



FOR PLANNING COMMISSION USE ONLY  
Rezoning No. RZ-21-007  
Date Filed: 11-19-21

WASHINGTON COUNTY PLANNING COMMISSION  
ZONING ORDINANCE MAP AMENDMENT APPLICATION

19817 Beaver Creek, LLC

Applicant

1125 Ocean Ave, Lakewood NJ 08701

Address

William C. Wantz

Primary Contact

123 W. Washington St., Hag. MD 21740

Address

☐ Property Owner ☒ Contract Purchaser

☐ Attorney ☐ Consultant

☐ Other: \_\_\_\_\_

(301) 733-7972

Phone Number

wantz@mac.com

E-mail Address

w/s Dual Highway and 19817 Beaver Creek Road

Property Location: \_\_\_\_\_

Tax Map: 58 Grid: 15 Parcel No.: 52 & 351 Acreage: 131.28

Current Zoning: RM Requested Zoning: HI

Reason for the Request: ☐ Change in the character of the neighborhood

☒ Mistake in original zoning

**PLEASE NOTE: A Justification Statement is required for either reason.**

*Wantz*  
Applicant's Signature

Subscribed and sworn before me this 18th day of November, 2021.

My commission expires on 3-18-2023

*Paula S. Munday*  
Notary Public

FOR PLANNING COMMISSION USE ONLY

- ☒ Application Form
- ☒ Fee Worksheet
- ☒ Application Fee
- ☒ Ownership Verification
- ☒ Boundary Plat (Including Metes & Bounds)

- ☒ Names and Addresses of all Adjoining & Confronting Property Owners
- ☒ Vicinity Map
- ☒ Justification Statement
- ☒ 30 copies of complete Application Package

RECEIVED

NOV 19 2021

Washington County  
Dept. of Planning & Zoning



WASHINGTON COUNTY DEPARTMENT OF  
PLANNING & ZONING FEE WORKSHEET

FOR PLANNING COMMISSION USE ONLY  
Rezoning No. \_\_\_\_\_  
Date Filed: \_\_\_\_\_

PLEASE COMPLETE ONLY THE  
SECTION THAT APPLIES.

Applicant's Name: 19817 BEAVER CREEK, LLC Date: 11-16-21

**Zoning Ordinance Map Amendment** ..... \$ 2,000.00  
Number of Acres \* 132 x \$20.00 [1 acre minimum]  
per acre ..... \$ 2,640  
Engineering Review Fee ..... \$ 150.00  
Technology Fee ..... \$ 15.00  
**TOTAL FEES DUE – MAP AMENDMENT** ..... \$ 4,805

\*Minimum charge of \$20.00 [if less than one acre]

**Text Amendment** ..... \$ 2,000.00  
Choose One: ☐ Adequate Public Facilities Ordinance  
☐ Forest Conservation Ordinance  
☐ Solid Waste Plan  
☐ Subdivision Ordinance  
☐ Zoning Ordinance  
☐ Other: \_\_\_\_\_  
Technology Fee ..... \$ 15.00  
**TOTAL FEES DUE – TEXT AMENDMENT** ..... \$ 2,015.00

**Water and Sewer Plan Amendment** ..... \$ 2,000.00  
Technology Fee ..... \$ 15.00  
**TOTAL FEES DUE – WATER AND SEWER PLAN AMENDMENT** ..... \$ 2,015.00

**Forest Conservation Exemption** ..... \$ 25.00  
Technology Fee ..... \$ 15.00  
**TOTAL FEES DUE – FOREST EXEMPTION** ..... \$ 40.00

Please make checks payable to "Washington County Treasurer".

November 16, 2021

**DESCRIPTION OF PROPERTY**

Lands of  
Agrimar Company Establishment

Situate along the south side of U.S. Route 40 (National Pike), along the south side of Beaver Creek Road and along the west side of Crossfield Road in Election District No. 16, Washington County, Maryland, and being more particularly described as follows:

Beginning at a point at the intersection of the south margin of Beaver Creek Road and the southern right of way line of U.S. Route 40 (National Pike), said point being at or near the beginning point of a parcel of land conveyed by Kenneth R. Hammond and L. Pearl Hammond, his wife, to Agrimar Company Establishment, a Corporation of the Principality of Liechtenstein, by deed dated November 30, 1982, and recorded at Liber 736, Folio 264, among the land records of Washington County, Maryland, thence running with the sixth (6<sup>th</sup>) line of said deed reversed, and running with the southern right of way line of U.S. Route 40 (National Pike) as per Maryland State Roads Commission Plat No. 31291, the two (2) following courses and distances

- |    |                 |         |  |
|----|-----------------|---------|--|
| 1. | S 24° 41' 11" E | 81.11'  | to a point, thence running with a curve to the left having a radius of 2999.79', an arc length of 470.81' and a chord bearing and distance of                                  |
| 2. | S 29° 10' 25" E | 470.33' | to a point, thence leaving said right of way line and binding on the lands of National Pike Joint Venture, LLC (L. 4352, F. 284), the four (4) following courses and distances |
| 3. | S 21° 06' 56" W | 722.37' | to a point, thence   |
| 4. | S 55° 54' 04" E | 203.60' | to a point, thence   |
| 5. | S 57° 06' 23" E | 229.95' | to a point, thence   |

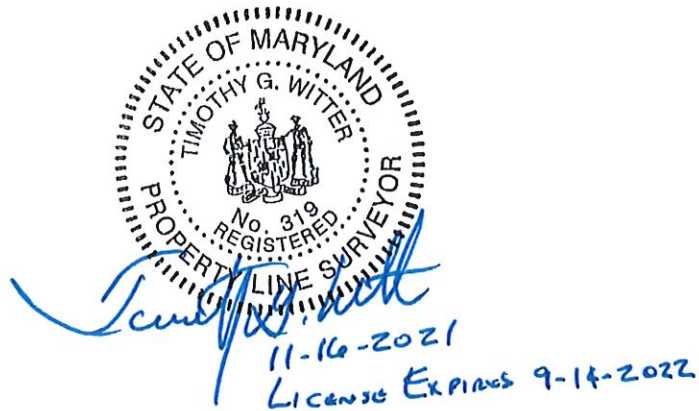
- |     |                 |          |   |
|-----|-----------------|----------|---|
| 6.  | N 32° 00' 00" E | 41.25'   | to a point, thence continuing with the lands of National Pike Joint Venture, LLC and also binding on the lands of R & W Doresy, Inc. (L. 557, F. 184), Mitra Ahadpour (L. 2679, F. 645) and Tony Summers (L. 4903, F. 26 & L. 4743, F. 7) |
| 7.  | S 59° 46' 33" E | 1442.00' | to a point in or near the center of Crossfield Road, thence running with said road  |
| 8.  | S 27° 20' 32" W | 1112.10' | to a point, thence leaving the road and binding on the lands of Allen D. Burch and Shirley A. Burch (L. 1358, F. 128), the two (2) following courses and distances  |
| 9.  | N 73° 54' 28" W | 271.05'  | to a point, thence  |
| 10. | S 77° 28' 32" W | 896.60'  | to a point, thence binding on the lands of Bowen Holdings, LLC (L. 4434, F. 449)  |
| 11. | N 55° 46' 28" W | 519.00'  | to a point, thence binding on the lands of Martha J. B. Talton (L. 3367, F. 187) the three (3) following courses and distances  |
| 12. | N 10° 43' 32" E | 412.50'  | to a point, thence  |
| 13. | N 48° 01' 28" W | 1641.75' | to a point, thence  |
| 14. | N 20° 13' 32" E | 561.00'  | to a point, thence binding on the lands of Alfred S. Bendell, III, and Charlotte Bendell (L. 792, F. 1084) the two (2) following courses and distances  |
| 15. | N 19° 43' 32" E | 639.37'  | to a point, thence  |
| 16. | N 20° 43' 32" E | 825.00'  | to a point at or near the center of Beaver Creek Road, thence running with the road   |
| 17. | S 62° 16' 23" E | 700.31'  | to point, thence leaving the road   |
| 18. | S 21° 54' 22" W | 21.84'   | to a point on the south margin of the road, thence running with the first (1 <sup>st</sup> ) line reversed of the Agrimar Company Establishment (L. 736, F. 264) aforementioned   |
| 19. | S 60° 39' 38" E | 313.72'  | to the point of beginning.  |



Containing 131.38 acres of land, more or less.

Being all of the lands conveyed by Kenneth R. Hammond and Pearl L. Hammond, his wife, to Agrimar Company Establishment, a Corporation of the Principality of Liechtenstein, by deed dated November 30, 1982, and recorded at Liber 736, Folio 264, and also being part of the lands on the south side of U.S. Route 40 (National Pike) conveyed by Betty J. Pashen Monninger and Elizabeth Devona Pashen, to Agrimar Company Establishment, of the Principality of Liechtenstein, by deed dated December 10, 1980, and recorded at Liber 710, Folio 985; both of which are recorded among the land records of Washington County, Maryland.

The lands described herein being taken from a plan prepared by and on file among the records of Shelly, Witter & Fox, dated November 15, 2021, at Job No. 2021-43925. As noted on said plan, the description of the property described herein is from deeds and plats of record and not from an actual survey prepared by Shelly, Witter & Fox.





Paul Abbott  
Dorothy Abbott  
20033 National Pike  
Hagerstown MD 21740

Mitra Ahadpour  
8904 Bells Mill Road  
Potomac MD 20854-2642

B Creek Properties LLC  
PO Box 724  
Funkstown MD 21734

Alfred S. Bendell, III  
Charlotte Bendell  
19515 Beaver Creek Road  
Hagerstown MD 21740

Bowen Holdings LLC  
9651 Old National Pike  
Hagerstown MD 21740-1553

Allen D. Burch  
Shirley A. Burch  
9834 Crossfield Road  
Hagerstown MD 21740

R & W Dorsey Inc.  
19935 National Pike  
Hagerstown MD 21740

John H. Hopkins & Wilmarie, Trustees  
Hopkins Family Revocable Trust  
PO Box 2978  
Hagerstown MD 21741

Kegerreis Properties LLC  
PO Box 242  
Fayetteville PA 17222

Louis Knapp  
Cheryl Knapp  
19806 Beaver Creek Road  
Hagerstown MD 21740

Maryland Metro Realty LLC  
10228 Governor Lane Blvd., Ste 3002  
Williamsport MD 21795

National Pike Joint Venture LLC  
c/o Robert Hill  
11301 Grouse Lane  
Hagerstown MD 21742

Greg Palmer  
Kelli Jo Palmer  
19810 Beaver Creek Road  
Hagerstown MD 21740

Tony Summers  
21284 Mt. Lena Road  
Boonsboro MD 21713

Martha Talton  
9821 Old National Pike  
Hagerstown MD 21740

Donald Trumpower, Sr.  
19730 Beaver Creek Road  
Hagerstown MD 21740

Twigg Family Limited Partnership  
200 S. Edgewood Drive  
Hagerstown MD 21740



## JUSTIFICATION STATEMENT

The application for rezoning of the subject property is supported by evidence of mistake in the current zoning classification.

In RZ10-005 (2012), the Board of County Commissioners repealed and deleted Article 19B of the Washington County Zoning Ordinance (the "Ordinance"), previously establishing the HI-2 Highway Interchange zoning district. Prior to the repeal of Article 19B, the subject 132 acre property was zoned HI-2. Thereafter, the property was assigned an RM (Residential, Multi-family) zoning classification under Article 10 of the Ordinance.

Section 10.0 of the Ordinance generally provides:

"All new development in the Residential-Multi-Family District should be served by public water and sewer facilities approved by the Washington County Health Department."

Although the subject property is within the Urban Growth Area established in the Comprehensive Plan, it is not included in Hagerstown's Medium Range Growth Area "MRGA", and is not eligible for public water and sewer service provided by the City. In other words, although the subject property is within the County's designated Urban Growth Area, it is not located within the City's MRGA (see attached graphics).

The property cannot meet the requirement established in Article 10 of the Washington County Zoning Ordinance that the property be served by public water and sewer, since no municipal or county utility services meeting the requirements of Article 10 are available to serve the property. Uses suitable under the current RM classification would be impracticable if developed on well and septic. A zoning mistake was made in comprehensively rezoning the subject property to an RM zoning classification.

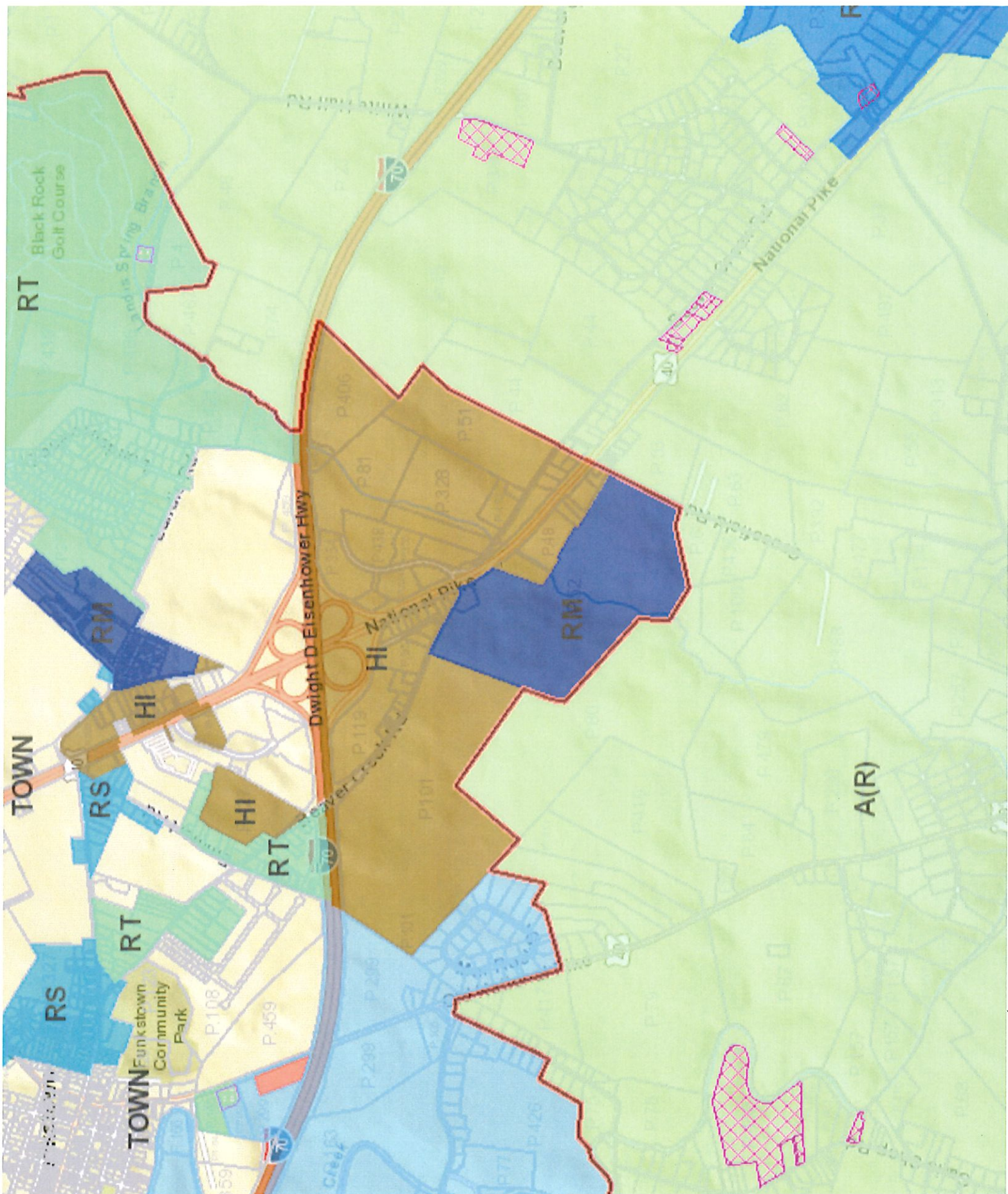
Under Maryland law, the presumption of validity accorded to a comprehensive zoning is overcome and error or mistake is established when there is probative evidence to show that the assumptions or premises relied upon by the legislative body at the time of the comprehensive rezoning were invalid. Error can be established by showing that at the time of the comprehensive zoning the legislative body failed to take into account the then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future, so that the legislative body's action was premised initially on a misapprehension. Error or mistake may also be established by showing that events occurring subsequent to the comprehensive zoning have proven that the legislative body's initial premises were incorrect. *Boyce v. Sembly*, 25 Md. App. 43, 50-51 (1975)

