. The lien for unpaid assessments, fines, or other charges may be established, enforce and foreclosed by the Association or any other person specified herein or by the Board of Directors, in the same manner, and subject to the same requirements, as the

foreclosure of mortgages or deeds of trust on real property in the State of Maryland, and as otherwise provided by law. Suite for any deficiency following foreclosure may be maintained in the same proceeding and suit to recover a money judgment for unpaid assessments may be maintained without waiving the lien and securing the same.

Section 8. Subordination and Mortgagee Protection.

(a) Notwithstanding any other provisions hereof to the contrary, the lien of any assessment levied pursuant to these Bylaws upon any lot shall be subordinate to, and shall in no way affect the rights of the holder of, or any indebtedness secured by, any recorded first mortgage, meaning a mortgage with priority over other mortgages, made in good faith and for value received, provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the purchaser at such sale of the lot from liability for any assessment thereafter becoming due, nor from the lien of any such subsequent assessment, which lien, if claimed, shall have the same effect, and be established and enforced in the same manner as provided herein.

(b) No amendment to these Bylaws shall affect the rights of the holder of any such mortgage, or the indebtedness secured thereby, recorded prior to recordation of such amendment, unless the holder thereof, or of the indebtedness secured thereby, shall join in the execution of such amendment.

(c) The Board of Directors may, in its sole and absolute discretion, extend the provisions of this Section to the holders of a mortgage, or the indebtedness secured thereby, not otherwise entitled thereto.

Section 9. Definitions. As used herein the term "mortgage" shall include deed of trust and the term "holder" or "mortgagee" shall include the party secured by any deed of trust, any beneficiary thereof and the Trustees named therein, their successors and assigns.

Section 10. Foreclosure of Assessments Lien. Foreclosure of the assessment lien shall not take place until after the mortgagee of that Lot is notified pursuant to Section 4(d) of this Article and the said mortgagee is given fifteen (15) days to obtain compliance by the Lot Owner with the assessment requirements hereinbefore stated.

## ARTICLE IX

### COMMITTEES

The Board of Directors shall appoint an Architectural Control Committee and a Nominating Committee. In addition, the Board of Directors may appoint other committees as deemed appropriate in carrying out its purposes.

## **ARTICLE X**

### **BOOKS AND RECORDS**

The books, records and papers of the Association shall be maintained at the principal office of the Association or such other place designated by the Board of Directors from time to time. Any Lot Owner or his agent may inspect and copy during usual business hours any of the following documents: the Declaration, the Bylaws, the Articles of Incorporation, the Minutes of the proceedings of the Lot Owners and Board of Directors, and annual statements of affairs.

## **ARTICLE XI**

### **AMENDMENTS**

Section 1. These Bylaws may be amended, at a regular or special meeting of the Lot Owners, by a vote of two-thirds of the Lot Owners present in person or proxy, provided a quorum is present and provided that a copy of any proposed amendment accompanied the notice of the meeting.

Section 2. In the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

## **ARTICLE XII**

### **MISCELLANEOUS**

The fiscal year of the Association shall begin on the first day of January and end on the 31<sup>st</sup> day of December of every year, except that the first fiscal year shall begin on the date of recordation of these Bylaws.

THIS DECLARATION OF COVENANTS AND RESTRICTIONS OF DELTA VILLAGE TOWNHOUSES (the "Declaration") made on the \_\_\_\_\_ day of \_\_\_\_\_, 2020 by FIFTH INVESTMENTS, LLC., a Maryland limited liability company, (hereinafter referred to as "the Declarant") and EMILY C. McCOY and CHRISTOPHER A. DELANTY (hereinafter referred to as "Lot \_\_ Owners")

WITNESSES:

WHEREAS, the Declarant is the owner of that tract or parcel of land more particularly described in a Deed dated October 26, 2012 and recorded among the Land Records of Kent County at Liber 740, folio 347 hereinafter the "Property"), and

WHEREAS, on November 17, 1982, the Property was subjected to a condominium regime known as Delta Heights Condominium pursuant to a Declaration and Condominium Plat recorded among the Land Records of Kent County at Liber 140, folio 001 and Plat Book No. EHP2, folio 38, and

WHEREAS, the Declarant conveyed Unit B4 to the Lot \_\_ Owners by Deed dated September 3, 2019 and recorded among the Land Records of Kent County at Liber 1028, folio 96, and

WHEREAS, the Declarant and Lot \_\_ Owners terminated the condominium regime pursuant a Termination Agreement dated \_\_\_\_\_, 2020 and recorded among the Land Records of Kent County at Liber \_\_\_\_\_, folio \_\_\_\_\_, and