Citing the decision in *Rockville v. Stone*, 271 Md. 655 (1974), the Court in *Boyce v. Sembly*, *supra*, further observed:

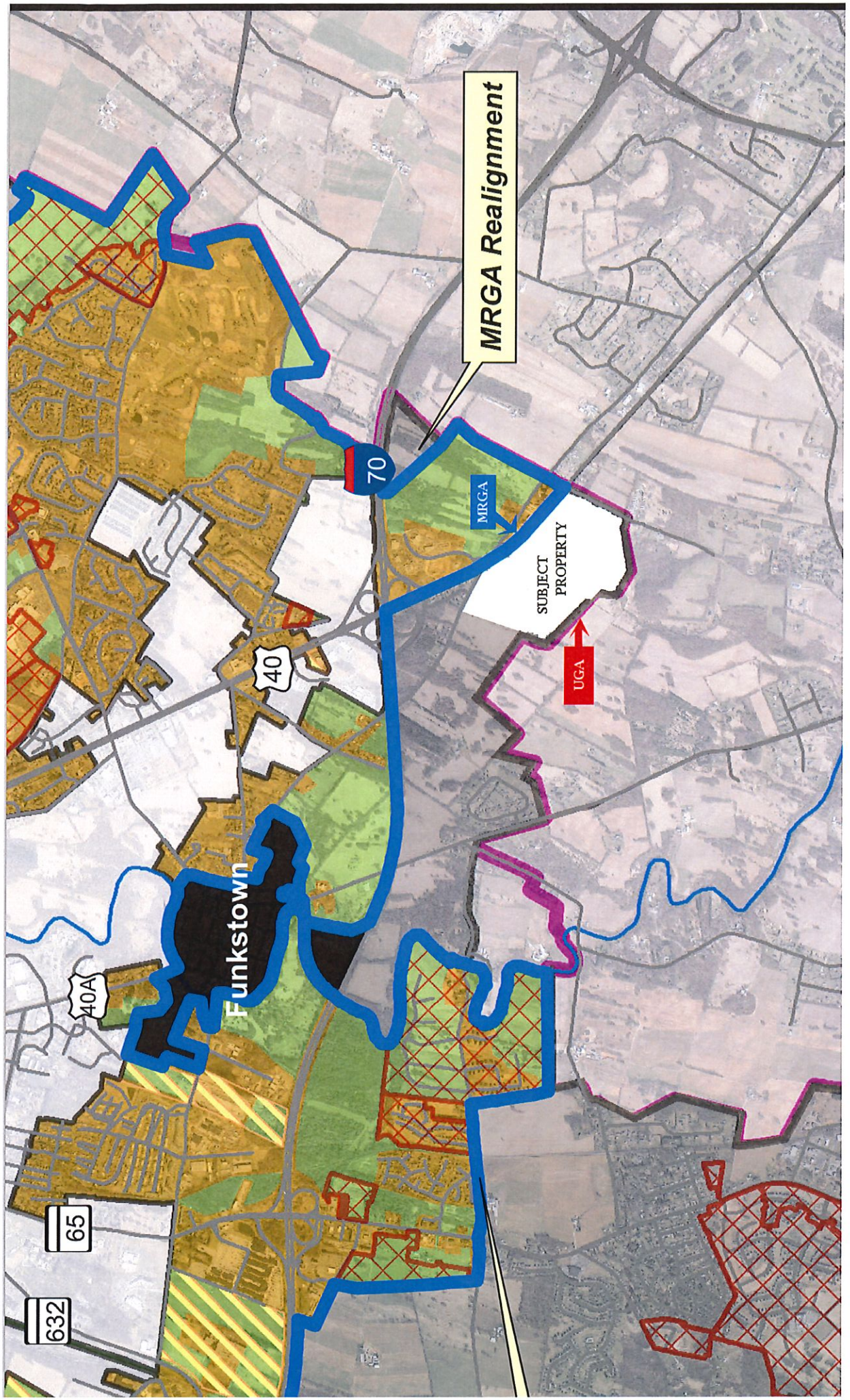
"On the question of original mistake, this Court has held that when the assumption upon which a particular use is predicated proves, with the passage of time, to be erroneous, this is sufficient to authorize a rezoning." *Boyce v. Sembly, supra*, 51

A comparison of the Urban Growth Area and MRGA boundaries (see attached graphics) demonstrates the incongruity of the respective county and municipal growth area delineations.

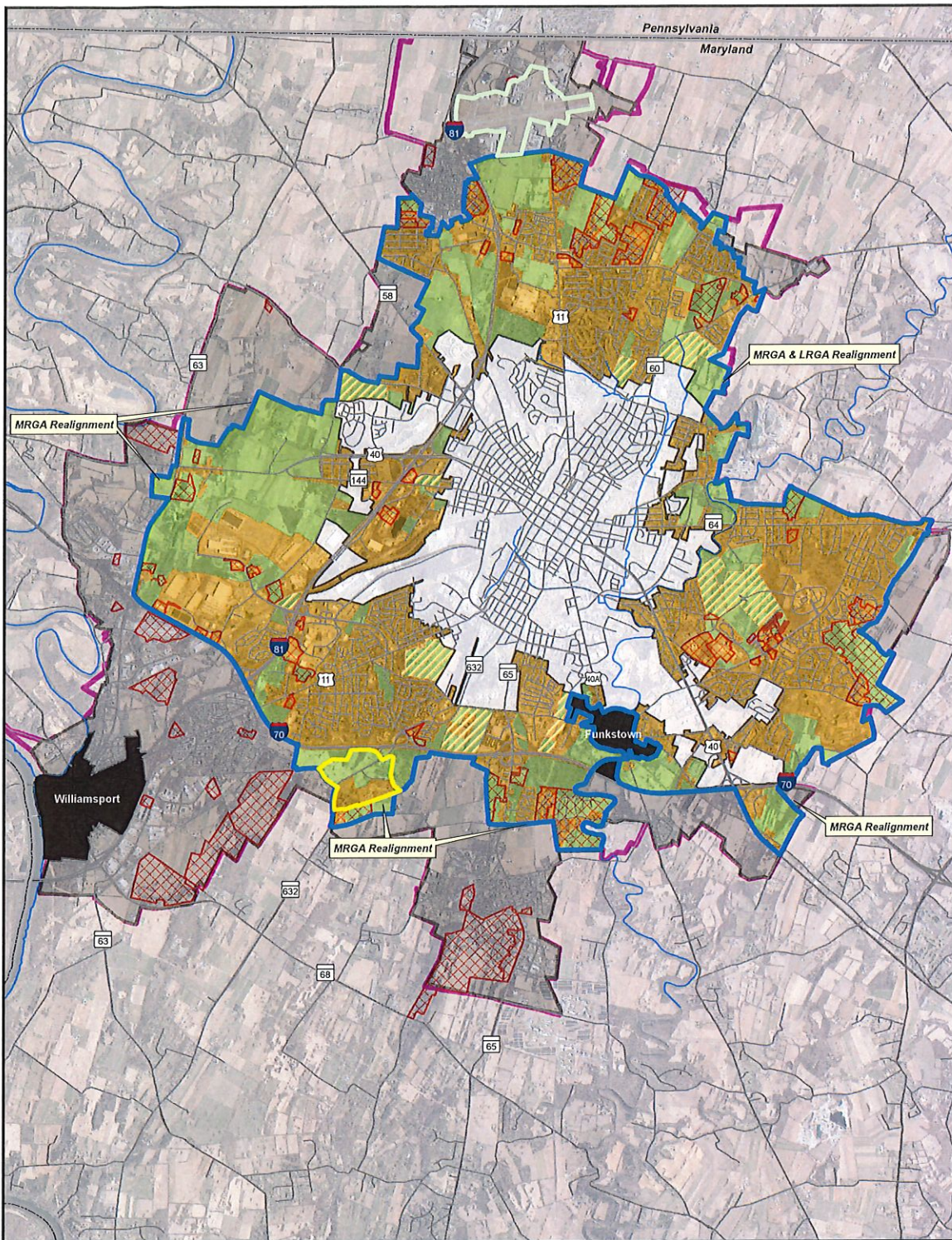
Other properties within the Urban Growth Area, and not within the City's MRGA are zoned to the same HI classification by the Applicant. The HI classification advocates and promotes the proximity of the subject property to the I-70/U.S. Route 40 interstate for significant economic development.











## visionHagerstown 2035 Comprehensive Plan

### Map 2-4: Hagerstown Growth Boundaries

- |                                 |   |
|---------------------------------|---|
| Road                            | Airport (Preexisting Water Agreement)         |
| Corporate Boundary              | Friendship Park (Preexisting Water Agreement) |
| Medium-Range Growth Area (MRGA) | Pre-Annexation Agreement*                     |
| Long-Range Growth Area (LRGA)   | Potential Annexations                         |
| County Urban Growth Area        | Developed Land in Medium Range Growth Area    |
| State Boundary                  | Undeveloped Land in Medium Range Growth Area  |

\* These areas represent only those pre-annexation agreements that are 3 acres or larger.



0 0.5 1 1.5 2 Miles

Map Projection: NAD83 State Plan Maryland FIPS (feet)

Data Sources:  
City of Hagerstown, 2017; State of MD Imagery, 2014  
Washington County, 2016

Prepared By:  
Hagerstown Planning & Code Admin Dept, 01/27/17 (rev. 10/27/17)



## Real Property Data Search

## Search Result for WASHINGTON COUNTY

View Map		View GroundRent Redemption		View GroundRent Registration	
Special Tax Recapture: None					
Account Identifier:		District - 10 Account Number - 008387			
Owner Information					
Owner Name:	AGRIMAR CO ESTABLISHMENT C/O NICK GIANNARIS THE SHERATON		Use:	RESIDENTIAL/COMMERCIAL	
Mailing Address:	19715 MEADOWBROOK RD HAGERSTOWN MD 21742-2522		Principal Residence:	NO	
			Deed Reference:	/00736/ 00264	
Location & Structure Information					
Premises Address:	19817 BEAVER CREEK RD HAGERSTOWN 21740-0000		Legal Description:	PARCEL A 1.86 ACRES 19817 BEAVER CREEK RD U S RT 40	
Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:
0058	0015	0351	10010150.22	0000	
					Block:
					Lot:
					Assessment Year:
					2022
					Plat No:
					Plat Ref:
Town: None					
Primary Structure Built		Above Grade Living Area		Finished Basement Area	
1962		1,914 SF		1.8600 AC	
Property Land Area		County Use			
1.8600 AC					
Stories	Basement	Type	Exterior	Quality	Full/Half Bath
1	YES	STANDARD UNIT	BRICK/	4	2 full
Garage		Last Notice of Major Improvements			
1 Attached					
Value Information					
Base Value		Value		Phase-in Assessments	
		As of		As of	
		01/01/2019		07/01/2021	
				As of	
				07/01/2022	
Land:	81,400	81,400			
Improvements	142,900	142,900			
Total:	224,300	224,300	224,300		
Preferential Land:	0				
Transfer Information					
Seller: HAMMOND KENNETH R & L P		Date: 11/30/1982		Price: \$95,000	
Type: ARMS LENGTH IMPROVED		Deed1: /00736/ 00264		Deed2:	
Seller:		Date:		Price:	
Type:		Deed1:		Deed2:	
Seller:		Date:		Price:	
Type:		Deed1:		Deed2:	
Exemption Information					
Partial Exempt Assessments:	Class	07/01/2021	07/01/2022		
County:	000	0.00			
State:	000	0.00			
Municipal:	000	0.00	0.00		
Special Tax Recapture: None					
Homestead Application Information					
Homestead Application Status: No Application					
Homeowners' Tax Credit Application Information					
Homeowners' Tax Credit Application Status: No Application					
Date:					



## Real Property Data Search

## Search Result for WASHINGTON COUNTY

View Map		View GroundRent Redemption		View GroundRent Registration	
<b>Special Tax Recapture: AGRICULTURAL TRANSFER TAX</b>					
<b>Account Identifier:</b>		<b>District - 16 Account Number - 007293</b>			
Owner Information					
<b>Owner Name:</b>		AGRIMAR CO ESTABLISHMENT C/O NICK GIANNARIS		<b>Use:</b>	AGRICULTURAL
<b>Mailing Address:</b>		19715 MEADOWBROOK RD HAGERSTOWN MD 21742-2522		<b>Principal Residence:</b>	NO
				<b>Deed Reference:</b>	/00710/ 00985
Location & Structure Information					
<b>Premises Address:</b>		NATIONAL PIKE 0-0000		<b>Legal Description:</b>	130.14 ACRES S/S U S RT 40
<b>Map:</b>	<b>Grid:</b>	<b>Parcel:</b>	<b>Neighborhood:</b>	<b>Subdivision:</b>	<b>Section:</b>
0058	0015	0052	16010180.22	0000	
					<b>Block:</b>
					<b>Lot:</b>
					<b>Assessment Year:</b>
					2022
					<b>Plat No:</b>
					<b>Plat Ref:</b>
<b>Town:</b> None					
<b>Primary Structure Built</b>		<b>Above Grade Living Area</b>		<b>Finished Basement Area</b>	
				<b>Property Land Area</b>	
				130.1400 AC	
<b>Stories</b>	<b>Basement</b>	<b>Type</b>	<b>Exterior</b>	<b>Quality</b>	<b>Full/Half Bath</b>
					<b>Garage</b>
					<b>Last Notice of Major Improvements</b>
Value Information					
		<b>Base Value</b>	<b>Value</b>	<b>Phase-in Assessments</b>	
			As of	As of	As of
			01/01/2019	07/01/2021	07/01/2022
<b>Land:</b>		39,800	39,800		
<b>Improvements</b>		0	0		
<b>Total:</b>		39,800	39,800	39,800	
<b>Preferential Land:</b>		39,800			
Transfer Information					
<b>Seller:</b> MONNINGER BETTY J PASHEN ET AL		<b>Date:</b> 12/11/1980		<b>Price:</b> \$286,000	
<b>Type:</b> ARMS LENGTH IMPROVED		<b>Deed1:</b> /00710/ 00985		<b>Deed2:</b>	
<b>Seller:</b>		<b>Date:</b>		<b>Price:</b>	
<b>Type:</b>		<b>Deed1:</b>		<b>Deed2:</b>	
<b>Seller:</b>		<b>Date:</b>		<b>Price:</b>	
<b>Type:</b>		<b>Deed1:</b>		<b>Deed2:</b>	
Exemption Information					
<b>Partial Exempt Assessments:</b>		<b>Class</b>		07/01/2021	07/01/2022
<b>County:</b>		000		0.00	
<b>State:</b>		000		0.00	
<b>Municipal:</b>		000		0.00	0.00
<b>Special Tax Recapture: AGRICULTURAL TRANSFER TAX</b>					
Homestead Application Information					
<b>Homestead Application Status:</b> No Application					
Homeowners' Tax Credit Application Information					
<b>Homeowners' Tax Credit Application Status:</b> No Application				<b>Date:</b>	

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "**Agreement**") is made as of the 26th day of May 2021 (the "**Effective Date**"), by and among 19817 Beaver Creek LLC, a Maryland limited liability company, or its assignee ("**Purchaser**"), and Agrimar Corporation (fka Agrimar Co Establishment), a corporation organized under the laws of the Principality of Liechtenstein, which entity is registered with the Maryland Department of Assessments and Taxation as a foreign corporation ("**Seller**").

### RECITALS

A. Seller is the owner in fee simple of certain property (two parcels of real property – (1) with residential structure, Map 0058, Grid 0015, Parcel 0351 - of approximately 1.86 acres, and (2) Map 0058, Grid 0015, Parcel 0052 – of approximately 130.14 acres) consisting of (i) land located in Washington County, Maryland and identified on Exhibit A attached hereto, including, without limitation, all existing easements, covenants and other rights appurtenant to such land and any land lying in the bed of any street, road, avenue or alley adjoining such land (the "**Real Property**"); (ii) all buildings, structures and any other improvements currently situated on such land (the "**Improvements**"); (iii) all Seller-owned systems, equipment, machinery, facilities, fixtures appliances, furniture, and other personal property (if any) now located on or serving such Improvements, and all Seller-owned drawings, plans, specifications, reports (if currently in existence and in Seller's possession) and any other intangible rights and benefits connected with or accruing from any of such property (the "**Personal Property**"); (iv) all currently existing licenses, approvals and permits issued with respect to any of the foregoing property (the "**Permits**"); and (v) all warranties and guaranties (if any) regarding any of the foregoing property (the "**Warranties**"). The foregoing Real Property, Improvements, Personal Property, Permits and Warranties are collectively referred to herein as the "**Property**".

B. Seller has agreed to sell the Property to Purchaser, and Purchaser has agreed to purchase the Property from Seller, under all of the terms set forth herein.

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

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated herein by reference as a substantive part of this Agreement.

2. Purchase and Sale of the Property. Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the Property in accordance with the terms of this Agreement.

3. Purchase Price; Terms of Payment; Duties of Escrow Agent.

3.1 Purchase Price. The aggregate purchase price for the Property ("**Purchase Price**") shall be [REDACTED] subject to adjustments and prorations as set forth below and in Section 5.

3.2 Terms of Payment. The Purchase Price shall be paid by Purchaser as follows:

3.2.1 Within three (3) Business Days (defined below) after the Effective Date, Purchaser shall deposit [REDACTED] the "**Initial Deposit**") with Madison Title Agency, LLC (the "**Escrow Agent**"). Within three (3) Business Days after the expiration of the

Feasibility Period (defined below), unless this Agreement is earlier terminated as provided herein, Purchaser shall deliver to the Escrow Agent an additional deposit of [REDACTED] the "Additional Deposit"), which, together with the Initial Deposit, shall be referred to herein collectively as the "Deposit," which Deposit shall be held by the Escrow Agent and paid, refunded or otherwise applied to the Purchase Price in accordance with the terms of this Agreement. Any interest earned on the Deposit shall be deemed part of the Deposit and paid together with the principal portion of the Deposit according to the terms hereof. For the avoidance of doubt, the parties hereby agree that Purchaser shall be entitled to terminate this Agreement and receive a full refund of the Deposit at any time and for any reason on or before the expiration of the Feasibility Period.

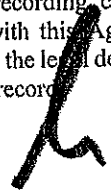
3.2.2 Upon Closing (as defined in Section 4) under this Agreement, the remainder of the Purchase Price, beyond the Deposit, subject to adjustments and prorations provided herein, shall be paid by wire transfer of funds to the Escrow Agent for disbursement at Closing in accordance with the settlement statement.

3.3 Duties of Escrow Agent. The Escrow Agent agrees to hold all sums constituting the Deposit if and when made, as escrowee, in strict compliance with the provisions of this Agreement. The Escrow Agent acts hereunder as a depository only and is not responsible or liable in any manner whatsoever for the (i) sufficiency, correctness, genuineness or validity of any written instrument, notice or evidence of a party's receipt of any instruction or notice which is received by the Escrow Agent, or (ii) identity or authority of any person executing such instruction, notice or evidence. The Escrow Agent shall have no responsibility hereunder except for the performance by it in good faith of the acts to be performed by it hereunder, and the Escrow Agent shall otherwise have no liability. The Escrow Agent shall not be responsible for the solvency or financial stability of any financial institution with which Escrow Agent is directed to invest funds escrowed hereunder. In the event of a dispute between the parties hereto with respect to the disposition of the amount held in escrow, the Escrow Agent shall be entitled, at its own discretion, to deliver such amount to an appropriate court of law (for the jurisdiction in which the Property is located) pending resolution of the dispute. The parties agree to enter into any reasonable escrow agreement provided to the parties by the Escrow Agent.

4. Closing. The closing of the purchase and sale of the Property (the "Closing") shall be held by the exchange of documents through the Escrow Agent in the form of an "escrow style" closing (without the need for party representatives to be present at the same location) at 11:00 a.m. on the date that is thirty (30) Business Days following the end of the Feasibility Period (hereinafter referred to as the "Closing Date") unless an earlier date is mutually agreed upon by the parties. Seller shall give exclusive possession and occupancy of the Property to Purchaser immediately following the consummation of Closing, and in the event Seller fails so to do, Seller shall become and be thereafter a tenant by sufferance of Purchaser, and Seller hereby waives all notice to quit as provided by any local, state or federal laws. Seller and Purchaser may, by written agreement, advance the date for Closing as mutually agreed.

4.1 Seller's Closing Deliverables. At the Closing, Seller shall deliver the following documents (collectively, the "Closing Documents") and such other items described below (together with the Closing Documents, the "Closing Deliverables"):

4.1.1 a special warranty deed to the Real Property including a covenant of further assurances, duly executed and acknowledged by Seller and in proper form for recording, conveying fee simple title to the Real Property to Purchaser or its designee in accordance with this Agreement. Notwithstanding anything herein to the contrary, Purchaser reserves the right to modify the legal description in the deed to reflect updated information regarding the Real Property and matters of record.



4.1.2 a bill of sale for all of the Personal Property (if any), duly executed and acknowledged by Seller in the form attached hereto as Exhibit B;

4.1.3 an assignment of the Permits and Warranties (if any), duly executed and acknowledged by Seller, assigning to Purchaser all of Seller's right, title and interest in and to all of the Permits and Warranties in the form attached hereto as Exhibit C;

4.1.4 originals, if in Seller's possession, or copies of the following which may be obtained by Seller at nominal cost, all certificates of occupancy, licenses, permits, authorizations, consents and approvals required by law and issued by any governmental or quasi-governmental authority having jurisdiction over the Property;

4.1.5 to the extent in Seller's possession, existing utilities layout plans, topographical plans, surveys and the like used in the construction, improvement, alteration or repair of the Property;

4.1.6 a FIRPTA affidavit (notwithstanding the forgoing, and given that Seller is a non-US entity, Seller will not provide a FIRPTA affidavit. It is Seller's intention to seek applicable exemption from withholding, and/or to seek and obtain an applicable withholding certificate that would evidence the need for Escrow Agent to withhold (for remittance to the IRS) a lesser amount than the otherwise legally required fifteen percent (15%) of sales proceeds. Seller's US Federal taxpayer ID# is 52-1207661. Additionally, given that Seller is registered with the State of Maryland (Department of Assessments and Taxation) as a foreign business, Seller intends to file applicable application(s) for exemption from withholding at the Maryland state level. Seller shall provide Escrow Agent with any applicable exemption certification(s) and/or withholding certification(s) promptly after Seller obtains same), and in all cases prior to Closing;

4.1.7 any transfer tax statements, declarations, filings and other similar documents that may be necessary, to the extent the same are required to be executed by Seller;

4.1.8 a settlement statement (Escrow Agent, as settlement agent, to prepare same) conforming to the proration and other relevant provisions of this Agreement as executed by Seller;

4.1.9 clearly labeled keys (to the extent in Seller's possession) to all locks on the Property;

4.1.10 an owner's affidavit of title, a "gap" indemnity and such other documents as reasonably required by the Escrow Agent for the Escrow Agent to issue to Purchaser its title insurance policy and endorsements, all in form and substance reasonably acceptable to the Escrow Agent;

4.1.11 such other information as the Escrow Agent may reasonably require to demonstrate Seller's due authorization and performance of this Agreement and the foregoing documents; and

4.1.12 a certificate updating the representations and warranties made pursuant to Section 7 in the form attached hereto as Exhibit D.

4.2 Purchaser's Closing Deliverables. At the Closing, Purchaser shall deliver the following:



4.2.1 the entire Purchase Price (including the Deposit), as adjusted pursuant to the terms hereof;

4.2.2 a settlement statement conforming to the proration and other relevant provisions of this Agreement; and

4.2.3 a certificate updating the representations and warranties made pursuant to Section 8 in the form attached hereto as Exhibit E.

5. Closing Adjustments/Costs.


5.1 Expense Adjustments. The following items of expense shall be adjusted as of 11:59 p.m., of the day immediately preceding the Closing Date such that Seller shall be responsible for all days prior to the Closing Date and Purchaser shall be responsible for the Closing Date and all days thereafter:

5.1.1 Taxes. Real estate, personal property, ad valorem taxes, assessments payable in installments and front foot benefit charges payable in installments that are due and payable with respect to Seller and the Property, respectively, on the basis of the most current bills or other current information available. Assessments payable in a lump sum and not in monthly installments, if any, for improvements completed prior to the Closing Date, whether assessment therefor has been levied or not, shall be paid by Seller or allowance therefor made at the Closing. All agricultural transfer taxes and/or "roll-back" taxes shall be the obligation of Purchaser. If the Parties make any errors or omissions in the closing prorations or if they subsequently determine any dollar amount prorated to be incorrect, each agrees, upon notice from the other after the Closing, to make any adjustment necessary to correct the error, including payment of any amount to the other then determined to be owing. The terms of this Section 5.1.1 shall survive Closing for six (6) months.

5.1.2 Utilities. Fuel, water and sewer service charges, and charges for gas, electricity, telephone and all other public utilities as of the most recent meter reading to be further adjusted post-Closing pursuant to Section 5.2. If there are meters on the Property measuring the consumption of water, gas or electric current, Seller shall cause the utilities to be terminated in Seller's name and the parties shall cooperate, if necessary, in transferring utilities to Purchaser's name at the time of Closing. Purchaser shall be liable for and shall pay all utility bills for services rendered after Closing.

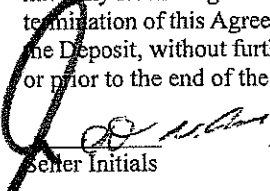
5.2 Final Reconciliation. The adjustments described in this Section 5 shall be paid on the Closing Date. If the amount of any of the adjustments described in this Section 5 cannot be determined on the Closing Date, the adjustment therefor shall be made within ninety (90) days after the Closing Date. In making the adjustments required by this subsection, Seller shall be given credit for all amounts prepaid for the Closing Date and any period thereafter, and Seller shall be charged with any unpaid charges for the period prior to the Closing Date.

5.3 Closing Costs. Purchaser shall pay all expenses of examination of title, title insurance commitment and title endorsements and the cost of a standard owner's title insurance policy insuring fee simple title to the Property in the name of Purchaser and subject only to the Permitted Exceptions. All state, county, city, local, and municipal transfer and recordation taxes, owing with respect to the sale of the Property, if any, shall be paid one-half (½) by Seller and one-half (½) by Purchaser. Each of Purchaser and Seller shall pay their own attorneys' fees and expenses incurred in connection with the negotiation of this Agreement and the closing of the transactions contemplated hereby. The provisions of this Section 5 shall survive Closing.



6. Due Diligence.

6.1 Feasibility Period/Right to Terminate. Simultaneously with the full execution of this Agreement (but, no later than five (5) business days thereafter), Seller shall deliver to Purchaser each of the documents and other information listed on Exhibit F attached hereto or otherwise indicate in writing to Purchaser that such information is not available ("**Due Diligence Documents**"). For the period beginning on the Effective Date and continuing through the Closing, Purchaser shall have the right (with all associated/incurred costs for Purchaser's investigations, inspections, and inquiries described in this Section 6 to be at Purchaser's sole cost and expense), to inspect, conduct testing and review of the Property, the physical and environmental condition thereof, including, but not limited to, inspection, evaluation and testing of the roofs, heating, ventilation and air-conditioning systems and all components thereof, all files and records of Seller (which are in Seller's possession) pertaining to the Property and the occupancy, maintenance, operation and repair thereof and to review such other information it may desire concerning the Property (collectively, the "**Inspections**"). Purchaser is expressly permitted to market the property prior to Closing (without binding Seller) and shall be entitled to post signage on the Property. In the event any other material legal action or proceeding is filed relating directly or indirectly to the sale of the Property, the Feasibility Period shall be tolled during the pendency of such action or proceeding. For each day or part thereof after the Effective Date that all Due Diligence Documents are not timely received by Purchaser, the Feasibility Period shall be extended on a day-for-day basis. The period of time from the Effective Date through 6:00 p.m. on the date that is one hundred twenty (120) days after the Effective Date is referred to as the "**Feasibility Period**". If Purchaser is not satisfied, in its sole and absolute discretion, with the results of the Inspections or otherwise elects not to proceed to Closing for any reason or no reason, Purchaser may terminate this Agreement by giving written notice thereof to Seller, which notice may be delivered by electronic mail, on or before 11:59 p.m. of the last day of the Feasibility Period. If Purchaser terminates this Agreement as aforesaid, the Escrow Agent shall promptly deliver the Deposit to Purchaser without the need for further instructions as acknowledged by the initials of both Seller and Purchaser below. From and after Purchaser's timely termination of this Agreement as aforesaid, neither Seller nor Purchaser shall have any further rights or liabilities hereunder (except for such rights and liabilities as expressly survive the termination of this Agreement). By initialing below, both parties are instructing the Escrow Agent to release the Deposit, without further instructions, if Purchaser sends an email notice to terminate this Agreement on or prior to the end of the Feasibility Period.

 Seller Initials

Purchaser Initials

6.2 Environmental. Purchaser and its agents shall have the right to conduct a "Phase I" environmental assessment of the Property. If the results of the Phase I assessment are inconclusive, in Purchaser's sole judgment, or reveal environmental matters unacceptable to Purchaser, in its sole judgment, then Purchaser, at its sole option, shall have the right (exercisable by giving Seller written notice on or before the expiration date of the Feasibility Period) to cause additional so-called "Phase II" inspections and tests to be performed as determined by Purchaser in its sole but reasonable judgment.