WHEREAS, the Declarant and Lot \_\_ Owners have caused a subdivision plat, captioned as "Final Subdivision Plat Of The Lands Of Fifth Investments, LLC, to be recorded among the Land Records of Kent County at Plat Book No. \_\_\_\_\_, folio \_\_\_\_\_ which has the effect of creating 24 townhouse lots and one (1) common area lot on the Property, and

WHEREAS, Lot \_\_ Owners conveyed former Unit B4 to themselves for the purpose of retitling the former condominium unit to reflect its new status as Lot \_\_ by Deed dated \_\_\_\_\_, 2020 and recorded among the Land Records of Kent County at Liber \_\_\_\_\_, folio \_\_\_\_\_, and

WHEREAS, the Declarant intends to continue to effect a general plan or scheme of development for the orderly, efficient and harmonious utilization of the lots in the Delta Village Townhouses development in order to preserve the value and amenities of said lots, and

WHEREAS, the success of such plan depends upon the lots being made subject to the several covenants, agreements, restrictions, conditions and charges hereinafter set forth, all of which are for the benefit of the Property and owners of the different lots, and

WHEREAS, the Declarant intends for the aforesaid reasons and purposes, to subject said lots of land, to all the hereinafter stated covenants, agreements, restrictions and charges, and

WHEREAS, Lot \_\_ Owners join in the execute of the Declaration to subject Lot \_\_ to the force and effect of the covenants, agreements, restrictions, and charges hereinafter set forth, and

WHEREAS, the Declarant intends to convey Parcel 155 as shown on the Plat to the Association for use and benefit al all lot owners,

NOW, WHEREFORE, the Declarant does hereby create, declare, establish and impose the following covenants, agreements, restrictions, conditions and charges to run with and bind the aforesaid lots known as "Delta Village Townhouses."

## ARTICLE I DEFINITIONS

Definitions. Whenever used in this Declaration, the following definitions shall apply, unless a contrary intention is clearly evident from the context:

- (a) "Association" means and refer to Delta Village Townhouses Homeowners Association, Inc., a Maryland non-stock corporation, and its successors and assigns.
- (b) "Common Area" means Parcel 155 as shown on the Plat.
- (c) "County" means Kent County, County, Maryland or the County Commissioners of Kent County, Maryland, as the context may require.
- (d) "Lot" means and refers to each of those portions of the Property that are subdivided parcels of land shown and defined as Lots or Lots of ground and designated by numerals on the Plat, on which a dwelling is constructed.
- (e) "Owner" means the person owning the record fee simple title to one of the Lots, including any contract purchaser, but not including mortgagee or other holder of a similar security interest.
- (f) "Person" shall include individuals, co-partnerships, associations, incorporations, trusts and any other legal entity; the single shall include the plural, and the masculine the feminine and the feminine and the neuter as the context may require.
- (g) "Final Subdivision Plat of the Lands of Fifth Investments, LLC", "Delta Village Townhouses", or "Plat" mean the plats recorded among the Land Records of Kent County in Plat Book \_\_\_\_, folio \_\_\_\_;
- (h) "Property" means all of the real property described on the Plat and such additions or amendments thereto as may hereafter be made pursuant hereto, and any additional land at such time as it is hereafter expressly made subject to this Declaration by an instrument in writing, duly executed and recorded among the Land Records.

(i) "Stormwater" shall include, in addition to its normal and customary meaning and the meaning given to those terms by federal, State, and local law and regulation, subsurface water to the extent that such subsurface water shall reach the surface of property in the Meadow Brook Estates or otherwise affect, contribute, increase, exacerbate, or interfere with or inhibit the drainage of surface waters in, above, under, on, or through the Property.

(j) "Structure" means any thing or device the placement of which upon the Property (or any part thereof) may affect the appearance of the Property (or any part thereof). "Structure" shall also mean (i) any excavation, fill, ditch, diversion, dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across the Lots and the Property, or which affects or alters the flow of any waters in any natural or artificial stream, wash, drainage channel or swale, or stormwater management facility from, upon, or across the Property, and (ii) any change in the grade of the Property (or any part thereof) of more than six (6) inches from that existing at the time of first ownership by a record owner hereunder other than the Declarant.

## ARTICLE II ARCHITECTURAL CONTROLS

1. Architectural Control. Except for construction or development done for the purpose of proper maintenance and repair, no building or structure, including additions or accessories thereto, including without limitation, dwellings, garages, dog kennels, fences, walls, swimming pools, tennis courts, exterior lighting, screens, awnings, patio covers, sidewalks, curb and gutters, patios, balconies, porches, driveways and signs, shall be commenced, constructed, erected, moved, removed or maintained, nor shall an addition to, change or alteration (including change of color of any exterior part), be made until the written and printed plans and specifications showing the location (by survey), nature, shape, height, type of construction, materials, floor plan, exterior color scheme (which shall be neutral or earth tone hues), topography and any other information specified by the Architectural Review Committee shall have been submitted to and approved in writing as to safety, harmony of exterior design, color, and location in relation to surrounding structures and topography, and conformity with the design concept of the community by an Architectural Review Committee. This approval shall be obtained prior to any building permit application being filed with any Kent County approving authority. The Architectural Review Committee shall grant or deny approval of all such applications within thirty (30) days of receipt of a final application. Any changes to the plans and specifications submitted and approved shall be provided to the Architectural Review Committee at least 15 days prior to the commencement of construction. Once construction commences, there shall be no deviations from the plans submitted to the Architectural Review Committee.