6.3 Title. Purchaser shall have the right to inspect the status of title to the Property. Purchaser may obtain a title report or title commitment ("**Commitment**") and, at Purchaser's election, a survey and bankruptcy, tax, judgment and lien searches with respect to Seller and/or the Property. In the event the Commitment discloses, or Purchaser becomes aware of any encumbrance on the Property that can be discharged or satisfied by the payment of money ("**Monetary Title Matters**"), Seller shall discharge or satisfy such Monetary Title Matters on or prior to the Closing Date. If Seller fails to discharge or satisfy any such Monetary Title Matters as aforesaid, Purchaser, at its sole option, and in addition to any other rights and remedies it may have under this Agreement, at law and/or in equity, shall have the right to discharge and satisfy (or cause the Escrow Agent to discharge and satisfy) the same from the proceeds of



the Purchase Price to be paid to Seller at Closing. Title to the Property shall be subject only to the following matters: (i) the lien of real estate taxes not yet due and payable and (ii) such matters appearing on the Commitment to which Purchaser shall fail to object during the Feasibility Period (collectively, the "Permitted Exceptions"). Title to the Property shall be insurable, together with such title insurance endorsements as Purchaser may reasonably request, at regular rates (including applicable rates for such endorsements) from a title insurance company licensed in the State of Maryland and selected by Purchaser. In the event Purchaser's review of title to the Property reveals any matters that are unacceptable to Purchaser in its sole and absolute discretion (other than Monetary Title Matters Seller is required to remedy as aforesaid), Purchaser intends to notify Seller thereof (the "Title Objections") within approximately sixty (60) days after the Effective Date (the "Objection Notice"). Within ten (10) days after receipt of the Objection Notice, Seller shall notify Purchaser in writing, whether Seller shall undertake to cure any or all of the Title Objections. In the event Seller elects not to cure any of the Title Objections or is unable with the exercise of due diligence to satisfy all of the Title Objections before the Closing Date, Purchaser may, at its option, either (a) accept title subject to the Title Objections, without an adjustment of the Purchase Price, in which event each of the Title Objections shall be deemed waived for all purposes and considered a Permitted Exception, or (b) terminate this Agreement upon written notice to Seller, which notice may be delivered by electronic mail, with a copy to Escrow Agent. If Purchaser shall terminate this Agreement, then (i) this Agreement shall be deemed to have terminated as of the date of Purchaser's notice without need for any further action by either party, (ii) neither Purchaser nor Seller shall have any further obligations to one another hereunder, except for those which expressly survive termination of this Agreement, and (iii) Escrow Agent shall immediately return the Deposit to Purchaser without any requirement for further notice or instructions.

6.4 Conditions of Conducting Due Diligence. Purchaser's right to conduct due diligence on, at or otherwise with respect to the Property prior to the Closing Date shall be subject to Purchaser's continuing compliance with each and all of the following conditions: (i) Seller shall permit Purchaser, and its agents, representatives and contractors, to have reasonable access to the Property, subject to the rights of tenants and occupants of the Property, if any; (ii) all such due diligence shall be conducted so as not to cause any unreasonable or material disruption to tenants or other occupants at the Property, if any; (iii) Purchaser shall at all times comply, in all material respects, with all laws, ordinances, rules and regulations applicable to the Property; (iv) promptly after entry onto the Property, Purchaser, at its cost and expense, shall restore or repair (to substantially the same condition it existed prior to the entry) any damage thereto to the extent caused by or otherwise arising from any act or omission by Purchaser, its agents, representatives, consultants or contractors; and (v) prior to conducting any invasive testing of the Property (e.g., soil borings) Purchaser shall furnish to Seller reasonably satisfactory evidence that Purchaser or its consultants, agents, representatives or contractors performing such work shall have procured comprehensive liability insurance protecting against claims for bodily injury and death with a single limit amount of not less than \$1,000,000, naming Seller as an additional insured. Purchaser shall indemnify, defend, reimburse, and hold and save Seller harmless from and against any and all reasonable and actual loss, cost (including without limitation any liens therefore), damage costs (*excluding* consequential and punitive damages), injury or expense arising out of or in any way related to claims by third parties for damage to property or bodily injury (or other applicable costs) to the extent resulting from the acts or omissions of Purchaser, its agents, employees and contractors, relating to any entry onto the Real Property. The indemnification provision contained in this Section shall survive for a period of one (1) year after the Closing or earlier termination of this Agreement, and the indemnification provisions contained in this Section do not apply to (i) any loss, liability, cost or expense to the extent resulting from the acts or omissions of Seller or Seller's agents or consultants, (ii) any diminution in value of the Property arising from or relating to matters discovered (but not created or caused) by Purchaser during its inspections, (iii) the discovery of conditions existing prior to the time of such entry but discovered as a result of such entry, or (iv) any latent defects in the Property discovered by Purchaser but not created or caused by Purchaser, or

(v) the release or spread of any Hazardous Substances (as defined in Section 7.10 below) which is discovered (but not deposited or introduced) on or under the Property by Purchaser.

7. Representations and Warranties of Seller. Seller hereby makes the following representations and warranties to Purchaser, all of which are made as of the Effective Date and shall be true and correct on and as of the Closing Date.

7.1 Entity; Enforceability; Authorization. Seller is a corporation organized under the laws of the Principality of Liechtenstein and is registered to transact business and in good standing in the State of Maryland. This Agreement and the documents, affidavits, certificates and other instruments to be executed and delivered by Seller pursuant hereto are, or will be when executed and delivered by Seller, the legal, valid and binding obligations of Seller and enforceable against Seller in accordance with its terms. Seller has obtained all consents necessary for, and possesses full authority and legal right to authorize Seller's entry into and performance of this Agreement, the Closing Documents and any other documents, affidavits, certificates and other instruments to be executed and delivered by Seller pursuant hereto and/or the transactions contemplated hereby or thereby.

7.2 Ownership of the Property. Seller is the fee simple record and beneficial owner of the Property, free and clear of any and all leases, liens, claims, charges, pledges, security interests, encumbrances, restrictions, judgments and claims of any kind or character whatsoever, except for the Permitted Exceptions. Except for Purchaser's rights hereunder, no person or entity has an option, right of first refusal or other similar right to acquire all or any portion of the Property. Seller has performed all obligations under and is not in default in complying with the terms and provisions of any of the covenants, conditions, restrictions, rights-of-way or easements constituting one or more of the Permitted Exceptions or otherwise applicable to the Property.

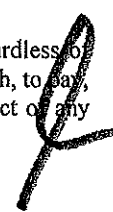
7.3 No Conflicts. Neither the execution and delivery of this Agreement or the Closing Documents, nor the delivery of the other Closing Deliverables, nor the consummation of the transactions contemplated hereby and thereby will conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, any agreement or instrument to which Seller is a party or to which the Property is subject.

7.4 Third Party Consents. All consents required from any governmental authority or third party in connection with the execution and delivery of this Agreement or the Closing Documents by Seller or the consummation by Seller of the transactions contemplated hereby and thereby have been made or obtained or shall have been made or obtained by the Closing Date.

7.5 Leases. There are no leases or other occupancy agreements of any kind with respect to any portion of the Property.

7.6 Contracts. There are no maintenance, repair, janitorial, snow removal, cleaning, supplier, management, leasing or other contracts or agreements of any kind affecting or relating to the Property, except as detailed on Exhibit G attached hereto (the "Contracts"). Seller is not in breach or default under any of the Contracts. All Contracts may be terminated by Seller without fee or penalty upon notice of thirty (30) days or less, unless otherwise set forth on Exhibit G attached hereto. Unless Purchaser elects otherwise in writing prior to the Closing Date, Seller shall terminate all Contracts as of the Closing Date.

7.7 Leasing Commissions. There is no currently existing obligation, regardless of whether such obligation is contingent on the passage of time or the occurrence of any event or both, to pay, either currently or in the future, any leasing commissions, fees or other compensation in respect of any



leases or any renewals and extensions of any leases. There does not currently exist any exclusive or continuing leasing or brokerage agreements regarding the leasing of any portion of the Property.

7.8 Other Agreements. Seller is not a party to, nor does Seller have knowledge of, any agreements relating to the Property other than the Contracts and the Permitted Exceptions.

7.9 Violation of Laws, Etc. Seller has not received notice of, and, to Seller's knowledge, there are no existing violations of any federal, state, county or municipal laws, ordinances, orders, codes, regulations or requirements affecting all or any portion of the Property.

7.10 Hazardous Conditions. For the purpose of this Agreement, "**Hazardous Substances**," shall mean any chemical, substance, waste, or material (i) defined as or deemed hazardous, toxic, a pollutant, a contaminant, or otherwise regulated under any Environmental Law, including, but not limited to, petroleum and petroleum products or other fuels, waste oil, halogenated and non-halogenated solvents, PCBs and asbestos, (ii) found to be flammable, explosive, reactive, corrosive, toxic, carcinogenic, teratogenic, or radioactive, or (iii) found to have an adverse effect on the environment or the health or safety of persons. "**Environmental Laws**" means (i) the Comprehensive Environmental Response, Compensation and Liability Act, as amended, (ii) the Resource Conservation and Recovery Act, as amended, and (iii) any other provisions of Federal or Maryland law, and the regulations, rules, ordinances, guidelines and orders adopted pursuant thereto relating to the regulation of environmental matters or other substances deemed potentially hazardous to human health or wildlife.

(i) During Seller's ownership of the Property there have been no, and there are no, pending or, to Seller's knowledge, threatened: (A) claims, complaints, notices, or requests for information received by Seller with respect to any alleged violation of any Environmental Law with respect to the Property, or (B) claims, complaints, notices, or requests for information to Seller regarding potential or alleged liability under any Environmental Law with respect to the Property.

(ii) Seller has no knowledge of the generation, storage, or disposal of Hazardous Substances on the Property. Seller has never generated, stored, or disposed of any Hazardous Substances on the Property in violation of Environmental Laws.

(iii) Seller has not received notice of any violation of any orders, directives, requirements, permits, certificates, approvals, licenses, and other authorizations relating to Environmental Laws with respect to the Property.

(iv) There are no above ground or underground storage tanks (collectively, "USTs") at the Property. Seller has not removed or abandoned any USTs at the Property and Seller has no knowledge of the existence, abandonment or removal of USTs at the Property.

7.11 Litigation. No proceeding, suit or litigation relating to Seller, the Contracts, or the Property or any part thereof is pending or, to Seller's knowledge, threatened in any court or other tribunal or before any governmental authority. Seller is and shall remain responsible after the Closing Date for defending (or continuing) any suit or proceeding attributable to periods prior to the Closing Date, and all damages, losses, expenses and costs related thereto, and Seller shall continue after the Closing Date to pursue any insurance maintained by Seller prior to Closing with respect thereto, which obligations shall survive Closing. Seller is not the subject of, nor has Seller received any written notice of or threat that it has or will become the subject of, any actions or proceedings under the United States Bankruptcy Code, 11 U.S.C. §§ 101, et seq. ("**Bankruptcy Code**"), or under any other federal, state or local laws affecting the rights of debtors and/or creditors generally, whether voluntary or involuntary and including, without limitation, proceedings to set aside or avoid any transfer of any interest in property or obligations, whether

denominated as a fraudulent conveyance, preferential transfer or otherwise, or to recover the value thereof or to charge, encumber or impose a lien thereon.

7.12 Permits, etc. All permits, licenses, authorizations and certificates of occupancy (if any) required by governmental authorities for the management, occupancy, leasing and operation of the Property are in full force and effect. In connection with any Improvements on the Property constructed during Seller's ownership, Seller obtained any necessary permits.

7.13 FIRPTA Compliance. Seller is a foreign (non-US) entity, and therefore Seller intends to pursue any available exemptions and/or withholding certification(s) (as further described above in Section 4.1.6) with respect to federal and Maryland state (and any local jurisdiction) income tax withholding requirements. To the extent that Seller is unable to timely obtain any such available exemptions and/or withholding certification(s) and tender copies of same to Escrow Agent on or before the Closing Date, the parties acknowledge and agree that Escrow Agent shall withhold and remit thereby applicable amounts (from sales proceeds) to the subject taxing authorities.

7.14 Mechanic's Liens. There are no claims for labor performed, materials furnished or services rendered in connection with the development, construction, improvement, renovation or repair of the Property with respect to which liens may or could be filed against the Property, either pending or threatened.

7.15 Zoning. The Property is currently zoned "RM". Seller is not a party to, nor does Seller have any actual knowledge of, any pending or threatened proceeding for the rezoning of the Property or any portion thereof, or the taking of any other action by governmental authorities that would have an adverse or material impact on the value of the Property or use thereof by Purchaser.

7.16 Condemnation. Seller has not received any written notice advising it of any pending or threatened condemnation or other governmental taking proceedings affecting all or any part of the Property.

7.17 Tax Matters. No federal or other taxing authority (each, a "Taxing Authority" and collectively, the "Taxing Authorities") has asserted in writing any tax deficiency, lien, interest or penalty against Seller or the Property, or any portion thereof, that has not been paid, and there is no pending audit or inquiry from any Taxing Authority relating to Seller or the Property, and to Seller's knowledge, no event has occurred and no condition or circumstance exists which presents a material risk that any tax deficiency, lien, interest, penalty or other assessment will be imposed against Seller or the Property or any portion thereof. For purposes of this section, "tax" shall mean any United States or other federal, state, provincial, local or foreign income, gross receipts, property, sales, goods and services, use, license, excise, franchise, employment, payroll, withholding, alternative or add-on minimum, ad valorem, transfer, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, imposed by any Taxing Authority.

7.18 Insurance Claims. There are no pending insurance claims with respect to any portion of the Property that Seller has received written notice of or that Seller has actual knowledge of, and to Seller's knowledge no insurance claims have been filed in the last twelve (12) months with respect to any portion of the Property.

7.19 Property Defects. To Seller's actual knowledge, there are no material defects in the structural, mechanical or other physical systems or components of the Property. Seller has not received any written notice, report or other written communication advising or alleging of the existence of any defect or deficiency in the conditions of the Improvements, the structural elements thereof, and the mechanical

systems (including, without limitation, all heating, ventilation and air-conditioning systems and all components thereof, plumbing, electrical, elevator, security, utility and sprinkler systems) therein.

8. Representations and Warranties of Purchaser. Purchaser hereby represents and warrants to Seller that: (i) Purchaser is a Maryland limited liability company and is in good standing in the State of Maryland; (ii) this Agreement and the documents, affidavits, certificates and other instruments to be executed and delivered by Purchaser pursuant hereto are, or will be when executed and delivered by Purchaser, legally binding on, and enforceable against, Purchaser in accordance with their respective terms except as the same may be limited by applicable bankruptcy, insolvency, reorganization, receivership and other similar laws affecting the rights and remedies of creditors generally and by general principles of equity (whether applied by a court of law or equity); and (iii) neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, any agreement or instrument to which Purchaser is a party. **PURCHASER HEREBY AGREES AND ACKNOWLEDGES THAT, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN ANY CLOSING DELIVERABLES, THE ACQUISITION OF THE PROPERTY SHALL BE ON AN "AS IS, WHERE IS" BASIS.** Purchaser further represents that it will not require any conditional or other financing in order to consummate the transaction contemplated hereunder and satisfy Purchaser's requirements to achieve Closing.

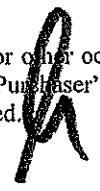
9. Seller Covenants.

9.1 Inspection. Seller shall make available to Purchaser and its agents during normal business hours prior to the Closing Date all information in Seller's or its management agent's possession or control concerning the Property, including, without limitation, all books and records and plans and specifications.

9.2 Operation and Maintenance. Seller agrees that from the date of this Agreement to the Closing Date, Seller will, at its sole cost and expense: (i) operate the Property in a commercially reasonable manner; (ii) maintain the Property in its current condition and otherwise continue its usual maintenance program for the Property, including, without limitation, making all repairs and replacements in the ordinary course of business (including repairs and replacements to building systems), ordering and maintaining on hand (to the extent applicable) sufficient materials, supplies, equipment, inventory, fuel and other personal property for the efficient operation and management of the Property, through the Closing Date; (iii) comply with and perform all material provisions and obligations to be complied with and/or performed by Seller under each of the Contracts (if any); (iv) not mortgage or otherwise encumber all or any part of the Property, or to the extent any mortgages or deeds of trust encumber the Property, during the pendency of this Agreement, Seller shall keep such mortgages/deeds of trust and all real property and other assessments current and shall not permit any default and/or delinquency thereof; (v) Seller shall not transfer or otherwise pledge any portion of the Property to any person during the pendency of this Agreement, unless such transfer or pledge can be and is removed on or before the Closing Date; and (v) maintain in full force and effect its current all-risk (or current equivalent) casualty insurance policy for the Property.

9.3 Contracts. Seller shall not enter into any new contracts, nor shall it modify any Contracts which will remain in effect after Closing.

9.4 Leases. Seller shall not enter into any leases or other occupancy agreements of any kind with respect to the Property or any portion thereof without Purchaser's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.



9.5 Leasing Commissions. Seller shall pay and discharge in full at or before Closing all leasing commissions (past, present or future, actual or contingent) with respect to the Property, including, without limitation, leasing commissions relating to extensions, renewals, expansions, failures to exercise termination options or otherwise. The obligations of Seller in this Section shall survive Closing for a period of three (3) years.

9.6 Correspondence. Promptly upon receipt, Seller shall provide Purchaser with copies (to the extent in the possession of Seller, its resident agent, its attorneys, its management company or other agents of Seller) of any notices, sales reports and correspondence received from tenants, neighboring property owners and any insurance company which carries insurance on the Property, from any governmental authorities or from any other person or entity with respect to the Property or any portion thereof.

9.7 Title and Encumbrances. Seller hereby agrees that, after the Effective Date, it shall not take any action affecting title to the Property or encumbering the Property (except for actions effectuating the release of liens or encumbrances in accordance with the terms of this Agreement) unless consented to by Purchaser in writing, which consent may be withheld in Purchaser's sole and absolute discretion. In all events, Seller will cause to be removed, paid off, released and/or discharged at Closing any mortgage, judgment, deed of trust, lien or other evidence of a monetary charge against the Property and any lien or other encumbrance affecting title to the Property and arising subsequent to the date of the Commitment referred to in Section 6.3.

9.8 Real Estate Tax Assessments. Prior to the Closing Date, Seller shall not institute any proceeding or application for a reduction in the real estate tax assessment of the Real Property for any tax year without the prior written consent of Purchaser, which consent may be withheld in Purchaser's reasonably exercised discretion.

9.9 Payment of Taxes. Unless otherwise provided herein, Seller shall pay all federal, state, county, local and foreign income, excise, real and personal property, sales and other taxes which first become due and payable prior to or on the Closing Date.

9.10 Claims. Seller hereby agrees to cooperate with Purchaser in connection with the pursuit of any claims resulting from or based on an event that occurred prior to Closing that are covered under the liability insurance policies for the Property that were in effect prior to Closing to assist Purchaser in filing a claim under such insurance policies, including, but not limited to executing any assignment of such policy or proceeds to Purchaser. The obligations of Seller under this Section shall survive Closing for a period of three (3) years.

9.11 Marketing. At all times prior to Closing hereunder, Seller shall not offer for sale or negotiate in any manner for the sale or transfer of the Property with any third party. In addition, Seller shall not disclose the terms of this Agreement, or any other information regarding the transaction contemplated hereby, to any third party, except that Seller may disclose such terms and information to the broker, lawyer and/or accountant assisting Seller with this transaction, provided that Seller instructs and requires such parties to observe and protect the confidentiality of such terms and other information.

9.12 Equipment/Property Warranties. No appliances or articles of personal property (if any) belonging to Seller and located on or used in connection with the operation of the Property shall be removed from the Property prior to Closing, unless replaced by items of like kind and quality, and all such appliances and articles of personal property shall be maintained and repaired by Seller prior to Closing, as may be required to keep such items in the same condition as they were on the date of this Agreement. After the Effective Date (subject to final effectiveness upon the Closing), Seller shall (at Purchaser's request and



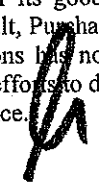
expense) take any steps which are a prerequisite to the assignment and transfer to Purchaser at Closing of any current roof, HVAC, equipment, appliance, and other warranties or guaranties (if any) relating to the Property. Such obligation shall include, but not be limited to, the obtaining of any required consents, the arranging of any required inspections, and the payment of any required fees (said fees to be paid by Purchaser).

9.13. Notice of Violations of Representations and Warranties. Seller will not cause or suffer any action to be taken or fail to take any action which would cause any of the foregoing representations or warranties to be untrue as of the Closing Date. Seller shall promptly notify Purchaser, in writing, of any event or condition known to Seller which occurs prior to the Closing Date which causes a change in the facts relating to, or the truth of, any of the above representations or warranties or otherwise have a material effect upon the Property or its use. Seller hereby authorizes Purchaser to make such inquiries and/or investigations which Purchaser deems necessary and appropriate of any and all applicable governmental or quasi-governmental agencies in connection with Purchaser's intended purchase of the Property.

9.14 Cooperation with Entitlements/Zoning/Land Use. Seller shall use commercially reasonable efforts (without any additional cost or expense to Seller) to cooperate with Purchaser's efforts to obtain any reasonably requested information, including without limitation, agricultural assessment and transfer tax information, zoning letters, and other reports, records, letters, permits or approvals from authorities having applicable jurisdiction over the Property and to cooperate with Purchaser's exploration of redevelopment opportunities relating to the Property, provided that Seller makes no warranties or representations as to the ultimate ability of Purchaser to obtain same to its satisfaction. To the extent that applications and submissions require the Owner's approval or consent, Seller agrees to cooperate (without any additional cost or expense to Seller) with such requests, such cooperation not to unreasonably withheld, conditioned or delayed.

10. Conditions Precedent to Purchaser's Obligation to Purchase. The obligation of Purchaser to acquire the Property and to perform the other covenants and obligations to be performed by it on the Closing Date shall be subject to the following conditions precedent (which conditions precedent shall inure solely to the benefit of Purchaser, and no other person or entity, including, without limitation, Seller, shall have any right to waive or defer any of such conditions, in whole or in part). In the event of a failure of a condition precedent, Purchaser may pursue its rights and remedies in accordance with the terms of Section 12.1.1 below. Notwithstanding anything else herein, however, in no case shall Purchaser's ability to obtain mortgage or other financing be a precondition to Closing or Purchaser's obligation to purchase/acquire the Property, it being the intent of the parties that Purchase will make a "cash" purchase of the Property. Without limitation on the generality of the foregoing, in the event the following described conditions precedent are not satisfied before the Closing Date, Purchaser may terminate this Agreement by giving written notice thereof to Seller and Escrow Agent, and Escrow Agent shall promptly return the Deposit to Purchaser without the need for further instructions, and neither Seller nor Purchaser shall have any further rights or liabilities hereunder (except for such rights and liabilities as expressly survive the termination of this Agreement):

(i) Seller shall have performed in all material respects its covenants and obligations required by this Agreement to be performed or complied with by it on or before the Closing Date. Although certain of Seller's covenants and obligations are limited to the exercise by Seller of its good faith, commercially reasonable efforts, this condition to closing is not so limited and, as a result, Purchaser has no obligation to proceed to Closing if one or more of Seller's covenants or obligations has not been performed notwithstanding that Seller exercised its good faith, commercially reasonable efforts to do so or that Seller may not be in default under this Agreement as the result of such nonperformance.



(ii) All of Seller's representations and warranties in this Agreement shall be true and correct (to the best of Seller's knowledge) in all respects as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of such date. Seller shall have executed and delivered to Purchaser a certificate, dated as of the Closing Date, to the foregoing effect.

(iii) Delivery of possession of the Property to Purchaser at Closing, which shall be in substantially the same condition it is in on the date of this Agreement, subject to reasonable wear and tear, casualty and/or condemnation and the provisions of this Agreement relating thereto.

(iv) Title to the Property on the Closing Date shall be in accordance with Section 6.3 above.

11. Condemnation and Casualty. If, prior to the Closing Date, Seller receives written notice of any pending or threatened condemnation proceedings or actions or if there occurs any damage, destruction or casualty with respect to all or any portion of the Property, Seller shall promptly notify Purchaser thereof in writing. In the event there occurs: (i) any actual or pending condemnation of any portion of the Property; or (ii) any casualty exceeding a cost of One Hundred Thousand Dollars (\$100,000.00) to restore, Purchaser shall have the right to terminate this Agreement by giving notice to Seller within ten (10) days after receipt of Seller's notice advising Purchaser of the occurrence of any casualty or pending condemnation. If: (i) Purchaser fails to notify Seller of Purchaser's election to terminate this Agreement within such 10-day period; or (ii) Purchaser elects to proceed to Closing and not terminate this Agreement, then Purchaser shall proceed to Closing, without adjustment of the Purchase Price, subject to such condemnation or casualty, in which event at Closing, Seller shall, as applicable: (A) assign to Purchaser any condemnation award or rights thereto paid or payable or otherwise accruing to Seller on account of such condemnation; or (B) assign to Purchaser all of Seller's right, title and interest in and to the proceeds of any casualty insurance payable to Seller on account of such casualty (respecting the Property) and pay to Purchaser an amount equal to any deductible or coinsurance applicable to the casualty insurance under such insurance policies. If Purchaser timely elects to terminate this Agreement as aforesaid, Escrow Agent shall return the Deposit to Purchaser, and neither Purchaser nor Seller shall have any further rights or liability under this Agreement except for such rights and liabilities as expressly survive termination hereof.

12. Breach/Termination.

12.1 Breach by Seller.

12.1.1 On or Before the Closing Date. If Seller shall fail to perform its covenants or agreements required to be performed at or before the Closing Date and such failure shall continue for five (5) business days after written notice from Purchaser (or if any of Seller's representations and warranties set forth in this Agreement are not true and correct in all material respects on the date hereof or on the Closing Date) (each such Seller default being a "Seller Default"), then Purchaser shall have the right, at its sole option, to: (i) terminate this Agreement (by its notice to Seller), and receive a refund of the Deposit plus, in the event such failure is due to events within the control of Seller to cure, an amount equal to all of Purchaser's actual and documented (Purchaser to provide applicable invoices) third party costs and expenses incurred in connection with this Agreement, the Inspections, and its evaluation of the Property, including reasonable attorneys' fees, title fees, environmental consulting fees, insurance certificates, and other costs and expenses up to a maximum of [REDACTED] (the "Due Diligence Costs") and upon Purchaser's receipt of the Deposit from Escrow Agent and payment of the Due Diligence Costs from Seller, neither party shall have any further rights or obligations to the other under this Agreement except such rights and obligations as expressly survive termination of this Agreement; or (ii) pursue any legal or equitable remedies to which Purchaser may be entitled on account of such Seller Default, including,

without limitation, specific performance and recovery of actual third party costs and expenses (subject to above monetary recovery limitation as stated in this paragraph) incurred by Purchaser with respect to the Seller Default.

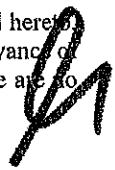
12.1.2 After the Closing Date. In the event of a breach or failure of Seller's representations, warranties or covenants as required herein discovered or occurring following the Closing Date, Purchaser may pursue any legal or equitable remedies to which Purchaser may be entitled on account of such Seller Default, including, without limitation, specific performance and recovery of Purchaser's actual costs, expenses (subject to monetary recovery limitation as stated in the immediately preceding paragraph) and any damages incurred in connection with this Agreement and/or such default by Seller.

12.2 Breach by Purchaser. If Purchaser shall fail to perform any of the covenants or agreements to be performed by it hereunder and such failure shall continue for five (5) business days after written notice from Seller (except there shall be no notice requirement for a Purchaser failure to terminate this Agreement prior to the expiration of the Feasibility Period), or if any of Purchaser's representations and warranties set forth herein shall not be true and correct in all material respects as of the date made or deemed made, Seller's sole and exclusive remedy shall be to terminate this Agreement and receive the Deposit then held by Escrow Agent as liquidated damages for Purchaser's default (Escrow Agent to pay the Deposit then held by Escrow Agent to Seller upon Seller's request), all other claims for losses, damages, costs and expenses being waived hereby. Notwithstanding anything to the contrary, if this Agreement is terminated prior to the expiration of the Feasibility Period, for any reason whatsoever, the Deposit shall be immediately refunded to Purchaser. Purchaser and Seller hereby acknowledge and agree that the actual damages suffered by Seller as a result of such breach by Purchaser would be impracticable, extremely difficult or impossible to determine and the parties agree that the Deposit described above shall be the amount of damages to which Seller is entitled in such event and that the amount of such liquidated damages is reasonable and does not constitute a penalty.

12.3 Litigation Costs. In the event of any litigation between the parties with respect to this Agreement, including any action for specific performance that may be brought by Purchaser as provided above, the prevailing party shall be entitled to recover reasonable attorneys' fees and expenses. Neither party shall be entitled to any indirect, punitive or consequential damages.

13. Brokers. Each party hereto represents and warrants to the other that it has dealt with no brokers or finders in connection with this transaction, except for Sitar Realty Company (representing Purchaser) and The Genau Group (representing Seller) (collectively, the "Brokers"). Seller shall pay the commission due to the Brokers pursuant to a separate agreement between Seller and the Brokers, and release/payment of such commissions (from proceeds from the sale hereunder) shall be coordinated by Seller with Escrow Agent. Each of the parties hereto hereby represents and warrants that neither has authorized any real estate broker, agent or finder to act on its behalf in connection with the transaction contemplated by this Agreement other than the Brokers, nor does it have any knowledge of any other broker, agent or finder purporting to act on its behalf in respect to this Agreement and the sale of the Property to be made pursuant hereto, and that the other party hereto shall have no liability to any broker for compensation, commission or otherwise except for Seller's obligations to the Brokers. Each party agrees that it shall respectively (as the subject indemnifying party) indemnify, defend and save the other harmless from and against any cost, expense, claim, loss, liability or damages, including reasonable attorneys' fees, and court costs, resulting from the indemnifying party's breach of the foregoing representation and warranty. The provisions of this Section shall survive Closing or termination of this Agreement.

14. Entire Agreement/Modification. This Agreement, including the exhibits attached hereto, and the Closing Documents contain the entire agreement between the parties relating to the conveyance of the Property, all prior negotiations between the parties are merged into this Agreement and there are no



promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied, between them other than as set forth in this Agreement, including the exhibits attached hereto, and the Closing Documents. No change or modification of this Agreement or any of the Closing Documents shall be valid unless the same is in writing and signed by each of the parties hereto or thereto. No waiver of any of the provisions of this Agreement or any of the Closing Documents executed or to be executed in connection herewith shall be valid unless in writing and signed by the party against whom it is sought to be enforced. Notwithstanding the foregoing, in the event that Purchaser and Seller agree to and execute any written amendment or other document modifying this Agreement, which does not directly modify the obligations of the Escrow Agent hereunder, the Escrow Agent shall not be required to execute such amendment or other agreement in order for the document to be fully effective and enforceable.