2. Architectural Review Committee. The Board of Directors may appoint an Architectural Review Committee. The Architectural Review Committee shall be composed of three (3) or more persons designated from time to time by the Board of Directors. The affirmative vote of a majority of the members of the Architectural Review Committee shall be required in order to adopt or promulgate any rule or regulation, or to make any finding, determination, ruling or order, or to issue any permit, consent, authorization, approval or the like pursuant to the authority contained in this Article. Said Committee may, from time to time,

delegate its ministerial and policing functions to a managing agent.

All of the responsibilities and duties herein delegated to the Architectural Review Committee shall be carried out by the Board of Directors of the Association, unless and until the Board appoints such a Committee. References hereinafter to the Architectural Review Committee shall apply with equal force to the Board of Directors acting in the capacity of such a Committee.

3. Plans and specifications. The approved plans and specifications and all plans and specifications submitted shall be deposited among the permanent records of the Architectural Review Committee, and a copy bearing such written approval shall be returned to the owner. In the event the Architectural Review Committee fails to approve or disapprove any plans and specifications within thirty (30) days of their receipt, together with all other materials and information it may require, then the Architectural Review Committee shall be deemed to have approved such plans and specifications, and this Article complied with.

4. Limitations. Any approval given hereunder shall be null and void unless construction is commenced within six (6) months of the date of such approval, and shall be substantially completed including driveways and seeding of areas disturbed during construction within eighteen (18) months following the date of commencement, or within such other period as the Architectural Review Committee shall specify in writing; provided, however, that the time for completion shall be extended commensurate with the period of interruption of construction caused by war, acts of God, strikes, labor disputes or other matters beyond the control of the owner. In the event construction is not commenced within the period aforesaid, then approval of plans and specifications by the Architectural Review Committee shall be deemed to have lapsed and compliance with all of the provisions of this Article II shall again be required.

There shall be no deviation from the plans and specifications approved by the Architectural Review Committee without its prior written consent. Approval of any particular plan, specification or design shall not be a waiver of the right of the Architectural Review Committee to disapprove any such plan or specification or any element or feature thereof in the event the same is subsequently resubmitted by an owner.

5. Building setbacks, Except as provided under Article III, Section 2 (m) hereof, no structure, including without limitation the main dwelling and accessory structures, shall be located outside of the building restriction line (B.R.L.) shown on the plat.

6. Driveways. All driveways shall be paved with concrete or asphalt.

7. Appeals. Any Member dissatisfied with a decision of the Architectural Review Committee may, within fifteen (15) days after the rendering of such decision, make an appeal thereof to the Board of Directors. Not less than fifteen (15), nor more than sixty (60) days, after the noting of such appeal, the Board of Directors shall conduct a hearing thereon. Within fifteen (15) days of such hearing, the Board of Directors may affirm, reverse, modify, or remand the decision appealed. Two-thirds (2/3) of the Board of Directors shall be required to reverse a

decision of the Architectural Review Committee. The Board of Directors is hereby authorized and empowered to promulgate reasonable rules of procedure for the conduct of such appeals and hearings. In the event that the Board of Directors itself acts in the capacity of the Architectural Review committee, no such right of appeal will lie and the decision of the Architectural Review Committee will be final.

8. Rules and Regulations. The Architectural Review Committee may from time to time adopt statements of policy, standards, guidelines and establish criteria relating to architectural styles, details, fences, colors, setbacks, materials, location of improvements, landscaping plans, and other matters relative to architectural control as it may consider necessary and appropriate. No such rules, regulations and statements shall be construed as a waiver of the provisions of this Article or any other provision or requirement of this Second Amendment, and a decision of the Architectural Review Committee as to such matters shall be final.

### **ARTICLE III MEMBERSHIP IN ASSOCIATION**

1. Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot, including contract sellers, shall be Member of the Association; provided that any such person or entity who or which holds such interest merely as security for the performance of an obligation shall not be a member. Membership shall be appurtenant to, and may not be separated from, ownership of any lot which is subject to assessment by the Association.

2. Voting Rights. Every owner shall be a Member of the Association and shall hold one (1) membership interest for each lot owned. When more than one (1) person holds such an interest in any lot, all persons shall be Members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast by a Member with respect to any one (1) lot.

### **ARTICLE IV USE RESTRICTIONS**

1. Residential use. Each lot may be improved only by a main dwelling or residence for the occupancy of one family, together with accessory structures as may be approved by the Architectural Review Committee. No dwelling shall be leased for a term of less than six (6) months.

2. Prohibited uses. Except with the prior written approval of the Board of Directors of the Association or the Architectural Review Committee, or as may be necessary in connection with reasonable and necessary repairs or maintenance of any dwelling or the common area, no noxious or offensive trade, or business, shall be carried on upon any lot nor shall anything be done or kept there on which may be or become an annoyance or nuisance to the neighbors. Without limiting the generality of the foregoing:

(a) No speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be maintained on the exterior of any dwelling or other structure constructed on any lot. No snowmobiles, go-carts, motor bikes, trail bikes, all-terrain vehicles or other loud engine recreation vehicles shall be operated on any lot or upon the roadways within Delta Village Townhouses.

(b) No animals, livestock, poultry or other fowl of any kind shall be raised, bred or kept on any lot, except a total of five (5) dogs, cats or other household pets, provided that the same are confined and do not roam at large, or become a source of annoyance to the neighbors.

(c) No lumber, metal, bulk materials, refuse or trash shall be allowed to accumulate on any lot, except building materials during the course of construction of any approved structure.

(d) No burning of trash shall be permitted. Trash and refuse containers shall be stored in such a manner as to not be visible from the roadways or other lots within Meadow Brook Estates, except for being placed out on the day on which they are regularly picked up.

(e) No boats, unlicensed or inoperable motor vehicles, commercial vehicles, house trailers, tractors, or other similar vehicles or pieces of equipment shall be kept upon any lot or in the parking areas. No motor vehicles of any kind shall be regularly parked upon any of the roadways within Delta Village Townhouses. Boats and recreational vehicles may be stored only in an area within the common area of Lot 25 as may be designated for such use, from time to time, by the Board Of Directors.

(f) No structure of a temporary character shall be erected, used or maintained on any lot at any time.

(g) Except for entrance, directional, traffic control, or safety and promotional signs by Declarant, no signs or advertising devices of any nature shall be maintained on any lot; provided, however, that one temporary "For Sale" or "For Rent" sign not exceeding five (5) square feet in area may be erected. Any such real estate sign shall be removed promptly following the sale or rental of the property.

(h) No structure, planting or other material shall be placed or permitted to remain upon any lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may unreasonably change, obstruct or retard the direction or flow of any drainage ways.

(i) Vegetable gardens are not permitted in front yards.

(j) No satellite dishes larger than thirty inches (30") in diameter or other transmitting or receiving antennae of any kind may be located outside of a dwelling unless landscaped so as to minimize visibility from the roadway and other lots in Delta Village Townhouses.

(k) No exterior lighting shall be placed or fixed in such a manner as to cause a

concentrated beam to be directed outside the boundaries of any lot,

(l) All fences shall be made of wood or vinyl, except that the post may be concrete, and shall not exceed five (5) feet in height. Chain link or other metal fences are prohibited without prior specific approval, which approval will only be given in special instances and where adequate screening or landscaping is provided.

(m) Outbuildings/storage structures and swimming pools shall be permitted as accessory structures; provided, they are placed on permanent foundations and are architecturally and aesthetically compatible with the main dwelling as determined by the Architectural Review Committee in their sole and absolute discretion.

(n) Hunting is strictly prohibited and no firearms may be discharged on lots at any time.

3. Maintenance. Every lot owner shall keep his or her lot, including gardens and all improvements thereon, in good order and repair including but not limited to the seeding, watering and mowing of grass, the pruning and cuffing of all trees and shrubbery, and the painting, or other appropriate external care, of all buildings and other structures in the manner and with the frequency that is consistent with good property management. Roof shingles may be replaced as necessary with the same color and design as the shingles to be replaced.

In the event an Owner of any Lot shall fail to maintain the Lot and the improvements situated thereon, the Board of Directors may appoint someone to enter upon said Lot to correct drainage and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. All costs related to such correction, repair, or restoration shall become a lien upon such Lot, and such lien may be enforced in the same manner as an annual assessment levied in accordance with Article VII hereof. Any such lien shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure, or any proceeding or act in lieu thereof, shall extinguish any such lien as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof. No amendment to this Section shall affect the rights of the holder of any first mortgage on any Lot (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof (or the indebtedness secured thereby) shall join in the execution of such amendment.