15 Miscellaneous.

15.1 Binding Effect. This Agreement shall be binding upon, and inure to the benefit of and be enforceable by, the respective successors and assigns of the parties hereto.

15.2 Governing Law; Venue. The provisions of this Agreement shall be governed by the laws of the State of Maryland, without regard to the conflicts of laws provisions thereof. Any suit involving any dispute or matter arising under this Agreement may only be brought pursuant to the jurisdiction of the Circuit Court for Washington County, Maryland; provided, that if any such action or proceeding arises under the Constitution, laws or treaties of the United States of America, or if there is a diversity of citizenship between the parties thereto, so that it is to be brought in a United States District Court, it may be brought in the United States District Court for the District of Maryland (at said court's Baltimore, Maryland location). All of the parties hereto hereby consent to the exercise of personal jurisdiction by any such court with respect to any such proceeding.

15.3 Notices. Any notice, demand, consent, election, offer, approval, request, or other communication (collectively a "notice") required or permitted under this Agreement must be in writing and delivered (i) personally, or (ii) sent by certified mail, postage prepaid, return receipt requested, or (iii) by a nationally recognized overnight courier, or (iv) via email. A notice must be addressed to a party as indicated below. Any notice hereunder shall be deemed duly delivered (x) when delivered, with written receipt, if personally delivered or delivered by nationally recognized overnight courier, (y) or upon actual delivery or refusal of delivery, if mailed by certified mail, return receipt requested, postage prepaid, or (z) when delivered via email to the email address indicated herein with electronic delivery receipt. Any party may designate, by notice to all of the others, substitute addresses or addressees for notices; and, thereafter, notices are to be directed to those substitute addresses or addressees. Seller's notice address: I. & K. Delikostopoulos, Attorneys at Law, 4 Iraklitou Street, Athens 10673, Greece, Email: idelikostopoulos@gmail.com; With a copy to: Email: cdelicos@gmail.com; Purchaser's notice address: 19817 Beaver Creek LLC, c/o Diversified Capital, 1125 Ocean Avenue, Lakewood, NJ 08701, Attention: Moshe Rubin, Email: MRubin@diversified-capital.com; With a copy to: Abramoff Neuberger LLP, Attn: Meir Neuberger, Esquire, 2850 Quarry Lake Drive, Suite 300, Baltimore, MD 21209, Email: mneuberger@abrneu.com; Escrow Agent's notice address: Madison Title Agency, LLC, 1125 Ocean Avenue, Lakewood, NJ 08701, Email: CCelnik@madisoncres.com.

15.4 Incorporation. Each and all of the exhibits and schedules attached hereto are hereby incorporated into this Agreement by reference.

15.5 Further Assurances. Seller agrees that it will, at any time and from time to time after the Closing Date, do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably required for the better assigning, transferring, granting,

assuring and confirming to Purchaser, or to its successors and assigns of, or for aiding and assisting in collecting and reducing to possession, any or all of the assets or property being transferred to Purchaser pursuant to this Agreement; provided, however, that any instruments to be executed by Seller shall be in form and substance reasonably acceptable to Seller and in no event shall Seller be required to incur any liability or obligation in addition to that which it is obligated to incur under this Agreement. The provisions of this Section shall survive the Closing of the transactions contemplated by this Agreement for a period of three (3) years.

15.6 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument; provided, however, in no event shall this Agreement be effective unless and until signed by all parties hereto. A fax copy or an email of a PDF file containing a copy of an executed agreement (or signature page thereto) shall be sufficient for all purposes.

15.7 Risk of Loss. Risk of loss or damage from fire or other casualty is assumed by Seller until delivery of the deed conveying the Property to Purchaser at Closing.

15.8 Rules of Construction. Section captions used in this Agreement are for convenience only and shall not affect the construction of the Agreement. All references to "Sections", without reference to a document other than this Agreement are intended to designate articles and sections of this Agreement, and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section, unless specifically designated otherwise. The use of the term "including" shall mean in all cases "including but not limited to," unless specifically designated otherwise. No rules of construction against the drafter of this Agreement shall apply in any interpretation or enforcement of this Agreement, any documents or certificates executed pursuant hereto, or any provisions of any of the foregoing.

15.9 Computation of Time. In computing any period of time pursuant to this Agreement, the day of the act or event from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is not a Business Day, in which event the period runs until the end of the next day which is a Business Day. For purposes of this Agreement, "Business Day" shall mean any day other than a Saturday, Sunday or any federal or State of Maryland holiday. If Purchaser's rights or obligations hereunder are delayed or impeded as a result of medical or public health effects of the so-called Covid-19 disease (also known as novel coronavirus), including but not limited to, public/governmental orders or restrictions, curfew or shelter-in-place order or advisory, quarantine, bank regulation, and/or similar or related resections or imposition, then, upon notice from Purchaser to Seller, Purchaser shall be afforded a reasonable extension of applicable deadlines and periods, as provided in said notice. Purchaser in good faith shall use commercially reasonable efforts to mitigate the effect of such delay or impedance and no extension will be permitted in excess of a total of ninety (90) days without Seller's consent.

15.10 Time of the Essence. Time shall be of the essence under this Agreement.

15.11 No Third-Party Beneficiaries/Assignment. None of the rights or obligations provided hereunder shall inure to the benefit of any third party unless such third party is a permitted assignee. Purchaser shall have the right to assign this Agreement, including, without limitation, all of its rights and obligations hereunder.

15.12 Waiver of Trial by Jury/Survival. THE PARTIES HERETO HEREBY AGREE TO WAIVE ANY RIGHTS THEY MIGHT OTHERWISE HAVE TO A TRIAL BY JURY UNDER ANY PROVISION OF ANY APPLICABLE LAW. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH

THIS AGREEMENT, THE REPRESENTATIONS, WARRANTIES, INDEMNITIES, COVENANTS AND AGREEMENTS OF THE PARTIES SET FORTH IN THIS AGREEMENT, SHALL REMAIN OPERATIVE AND SHALL SURVIVE THE CLOSING UNDER THIS AGREEMENT FOR A PERIOD OF TWO (2) YEARS.

15.13 Tax-Deferred Exchange. Purchaser or Seller may consummate the purchase of the Property as part of a like kind exchange pursuant to Section 1031 of the Internal Revenue Code (the "Exchange"), provided that: (i) the Closing shall not be delayed or affected by reason of the Exchange nor shall the consummation or accomplishment of the Exchange be a condition precedent or condition subsequent to such party's obligations under this Agreement; (ii) the Exchange shall be effected through an assignment of this Agreement, or rights under this Agreement, to a qualified intermediary; and (iii) the requesting part(ies) shall each pay their own costs and expenses for facilitating the Exchange. The non-requesting party shall not by this agreement or acquiescence to the Exchange have its rights under this Agreement affected or diminished in any manner or be responsible for compliance with or be deemed to have warranted to the requesting party that the Exchange in fact complies with Section 1031 of the Code.

15.14 Seller Indemnity. Seller shall and hereby agrees to indemnify Purchaser and its affiliates, and their respective officers, directors, members, employees, shareholders, and agents against, and hold the same harmless from, all liabilities, indebtedness, obligations, losses, damages, claims, assessments, fines, penalties, costs, fees and expenses of every kind, nature or description, whether fixed or contingent, known or unknown, suspected or unsuspected, or foreseen or unforeseen, and whether based on contract, tort, statute or other legal or equitable theory of recovery, including any interest that may be imposed in connection therewith, court costs, costs resulting from any judgments, orders, awards, decrees or equitable relief, and reasonable fees and disbursements of counsel, consultants and expert witnesses (collectively, "Liabilities") resulting from or relating to (i) any breach of any representation or warranty of Seller contained in this Agreement, (ii) any material breach of, or any failure to materially perform, any covenant or agreement of Seller contained in this Agreement and (iii) Seller's ownership and operation of the Property prior to Closing.

15.15 Purchaser Indemnity. Purchaser shall and hereby agrees to indemnify Seller and its affiliates, and their respective officers, directors, members, employees, shareholders, and agents against, and hold the same harmless from, all Liabilities resulting from or relating to (i) any breach of any representation or warranty of Purchaser contained in this Agreement, (ii) any material breach of, or any failure to materially perform, any covenant or agreement of Purchaser contained in this Agreement, and (iii) responsibilities/obligations of Purchaser first arising from and after Purchaser's ownership and operation of the Property as of and following the Closing.

[SIGNATURES APPEAR ON NEXT PAGE]

A handwritten signature, possibly reading 'L', is written in black ink.

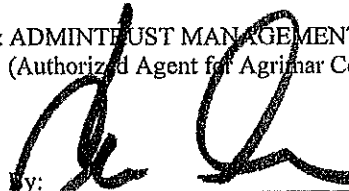
IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

SELLER:

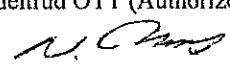
**Agrimar Corporation,**  
a corporation organized under the laws of the  
Principality of Liechtenstein

US Federal Taxpayer ID # 52-1207661

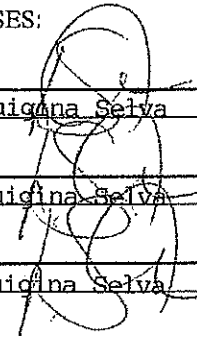
By: ADMINTRUST MANAGEMENT reg.  
(Authorized Agent for Agrimar Corporation)

By:  (SEAL)  
Klaus Boehler (Authorized Officer)

By:  (SEAL)  
Edeltrud OTT (Authorized Officer)

By:  (SEAL)  
Nicole Haas (Authorized Officer)

WITNESSES:

Name:  \_\_\_\_\_  
Luigina Selva

Name:  \_\_\_\_\_  
Luigina Selva

Name:  \_\_\_\_\_  
Luigina Selva

WITNESS:

Name: \_\_\_\_\_

PURCHASER:

**19817 Beaver Creek LLC**, a Maryland limited  
liability company

By: \_\_\_\_\_ (SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

JOINDER

Madison Title Agency, LLC joins herein to evidence its agreement to fulfill any and all obligations of Escrow Agent set forth in this Agreement.

**MADISON TITLE AGENCY, LLC**

Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

SELLER:

**Agrimar Corporation,**  
a corporation organized under the laws of the  
Principality of Liechtenstein

US Federal Taxpayer ID # 52-1207661

By: ADMINTRUST MANAGEMENT reg.  
(Authorized Agent for Agrimar Corporation)

WITNESSES:

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_


\_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
Klaus Boehler (Authorized Officer)

By: \_\_\_\_\_ (SEAL)  
Edeltrud OTT (Authorized Officer)

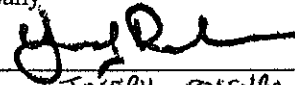
By: \_\_\_\_\_ (SEAL)  
Nicole Hass (Authorized Officer)

WITNESS:

  
Name: MOSHE RUBIN

PURCHASER:


**19817 Beaver Creek LLC**, a Maryland limited  
liability company.

By:  (SEAL)  
Name: JOSEPH ROSENBAUM  
Title: MANAGING MEMBER

JOINER

Madison Title Agency, LLC joins herein to evidence its agreement to fulfill any and all obligations of Escrow Agent set forth in this Agreement.

WITNESS:

  
Name: Esther Gardenswartz

**MADISON TITLE AGENCY, LLC**

By:   
Name: CHARLES CRUNK  
Title: MANAGER



## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

All the following described real estate, situate, lying and being in Election District No. 16, Washington County, Maryland, and lying on the Southwest side of the Turnpike Road between Funkstown and Beaver Creek and adjoining other lands formerly of Elias Young, deceased, the land formerly belonging to Michael Welty and lands now or formerly of Ranney Hunter, George Adams, Jacob R. Adams and Henry Eakle and being part of a tract of land called "Earhart's Industry" and part of a tract called "Kelley's Delight", part of a tract called "Duckett's Misfortune" and part of a tract called "Geoghagan's Friendship": BEGINNING for the same at a stone standing at the end of 10 perches in the first line of a tract called "Duckett's Misfortune" said stone being also the end of the 15th or South 55 degrees East 32 8/10 perches line of a deed from George Stouffer and others to Samuel McCauley for part of the above lands, and running thence with the 16th and 17th lines of said deed North 70 1/4 degrees East 54 perches to a stone, South 73 1/2 degrees East 16 2/10 perches to a stone, thence North 27 3/4 degrees East 67 4/10 perches to the end of the second line of the deed from George Stouffer and others to Samuel McCauley aforesaid, bearing date of the 20th day of March, A.D., 1844, and running thence with the lines thereof the five following courses and distances: North 57 1/4 degrees West 85 1/2 perches South 32 degrees West 2 1/2 perches North 56 3/4 degrees West 27 6/10 perches to a stone North 21 degrees East 60 perches, North 32 degrees West 6 perches into the turnpike road, then leaving the outlines of said deed North 61 1/4 degrees West 82 2/10 perches to the end of the ninth line of said deed, thence with the lines thereof South 21 1/2 degrees West 50 perches to a stone South 20 1/2 degrees West 38 3/4 perches South 21 degrees West 34 perches to a stone, South 47 1/4 degrees East 99 1/2 perches into the Spring Branch, South 11 1/2 degrees West 25 perches South 55 degrees East 32 3/4 perches to the beginning; CONTAINING 133 acres of land, more or less.

And:

ESTABLISHMENT, a Corporation of the Principality of Liechtenstein, all that lot or parcel of ground situate along the Southwest side of the Funkstown-Beaver Creek Road and along the West side of the Dual Highway, U.S. Route No. 40, in Election District No. 10, Washington County, Maryland and being more particularly described as follows: Beginning at the intersection of the Southwest marginal line of said Funkstown-Beaver Creek Road with the West margin of the Dual Highway, and running thence along said Southwest marginal line North 60 degrees 18 minutes West 313.72 feet to a post, thence leaving the Road and running back therefrom along the existing fence line South 22 degrees 16 minutes West 144.89 feet to a stake, thence to and along a second fence line South 29 degrees 01 minutes East 292.63 feet to a stake, thence North 65 degrees 57 minutes East 266.16 feet to a stake in the West marginal line of the Dual Highway, thence binding on said right of way by a curve to the right having a radius of 2999.79 feet for a distance of 57.50 feet, the chord being North 24 degrees 51 minutes 57 seconds West 57.50 feet to a point, and North 24 degrees 19 minutes West 81.1 feet to the place of beginning; containing 1.86 acres of land, more or less.

Being all the same property conveyed to Kenneth R. Hammond and L. Pearl Hammond, his wife, by Betty J. Pashen Monninger by deed dated February 1, 1978 and recorded in Liber 653, folio 607 among the Land Records of Washington County, Maryland.

**EXHIBIT B**

**BILL OF SALE**

THIS BILL OF SALE (this "**Bill of Sale**") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2021, by **Agrimar Corporation**, a corporation organized under the laws of the Principality of Liechtenstein and registered as a foreign corporation with the Maryland State Department of Assessments and Taxation ("**Seller**"), for the benefit of 19817 Beaver Creek LLC, a Maryland limited liability company ("**Purchaser**").