## **ARTICLE V EASEMENTS**

1. Easements. Easements are hereby expressly reserved upon, in and over strips of land ten (5) feet in width along all interior lot lines and strips of land ten (10) feet in width along exterior lot lines for the purpose of erecting, constructing and maintaining utility lines, wires and conduits with the necessary and proper attachments in connection therewith for the transmission of electricity and for telephone and other public utilities or services and for public sanitary sewers

and storm water drainage; and Declarant, or nominee, shall have the right to enter upon said reserve strips of land for any purposes for which said easements are reserved. Declarant or nominee, shall have the right to remove, prune or trim any tree or shrub on any lot interfering with the construction and maintenance of electric or telephone lines or other utility services.

2. Party Walls. Each wall, part of the thickness of which is on a lot and the rest of the thickness is on an adjoining lot, and which is therefore a party wall, shall be used as such by their owners jointly with each other. Each such lot shall be benefitted and burdened by an easement for the support and maintenance of such party wall. Except as is otherwise set forth below, the general rules of law regarding party walls and liability for property damage due to negligent or wilful acts or omissions shall apply to each party wall. If a party wall is deliberately or negligently damaged or destroyed by the act or omission of the owner, a tenant, resident, or guest of one (but not both) of such lots, the owner shall promptly repair such party wall at his or her expense. If a party wall is damaged or destroyed in another manner or otherwise requires maintenance, such owners shall promptly repair the party wall at their mutual expense. If either surface of the party wall is exposed to the elements, the owner of the lot containing such surface shall at his or her expense take all actions reasonably necessary to protect it from the elements.

2. Common Area Access Easement. There is hereby established for the benefit of the owners of the lots, forever and in perpetuity, an easement in common with all lot owners for the use of the Common Area for access to and from Tolchester Road, for parking in the paved parking area, and for active and passive recreational activities. Use of the Common Area shall be subject to the requirements of a Perpetual Protective Agreement for the Forest Retention Area shown on the Plat which is or is intended to be recorded simultaneously with the recordation of this Declaration. The Association, from time to time, may establish reasonable rules and regulations for the use of the Common Area which, when properly adopted, shall be binding on the lot owners and their guests and invitees..

## ARTICLE VI COMMON AREA

1. Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational and/or storage facility situated upon the Common Area,

(b) the right of the Association to suspend the voting rights and right to use of the recreational and/or storage facilities by an owner for any period during which any assessment against his or her lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations regarding use of the Common Area;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of managing such areas.

2. Delegation of Use. Any owner may delegate his right of enjoyment to the Common Area and facilities to the members of his family, his guests, or to tenants who reside on the property.

## ARTICLE VII ASSESSMENTS BY THE ASSOCIATION

1. Creation of a Lien and Personal Obligation of Assessment. The Declarant, for each lot, hereby covenants, and each owner of every lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association, its successors or assigns, an annual assessment which shall be based on a calendar year and established and collected as hereinafter provided. The annual assessment together with interest, costs, and reasonable attorney's fees shall be a charge on, and a continuing lien on, the lot against which each such assessment is made. Each such assessment, together with interest, costs of collection and reasonable attorney's fees, shall also be the personal obligation of the lot owner of such lot at the time when the assessment is due and payable.

2. Purpose of Annual Assessment. Each annual assessment shall be used (a) to promote the recreational, health, safety and welfare of the residences, (b) to cover any operating expenses associated with collecting the annual assessment, i.e. management company fees, attorneys fees and court costs, (c) to cover any operating expense associated with reviewing plans or enforcing the restrictive covenants, (d) to maintain any entrance sign and entrance landscaping and (e) for the construction, maintenance and preservation of the Common Area, specifically, but not exclusively, the entrance drive, parking areas, sidewalks, and landscaped areas.

3. General Assessments. The Board of Directors shall determine the amount of the general assessment annually, but may do so at more frequent intervals should circumstances so require. Upon resolution of the Board of Directors, annual assessments may be levied and collected, in installments, on a monthly or quarterly or semi-annual basis, rather than on an annual basis.

The Board of Directors shall prepare, or cause the preparation of, an annual operating budget for the Association which shall provide, without limitation, for the maintenance responsibilities of the Association. The Board of Directors of the Association shall make reasonable efforts to fix the amount of the annual general assessment against each lot for each assessment period at least thirty (30) days in advance of the beginning of such period and shall, at that time, prepare a roster of the lots and the general assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any owner upon reasonable notice to the Board. Written notice of the general assessment hereunder for that or the next period shall not be deemed a waiver or modification in any respect of the provisions of this Article, or a release of any owner from the obligation to pay the general assessment, but the general assessment fixed for the preceding period shall continue until a new general assessment is fixed. No owner may exempt himself or herself from liability for assessments by abandonment of any lot belonging to him or her.

4. Reserves for Replacements. The Association shall establish and maintain a reserve fund for replacement or improvements of facilities maintained by the Association including, without limitation, entrance features, entrance drive, parking areas, and sidewalks. The Board of Directors shall designate the amount of the payment to the reserve fund from time to time. Such fund shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by any State or by an agency of the United States of America, or may, in the discretion of the Board of Directors, be invested. The proportional interest of any owner in any such reserves shall be considered an appurtenance of his or her lot and shall not be separately withdrawn, assigned or transferred, or otherwise separated from the lot to which it appertains.

5. Non-Payment of Assessments. Any assessment levied pursuant to this Declaration, or any installment thereof which is not paid on the date when due, shall be delinquent and shall, together with interest thereon, late charges and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien upon the lot or lots belonging to the owner against whom such assessment is levied and shall bind such lot or lots in the hands of the then owner(s), his heirs, devisees, personal representatives and assigns. The personal obligation of the owner to pay such assessment shall, in addition, remain his or her personal obligation for the statutory period and a suit to recover a money judgment for non-payment of any assessment levied pursuant to this Declaration, or any installment thereof may be maintained without foreclosing or waiving the lien herein created to secure the same.

Any assessment levied pursuant to this Declaration, or any installment thereof which is not paid within fifteen (15,) days after it is due shall, unless otherwise determined by resolution of the Board of Directors shall bear interest at a rate not to exceed the maximum legal rate permitted from time to time in the State of Maryland, and shall, unless otherwise determined by resolution of the Board of Directors, subject the owner obligated to pay the same to the payment of such penalty or "late charge" equal to the greater of Fifteen Dollars (\$15.00) or one-tenth (1/10) of the total amount of any assessment (provided the charge may not be imposed more than once for the same delinquent payment,) , and the Association may bring an action at law against the owner personally obligated to pay the same, or foreclose on the lien against the lot then belonging to said owner in the manner now or hereafter provided for in the Maryland Contract Lien Act, or as may otherwise from time to time be provided by law, in either of which events interest, costs and reasonable attorneys' fees of not less than twenty percent (20%) of the sum claimed shall be added to the amount of each assessment.

If requested in writing so to do by a mortgagee, the Association shall notify the holder of the first mortgage on any lot for which any assessment levied pursuant to this Declaration becomes delinquent for a period in excess of thirty (30) days and in any other case where the owner of such lot is in default with respect to the performance of any other obligation hereunder for a period in excess of sixty (60) days, but any failure to give such notice shall not affect the validity of the lien for any assessment levied pursuant to this Declaration, nor shall any such failure affect any of the priorities established in this Article.

6. Commencement of Annual Assessments. Except as may be otherwise resolved by the Board of Directors of the Association, the annual assessments for each lot shall commence on the date a deed for the lot is delivered by the Declarant to the owner. A pro rata payment for such annual assessment shall be made for the balance of the year during which a deed for the lot is delivered to the owner and shall become due and payable and a lien on the date a deed for the lot is delivered to the owner. Except as herein elsewhere provided, the next annual assessment for any lot shall become due and payable and a lien on the first day of the next calendar year.

7. Assessment of the Declarant. The Declarant shall not pay any assessments for lots owned by the Declarant until the Declarant has sold, granted, and conveyed the 13<sup>th</sup> lot.

### **ARTICLE VIII ENFORCEMENT, AMENDMENTS AND MISCELLANEOUS**

1. Construction and Enforcement. The provisions hereof shall be liberally construed for the purpose of creating a uniform plan of development for Delta Heights Townhouses. These provisions shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association, the Architectural Review Committee and the owner of the leasehold or fee simple interest (but not reversionary or mortgagee interest) of any lot, their respective legal representatives, heirs, successors and assigns. Violation of any restriction, condition or covenant herein shall give the Association, in addition to all other remedies, (1) the right to enter upon the land as to which such violation exists and to summarily abate and remove, at the expense of the owner, such violation, and the Association shall not thereby be deemed guilty of any manner of trespass for such entry, abatement or removal, or for any damages resulting therefrom, and (2) the right to apply for relief by injunction since all parties agree that any breach of this Declaration cannot be compensated adequately by the recovery of damages. The failure or forbearance of the Association, or the owner of any lot, to enforce any restriction or covenant herein shall, not be deemed a waiver of the right to do so thereafter, nor shall it be deemed selective enforcement of any such restriction or covenant.

2. Duration and Amendment. The covenants, agreements, conditions, reservations, restrictions, and charges created and established herein, or any one (1) or more of them, may be waived, abandoned and terminated, modified, altered or changed, in whole or in part, as to any lot or group of lots, with the written consent of the owners of a majority of the total number of lots. (The joinder of mortgagees or other holders of a security interest shall not be required.) No such waiver, abandonment, termination, modification, or alteration shall become effective until a proper instrument in writing shall be executed and recorded in the Office of the Clerk of Court, Kent County, Maryland.