Reference is made to that certain Purchase and Sale Agreement dated \_\_\_\_\_, 2021, between Seller and Purchaser, as the same may have been amended, pursuant to which Seller has agreed to sell to Purchaser, and Purchaser has agreed to purchase from Seller, the improved real property and other assets described therein (the "**Agreement**"). Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Agreement.

KNOW ALL MEN BY THESE PRESENTS, that, for the consideration described in the Agreement, the receipt and sufficiency of which are hereby acknowledged by Seller, Seller hereby sells, transfers, assigns and delivers unto Purchaser, and its successors and assigns, all of the right, title and interest of Seller in and to all of the Personal Property.

TO HAVE AND TO HOLD all of such Personal Property, together and singular, unto Purchaser, and its successors and assigns, to and for its and their use forever.

AND Seller hereby represents and warrants to Purchaser, and its successors and assigns, that it has good and marketable title to the Personal Property and to each item comprising the Personal Property, free and clear of all security interests, mortgages, pledges, liens, restrictions, encumbrances, leases, charges and title defects whatsoever, and that Seller has full right and power to sell, transfer, assign and deliver the Personal Property and each item comprising the Personal Property.

The representations, warranties, covenants and agreements made in the Agreement by Seller are true and correct as of the date of this Bill of Sale and shall survive the execution and delivery of this Bill of Sale for the period of time set forth in the Agreement. **THIS BILL OF SALE IS IN ALL RESPECTS SUBJECT TO THE PROVISIONS OF THE AGREEMENT AND IS NOT INTENDED IN ANY WAY TO SUPERSEDE, LIMIT OR QUALIFY ANY PROVISION OF THE AGREEMENT.**

This Bill of Sale and the representations, warranties, covenants and agreements herein contained shall inure to the benefit of Purchaser and its successors and assigns and shall bind Seller and its successors and assigns.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale as of the date first written above.

**Agrimar Corporation,**  
a corporation organized under the laws of the  
Principality of Liechtenstein

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT C

### ASSIGNMENT OF PERMITS AND WARRANTIES

THIS ASSIGNMENT OF PERMITS AND WARRANTIES (this "**Assignment**") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2021, by **Agrimar Corporation**, a corporation organized under the laws of the Principality of Liechtenstein and registered as a foreign corporation with the Maryland State Department of Assessments and Taxation ("**Assignor**"), for the benefit of 19817 Beaver Creek LLC, a Maryland limited liability company ("**Assignee**").

1. Reference is made to that certain Purchase and Sale Agreement dated \_\_\_\_\_, 2021, between Assignor and Assignee, as the same may have been amended, pursuant to which Assignor has agreed to sell to Assignee, and Assignee has agreed to purchase from Assignor, the improved real property and other assets described therein (the "**Agreement**"). Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Agreement.

2. Assignment. For good and valuable consideration received by Assignor, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby grants, transfers and assigns to Assignee all right, title and interest of Assignor (if any) in and to the Permits and Warranties (if any). **THIS ASSIGNMENT IS IN ALL RESPECTS SUBJECT TO THE PROVISIONS OF THE AGREEMENT AND IS NOT INTENDED IN ANY WAY TO SUPERSEDE, LIMIT OR QUALIFY ANY PROVISION OF THE AGREEMENT.**

3. Binding Effect. This Assignment and the representations, warranties, covenants and agreements herein contained shall inure to the benefit of Assignee and its successors and assigns and shall bind Assignor and its successors and assigns.

IN WITNESS WHEREOF, Assignor has executed this Assignment effective as of the date first written above.

**Agrimar Corporation**, a corporation organized under  
the laws of the Principality of Liechtenstein

By: \_\_\_\_\_ (SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT D**

**SELLER UPDATE TO REPRESENTATIONS AND WARRANTIES**

The undersigned, **Agrimar Corporation**, a corporation organized under the laws of the Principality of Liechtenstein and registered as a foreign corporation with the Maryland State Department of Assessments and Taxation ("**Seller**"), certifies to 19817 Beaver Creek LLC, a Maryland limited liability company ("**Purchaser**"), that there has been no material change in the substance, truth, accuracy or completeness of any warranty or representation made by Seller under that certain Purchase and Sale Agreement, dated \_\_\_\_\_, 2021, by and between Seller and Purchaser, as the same may have been amended (the "**Agreement**"), nor, to Seller's knowledge, has there been any material change in the substance, truth, accuracy or completeness of any information, document or material attached as an exhibit to the Agreement or otherwise delivered to Purchaser.

Dated: \_\_\_\_\_, 2021

**Agrimar Corporation**, a corporation organized under  
the laws of the Principality of Liechtenstein

By: \_\_\_\_\_(SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT E**

**PURCHASER UPDATE TO REPRESENTATIONS AND WARRANTIES**

The undersigned, \_\_\_\_\_, a \_\_\_\_\_  
("Purchaser"), certifies to **Agrimar Corporation**, a corporation organized under the laws of the  
Principality of Liechtenstein ("Seller") that there has been no material change in the substance, truth,  
accuracy or completeness of any warranty or representation made by Purchaser under that certain Purchase  
and Sale Agreement, dated \_\_\_\_\_, 2021, by and between Seller and Purchaser, as the  
same may have been amended (the "**Agreement**"), nor, to Purchaser's knowledge, has there been any  
material change in the substance, truth, accuracy or completeness of any information, document or material  
attached as an exhibit to the Agreement or otherwise delivered to Seller.

Dated: \_\_\_\_\_, 2021

**19817 BEAVER CREEK LLC**, a Maryland limited  
liability company

By: \_\_\_\_\_ (SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **EXHIBIT F**

### **DUE DILIGENCE DOCUMENTS**

1. Surveys of the Property, recorded plats affecting the Property, and other drawings of the Property in the possession or control of Seller
2. A copy of all construction drawings, site plans, plans and specifications (if any) in the possession or control of Seller relating to the improvements on the Property
3. Copies of all inspection reports, all third-party engineering and environmental reports and assessments (both draft and final), action and/or work plans, contracts for remediation, Phase I and Phase II Environmental Assessments, test results, advisories and other similar documents (if any) relating to the existence or nonexistence of Hazardous Materials and/or underground storage tanks, soil and geological tests and reports, wetlands studies and/or analysis, wetlands delineations, wetlands permits, noise studies, advisories and other similar documents in the possession or control of Seller
4. Reports from any governmental authority having jurisdiction over all or any part of the Property and any and all approvals or permits relating to the Property issued by governmental or quasi-governmental agencies or authorities in the possession of Seller
5. All drainage and grading information, materials and plans and all soil and flood control conditions, information and materials (if any) in the possession or control of Seller
6. All termite, radon and mold tests or studies (if any) to the extent within Seller's or servicing agent's possession
7. All zoning documents and applications (if any) in the possession of Seller
8. Certificates of occupancy for the Property and other documentation with respect to compliance of the Property with government requirements (if any) to the extent within the possession of Seller
9. Copies of the most recent title policy or commitment for the Property in the possession or control of Seller
10. Copies of prior real estate tax bills, including special assessments or incentives, copies of all tax protests, related correspondence and protest results, for the Property for the past three (3) years
11. Copies of the prior twelve (12) months' utility bills for the Property
12. Financial books and records for the Property (if any), including, without limitation, detailed operating statements for the past two (2) year ends, current year-to-date and a 12-month rolling history, schedule of replacement costs and capital expenditures (if not already included in detailed operating statements) for the past two (2) year ends, current year-to-date and a 12-month rolling history and general ledgers for the past two (2) year ends and current year-to-date
13. List of outstanding payables (if any) with respect to the Property, with aging
14. A true, correct and complete copy of each Contract (if any)

15. A list of all permits, warranties and unexpired guaranties (if any) with respect to the Property
16. Insurance policies from the last three (3) years covering the Property
17. A summary of all insurance claims submitted by Seller in the past 3 years and any pending claims relating to the Property or evidence of self-insurance
18. A schedule of pending litigation (if any) affecting the Property
19. Corporate documents for Seller, including articles of incorporation and bylaws and all corporate action taken with respect to Seller's sale of the Property



**EXHIBIT G**  
**CONTRACTS**

None

**FIRST AMENDMENT TO  
PURCHASE AND SALE AGREEMENT**

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT (this "Amendment") is made effective as of the 18 day of October, 2021, by Agrimar Corporation (fka Agrimar Co Establishment), a corporation organized under the laws of the Principality of Liechtenstein ("Seller"), and 19817 Beaver Creek LLC, a Maryland limited liability company ("Purchaser").

RECITALS

A. Seller and Purchaser entered into that certain Purchase and Sale Agreement dated as of May 26, 2021 (the "Purchase Agreement"), pursuant to which Seller agreed to sell, and Purchaser agreed to acquire, the Property.

B. The parties now desire to amend the Purchase Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing Recitals and the covenants herein contained, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller hereby agree to amend the Purchase Agreement as follows:

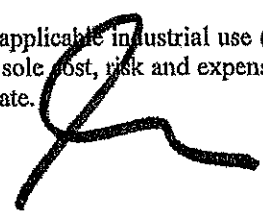
1. Recitals. The foregoing Recitals are hereby made a substantive part of this Amendment.

2. Feasibility Period. Section 6.1 of the Purchase Agreement is hereby modified by deleting the sixth (6<sup>th</sup>) sentence thereof and replacing it with the following sentence: "The period of time from the Effective Date through 6:00 p.m. on November 1, 2021 is referred to as the 'Feasibility Period.'"

3. Extension Fee Deposit. So long as Purchaser gives Seller notice (the "Extension Notice"), prior to the expiration of the Feasibility Period, of its intent to amend the Closing Date, Purchaser shall have the option to extend the Closing Date to August [4], 2022 if it provides Seller directly with a payment of [REDACTED] ("Extension Fee Deposit") prior to the expiration of the Feasibility Period. Other than in event that Seller defaults (beyond any applicable periods for cure) under the terms of this Amendment or the Purchase Agreement, the payment(s) provided for in this Section 3 shall be non-refundable. In the event the parties go to Closing (on or prior to the then applicable Closing Date), the payments (as received by Seller) provided for in this Section 3 shall be credited against the Purchase Price.

4. Condition Precedent. The Agreement is amended to insert a new Section 10(v) as follows:

(v) The Property shall be re-zoned [HI] for applicable industrial use (such rezoning to be accomplished at Purchaser's sole cost, risk and expense) at least fifteen (15) days prior to the Closing Date.



5. Defined Terms. Except as otherwise defined herein, all capitalized terms used herein shall have the meaning ascribed to them in the Purchase Agreement.

6. Counterparts. This Amendment may be executed in any number of counterparts, each of which, when taken together, shall constitute one and the same instrument.

7. Ratification. Except as otherwise modified herein, the terms and conditions of the Purchase Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment under seal as of the day and year first above written.

**SELLER:**

**Agrimar Corporation,**  
a corporation organized under the laws of the  
Principality of Liechtenstein

US Federal Taxpayer ID # 52-1207661

By: ADMINTRUST MANAGEMENT reg.  
(Authorized Agent for Agrimar Corporation)

By:  (SEAL)

Name: Klaus Boehler

Title: Authorized Officer

By:  (SEAL)

Name: Edeltraud Ott

Title: Authorized Officer

By:  (SEAL)

Name: Nicole Haas

Title: Authorized Officer

**PURCHASER:**

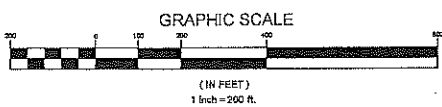
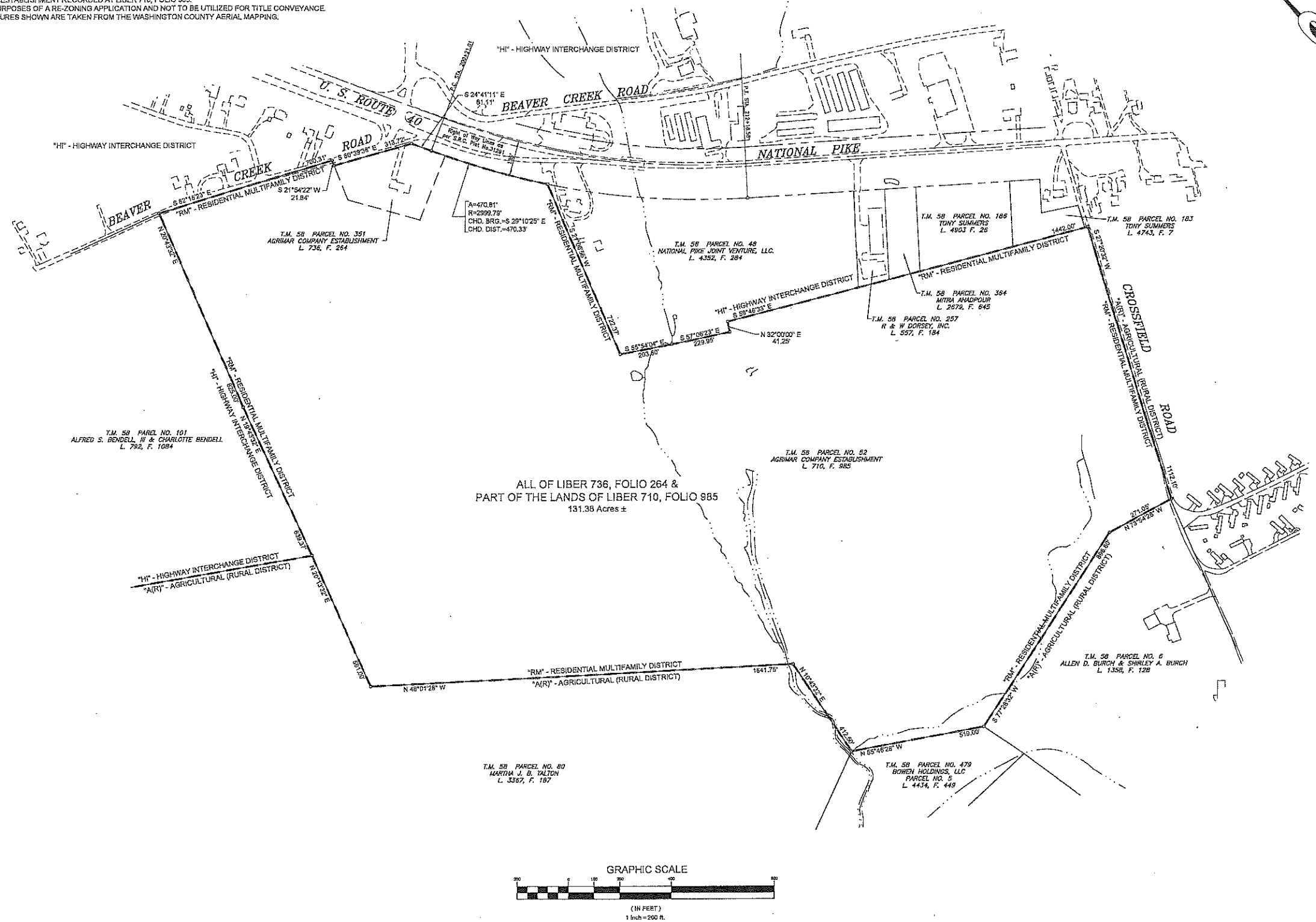
**19817 Beaver Creek LLC,**  
a Maryland limited liability company

By:  (SEAL)

Name: JOSEPH ROSENBAUM

Title: MANAGING MEMBER

- NOTES
1. EASEMENTS, RIGHTS OF WAY, AND OTHER SERVITUDES MAY EXIST OTHER THAN SHOWN HEREON.
  2. THE PROPERTY LINES SHOWN HEREON ARE TAKEN FROM DEEDS AND PLATS OF RECORD AND NOT FROM AN ACTUAL FIELD SURVEY.
  3. THE LANDS SHOWN HEREON ARE ALL OF THE LANDS CONVEYED TO AGRIMAR COMPANY ESTABLISHMENT BY DEED RECORDED AT LIBER 736, FOLIO 264 AND ALL OF THE LANDS SOUTH OF U.S. ROUTE 40 (NATIONAL PIKE) CONVEYED TO AGRIMAR COMPANY ESTABLISHMENT RECORDED AT LIBER 710, FOLIO 985.
  4. THIS PLAN IS FOR PURPOSES OF A RE-ZONING APPLICATION AND NOT TO BE UTILIZED FOR TITLE CONVEYANCE.
  5. TOPOGRAPHIC FEATURES SHOWN ARE TAKEN FROM THE WASHINGTON COUNTY AERIAL MAPPING.