3. Assignability. Any and all rights, titles, easements and estates given to or reserved by Declarant in this instrument, including all the powers (including discretionary powers), duties and obligations given to, assumed by, or imposed upon Declarant by this instrument may be assigned and transferred, in whole or in part, to one or more persons or entities agreeing to assume, exercise, carry out and perform the same. The Declarant may, at any time deemed advisable by it, cause any or all of said rights, titles, easements and estates to be conveyed to the

Association. Each owner, by acceptance of a deed to a lot in Delta Heights Townhouses, agrees to become a member of the Association and to pay such dues and assessments as may be levied from time to time by a majority vote of the Association, provided that only lot owners in Delta Heights Townhouses, not mortgagees, shall be eligible for membership in said Association and, provided further, that each lot owner shall be entitled to cast one (1) vote for each lot owned. Any assignment or transfer shall be made by an appropriate written instrument in which the assignee or transferee shall join for the purpose of evidencing his, its or their consent to the acceptance and assumption of such powers, duties and obligations, and such assignee or transferee shall thereupon have the same powers and be subject to the same duties and obligations as are herein given to, assumed by or imposed upon Declarant, Declarant thereupon being released therefrom.

4. Acceptance. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of Delta Heights Townhouses is and shall be conclusively deemed to have consented and agreed to every restriction and covenant contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in any lot forming a part of Delta Heights Townhouses and subject to this Declaration.

5. Notices. Any notices required to be sent to any person under the provisions of this Declaration shall be deemed to have been properly sent when mailed by ordinary mail, postage paid, to the address of the recipient as reflected on the Real Estate Tax Assessment Records of Kent County, Maryland, at the time of such mailing, or as may be permitted by the By-Laws of the Association.

6. Reservation.

a. Declarant shall have the right to reconfigure, grade, change the grade of, or regrade any street, road or lane shown on any recorded plat relating to the land contained in said subdivision, and said Declarant shall have the further right, before sale, to change the size of, and to locate or relocate any of the lots shown on any recorded plat of the subdivision, However, nothing herein shall be construed as prohibiting further subdivision, resubdivision, or lot line adjustment as to any of the lands governed hereby, provided appropriate governmental approval is obtained, whether before or after sale.

7. Severability - In case any one or more restrictions and covenants contained in this Declaration shall be held to be invalid, illegal or unenforceable in any respect, such holding shall not affect any other provision hereof, and this Declaration shall be construed as if such invalid, illegal or unenforceable restriction or covenant had never been contained herein.

8. Captions. The captions contained herein are for convenience only and are not a part hereof and are not intended in any way to limit or enlarge the terms and provisions of this Declaration.

IN WITNESS WHEREOF, the parties have set their hands and seals as of the day and year first above written.

FIFTH INVESTMENTS, LLC.

\_\_\_\_\_  
By: M. Kate Weaver, Vice-President  
Fifth Properties, Inc., Sole Member (SEAL)

\_\_\_\_\_  
Emily C. McCoy (SEAL)

\_\_\_\_\_  
Christopher A. Delanty (SEAL)

STATE OF MARYLAND, \_\_\_\_\_ COUNTY, TO WIT:

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2020 before me, the undersigned Notary Public of the State and County aforesaid, personally appeared M. Kate Weaver known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and who acknowledged that she is the Vice-President of Fifth Properties, Inc. with authority to execute the instrument and who further acknowledged that the instrument was executed for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF MARYLAND, \_\_\_\_\_ COUNTY, TO WIT:

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2020 before me, the undersigned Notary Public of the State and County aforesaid, personally appeared Emily C. McCoy known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and who acknowledged that the instrument was executed for the purposes therein contained.

**IN WITNESS WHEREOF**, I have hereunto set my hand and official seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**STATE OF MARYLAND**, \_\_\_\_\_ **COUNTY, TO WIT:**

**I HEREBY CERTIFY** that on this \_\_\_\_ day of \_\_\_\_\_, 2020 before me, the undersigned Notary Public of the State and County aforesaid, personally appeared Christopher A. Delanty known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and who acknowledged that the instrument was executed for the purposes therein contained.

**IN WITNESS WHEREOF**, I have hereunto set my hand and official seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

This instrument was prepared by an attorney licensed to practice law in the State of Maryland.

\_\_\_\_\_  
Christopher F. Drummond

**DELTA HEIGHTS CONDOMINIUM TERMINATION AGREEMENT**

THIS TERMINATION OF CONDOMINIUM REGIME made this \_\_\_ day of \_\_\_\_\_, 2020 by FIFTH INVESTMENTS, LLC, a Maryland limited liability company, EMILY C. McCOY, and CHRISTOPHER A. DELANTY,

**WITNESSES:**

**WHEREAS**, on November 5, 1982, C&D Enterprises, a Maryland general partnership, caused a Declaration to be recorded among the Land Records of Kent County at Liber 140, folio 1, and

**WHEREAS**, on November 5, 1982, C&D Enterprises, a Maryland general partnership, caused a Condominium Plat to be recorded among the Land Records of Kent County at Plat Book No. 2, folio 38, and

**WHEREAS**, the Declaration and Plat had the effect of subjecting a 10.712 acre tract of land then owned by C&D Enterprises to a condominium regime known as "Delta Heights Condominium," and

**WHEREAS**, Delta Heights Condominium consists of 24 condominium units and related general and limited common elements, and

**WHEREAS**, *be mesne* conveyances, Fifth Investments, LLC took title to all condominium units and all percentage interests in common elements in Delta Heights Condominium by Deed dated October 26, 2012 and recorded among the Land Records of Kent County at Liber 740, folio 347, and

**WHEREAS**, Fifth Investments, LLC conveyed Unit B4 and a percentage interest in common elements to Emily C. McCoy and Christopher A. Delanty by Deed dated September 30, 2019 and recorded among the Land Records of Kent County at Liber 1028, folio 96, and

**WHEREAS**, Fifth Investments, LLC retains ownership of 23 condominium units and the corresponding percentage interests in common elements, and

**WHEREAS**, Fifth Investments, LLC, Emily C. McCoy, and Christopher A. Delanty agree that the Delta Heights Condominium regime shall terminate, as provided in §11-123, Real Property Article, Annotated Code of Maryland, so that a Final Subdivision Plat creating 24 fee simple townhouse lots may be recorded among the Land Records of Kent County, and

**WHEREAS**, the 10.712 acre tract of land subject to the Declaration and Plat, including Unit B4, is not to be sold as a single parcel following termination of the condominium regime, and

**WHEREAS**, Emily C. McCoy and Christopher A. Delanty have acknowledged and agreed that their percentage interest in common elements will be extinguished following recordation of this Termination Agreement, and

**WHEREAS**, Emily C. McCoy and Christopher A. Delanty have acknowledged and agreed that an appraisal of the value of their percentage interest in common elements is unnecessary and waived,

**NOW WHEREFORE**, in consideration of the premises, which are not merely prefatory, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. The Declaration for Delta Heights Condominium dated November 5, 1982 and recorded among the Land Records of Kent County at Liber 140, folio 1 is hereby declared to be null and void and of no further force and effect to the end that the Delta Heights Condominium regime is terminated.

2. The Plat of Delta Heights Condominium dated November 5, 1982 and recorded among the Land Records of Kent County at Plat Book No. 2, folio 38 is hereby declared to be null and void and of no further force and effect to the end that the Delta Heights Condominium regime is terminated.

3. Fifth Investments, LLC, Emily C. McCoy, and Christopher A. Delanty waive and relinquish any and all interest they have or may have as tenants in common in the former common elements of the Delta Heights Condominium regime.

**IN WITNESS WHEREOF**, the parties have hereunto set their hand and seals as of the date below.

WITNESS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

FIFTH INVESTMENTS, LLC

\_\_\_\_\_  
(Seal)  
By: M. Kate Weaver, Managing Member  
Fifth Properties Inc., Sole Member

\_\_\_\_\_  
(Seal)  
Emily C. McCoy

\_\_\_\_\_  
(Seal)  
Christopher A. Delanty

STATE OF MARYLAND, \_\_\_\_\_ COUNTY, TO WIT:

**I HEREBY CERTIFY** that on this \_\_\_\_\_ day of \_\_\_\_\_, 2020 before me, the undersigned Notary Public of the State and County aforesaid, personally appeared appeared M. Kate Weaver, Vice President of Fifth Properties, Inc., sole member of the Grantor, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and who further acknowledged that she executed the within instrument for the purposes therein contained.

**IN WITNESS WHEREOF**, I have hereunto set my hand and official seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF MARYLAND, \_\_\_\_\_ COUNTY, TO WIT:

**I HEREBY CERTIFY** that on this \_\_\_\_\_ day of \_\_\_\_\_, 2020 before me, the undersigned Notary Public of the State and County aforesaid, personally appeared appeared Emily C. McCoy, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and who further acknowledged that she executed the within instrument for the purposes therein contained.

**IN WITNESS WHEREOF**, I have hereunto set my hand and official seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF MARYLAND, \_\_\_\_\_ COUNTY, TO WIT:

I **HEREBY CERTIFY** that on this \_\_\_\_ day of \_\_\_\_\_, 2020 before me, the undersigned Notary Public of the State and County aforesaid, personally appeared Christopher A. Delanty, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and who further acknowledged that he executed the within instrument for the purposes therein contained.

**IN WITNESS WHEREOF**, I have hereunto set my hand and official seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

The above instrument was prepared by an attorney licensed to practice law in the State of Maryland.

\_\_\_\_\_  
Christopher F. Drummond