<b>SHELLY, WITTER &amp; FOX</b> ENGINEERS • SURVEYORS • PLANNERS 2371 BUCHANAN TRAIL WEST GREENCASTLE, PA 17225 (717) 597-4433 (717) 597-4435 FAX SERVING PENNSYLVANIA, MARYLAND, WEST VIRGINIA & VIRGINIA MD. TELEPHONE NO. (301) 791-0223	<b>RE-ZONING PLAT FOR LANDS OF AGRIMAR COMPANY ESTABLISHMENT</b>		See Map: 58
	SITUATE ALONG THE SOUTH SIDE OF U.S. ROUTE 40, SOUTH SIDE OF BEAVER CREEK ROAD AND ALONG THE WEST SIDE OF CROSSFIELD ROAD IN ELECTION DISTRICT NO. 18, WASHINGTON COUNTY, MARYLAND		Parcel No. 52 & 351 Drawn By: C.A.D. Checked By: T.G.W./J.L.H. Date: 11-15-2021 Scale: 1" = 200' Job No. 2021-43925 SHEET 1 OF 1



DEPARTMENT OF PLANNING & ZONING  
PLANNING | ZONING | LAND PRESERVATION | FOREST CONSERVATION | GIS

February 7, 2022

Case #: RZ-21-007

**Application for Map Amendment  
Staff Report and Analysis**

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Property Owner(s)	:	Agrimar Co Establishment
Applicant(s)	:	19817 Beaver Creek, LLC
Location	:	Beaver Creek Road, SW I-70/U.S. 40 Interchange
Election District :		#10 – Funkstown
Comprehensive Plan		
Designation	:	Low Density Residential
Zoning Map	:	58
Parcel(s)	:	P. 52, 351
Acreage	:	131.28 acres
Existing Zoning	:	RM – Residential, Multi-Family
Requested Zoning	:	HI – Highway Interchange
Date of Meeting :		February 7, 2022

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**I. Background and Findings Analysis:**

**1. Site Description**



The proposed rezoning site is located at 19817 Beaver Creek, encompassing two parcels, immediately adjacent to the Interstate 70/U.S. 40 interchange (Exit 32). The total acreage of the two parcels subject to this rezoning case is 131.28 acres. All properties are located within the Urban Growth Area (UGA) that surrounds the City of Hagerstown and the Towns of Williamsport and Funkstown.

The smaller of the two parcels (parcel 351) is improved by a single story brick home. Parcel 51 is currently undeveloped and being used for agricultural purposes.

The center of parcel 52 contains floodplain areas that stem from a section of Landis Spring Branch that intermittently flows



through the property before draining southwest into Antietam Creek. No permanent land preservation easements encumber either property.

## **2. Population Analysis**

To evaluate the change in population, information was compiled from the US Census Bureau over a thirty-year time frame. A thirty-year horizon was chosen to show long term population trends both in the election district of the proposed rezoning, and the County as a whole.

The properties subject to this rezoning are located within the Funkstown Election District (#10). As shown in the table below, the population in this district has grown more rapidly than the County has over the thirty-year time frame between 1990 and 2020. District 10 has grown 60.3% over the thirty-year period (2%) per year while the County as a whole has increased in population by 27.4% (.91% per year) during the same period. The Funkstown Election District experienced their greatest population increase during the thirty-year period surveyed between 2010 and 2020 (22.9%).

**Table 1: Funkstown Election District Population Trends**

Population Trends 1990 - 2020			
Year	Area	Population	% change from previous decade
1990	District	9,330	
	County	121,393	
2000	District	11,390	22.1%
	County	131,932	8.7%
2010	District	12,175	6.9%
	County	147,430	11.7%
2020	District	14,960	22.9%
	County	154,705	4.9%

Source: US Census Bureau

## **3. Availability of Public Facilities**

### **A. Water and Sewerage**

The adopted Water and Sewerage Plan for the County establishes the policies and recommendations for public water and sewer infrastructure to help guide development in a manner that helps promote healthy and adequate service to citizens. By its own decree, the purpose of the Washington County Water and Sewerage Plan is "...to provide for the continued health and well-being of Washington Countians and our downstream neighbors..."<sup>1</sup> This is achieved through implementing recommendations within the County Comprehensive Plan and the Water and Sewerage Plan to provide for services in a timely and efficient manner and by establishing an inventory of existing and programmed services.

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<sup>1</sup> Washington County, Maryland Water and Sewerage Plan 2009 Update, Page I-2

**Water:**

*W-5-Long Term Planned Service (City of Hagerstown)*

Public water is not currently available at the site. The site is permitted to access water by well. The site is given the W-5 designation in the County's 2009 Water and Sewerage Plan, denoting long-term planned service. Neighboring parcels in the vicinity of the site generally also do not have access to public water. The City of Hagerstown Water Division offered no comment on the proposed development when sent the application for review.

**Wastewater:**

*S-5- Long Term Planned Service (County)*

Public sewer service is also not currently available at the site of this rezoning. The S-5 Long Term Planned Service designation is applied to these parcels in the Water and Sewerage Plan. On-site septic systems are permitted under this classification. Most neighboring parcels in the immediate vicinity also utilize on-site septic systems.

Neither the Washington County Health Department nor the Department of Water Quality offered comment on the application when routed a copy for review.

**B. Emergency Services**

**Fire and Emergency Services:**

Funkstown Volunteer Fire Company (2 South Westside Avenue) – 2 miles away

The proposed rezoning site is located within the service area of the Funkstown Volunteer Fire Company. This same entity also provides the nearest emergency rescue services. Their station is located approximately 2 miles away from the subject properties.

A copy of this application was sent to the Washington County Division of Emergency Services. No comments were received.

**C. Schools**

The requested zoning classification, Highway Interchange (HI), does not permit residential development. Therefore, there would be **no school capacity mitigation requirements** for pupil generation under the County's Adequate Public Facilities Ordinance.

**4. Present and Future Transportation Patterns**

**Highways – Access and Traffic Volume**

The proposed rezoning site is located on Beaver Creek Road which would provide one possible access point for the site. The Functional Road Classification for Beaver Creek Road is as a Local Road in the Transportation Element of the 2002 Comprehensive Plan. This classification

accounts for mobility and access characteristics of the roadway in its categorization. **Local Roads** are designed to carry less than 1,000 Average Daily Traffic in rural areas, and greater than 2,000 vehicles daily in urban areas. The County's road classification system is based upon the Federal Highway Functional Classification System, but modified to reflect local road conditions.

The site also has road frontage on Dual Highway (National Pike). The stretch of Dual Highway adjacent to this property is designated as a Major Collector. **Major Collectors** are designed to carry between 1,000-3,000 Average Daily Traffic in rural areas, and 2,000 – 10,000 vehicles daily in urban areas.

In addition to evaluating public access of a parcel for rezoning purposes, it is also important to evaluate traffic generation and existing traffic volumes. This is commonly accomplished through analysis of historic and existing traffic counts as well as any existing traffic impact studies. As the proposed rezoning site is located on a County road, the most relevant data on traffic in the vicinity comes from counts taken on Beaver Creek Road just across National Pike from the subject properties.

The County's Division of Engineering & Construction Management collected single day traffic counts at two locations in the vicinity of the site in 2016. These locations include two points surrounding the intersection of Beaver Creek Road and Auto Place. Since these were first time collections at these locations, trends cannot be discerned. These counts do however give us an idea of traffic volume occurring in the "neighborhood."

As shown in the table below, the highest traffic volume was recorded at Auto Place, just north of its intersection with Beaver Creek Road at 2,231 vehicles. At Beaver Creek Road just east of the Auto Place intersection 1,200 vehicles were counted during the one-day traffic survey.

**Table 2: 2016 County Traffic Volumes**

Auto Place North of Beaver Creek Road	2046
Beaver Creek Road East of Auto Place	1200

Source: Washington County Division of Engineering and Construction Management Traffic Count Inventory Map

Though less relevant in establishing transportation patterns at the rezoning site itself, there is some value in identifying traffic trends at select points along the major federal and state transportation that occur in the immediate vicinity of the subject properties. In this location that includes traffic counts on National Pike (U.S 40) north and south of the I-70 interchange and on I-70 at Exit 32 (U.S. 40).

**Table 3: Traffic Volumes 1990-2020**

Year	I-70 East of Exit 32	U.S. 40 North of I-70 Exit 32	U.S. 40 North of I-70 Exit 32
2020	62,512	30,541	9,204
2015	69,320	35,492	11,415
2010	61,391	36,010	11,170
2005	60,025	34,150	10,950
2000	56,975	25,150	NA

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1995	39,750	14,475	NA
1990	41,500	22,800	NA

Source: Maryland State Highway Administration

From an overall perspective, Table 3 shows that traffic has continually increased at these three locations between 1990 and 2020 with a couple of exceptions. Traffic increased 67% between 1990 and 2015 at I-70 eastbound and 56% at U.S. 40 northbound. U.S. 40 southbound increased 4% between 2005 and 2015 (no counts were available at this location before 2005). Traffic Counts were down at each location in 2020, almost certainly due to effects of the COVID-19 Pandemic drastically reducing vehicular trips of all types due to widespread quarantine requirements. Thus 2020 traffic data will likely be viewed as an anomaly in future years. Outside of 2020, traffic dipped in 1995 at each location, but rebounded steadily in future years.

Washington County Engineering Plan Review had no comment after receiving a copy of the rezoning application.

### **Public Transportation**

This area is not directly served by public transportation. Route 331 of the County Commuter makes stops in Funkstown and at Hagerstown Commons (anchored by Martin's grocery store) roughly 1.5 miles northeast of the site.

## **1. Compatibility with Existing and Proposed Development in the Area:**

### **A. Zoning**

The subject parcels are currently zoned Residential Multi-family (RM) and are requesting to change to Highway Interchange (HI). The purpose of the HI zoning district is:

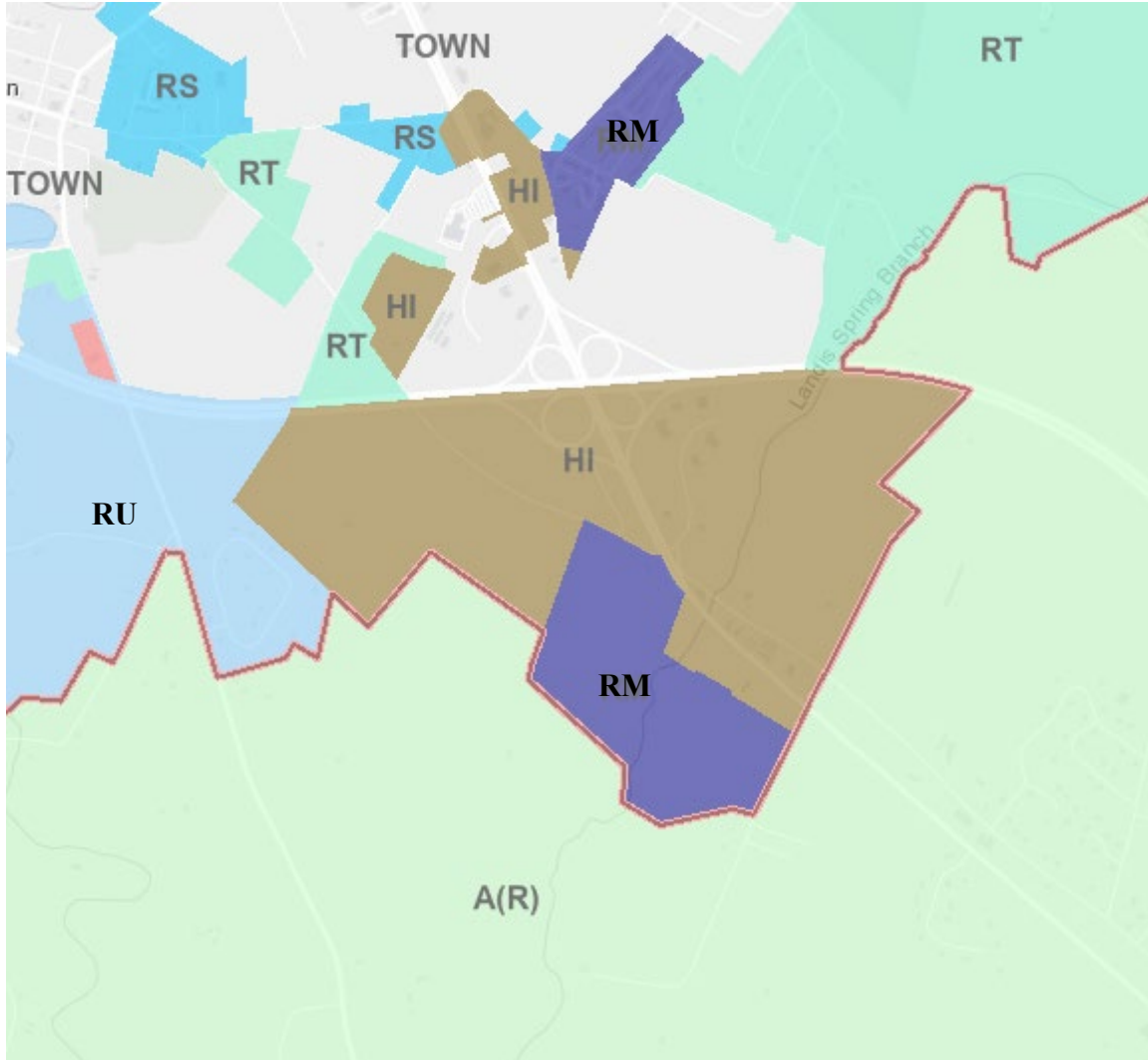
*"...to provide suitable locations for commercial activities or light industrial land uses that serve highway travelers, provide goods and services to a regional population, or uses that have a need to be located near the interstate highway system to facilitate access by a large number of employees, or the receipt or shipment of goods by highway vehicles. In addition to providing accessible locations, the Highway Interchange District is intended to protect the safe and efficient operation of the interchange and to promote its visual attractiveness...."*<sup>2</sup>

The HI Zoning District does not define its own standalone permitted uses. Instead it pulls all principal permitted uses allowed in the BL, BG, PB, and ORT Districts as well as those in the IR District except heliports and Commercial Communications Towers. Truck stops are among other land uses allowed by special exception in an HI District.

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<sup>2</sup> Washington County Zoning Ordinance, Article 19

**Map 1: Surrounding Zoning Classifications**

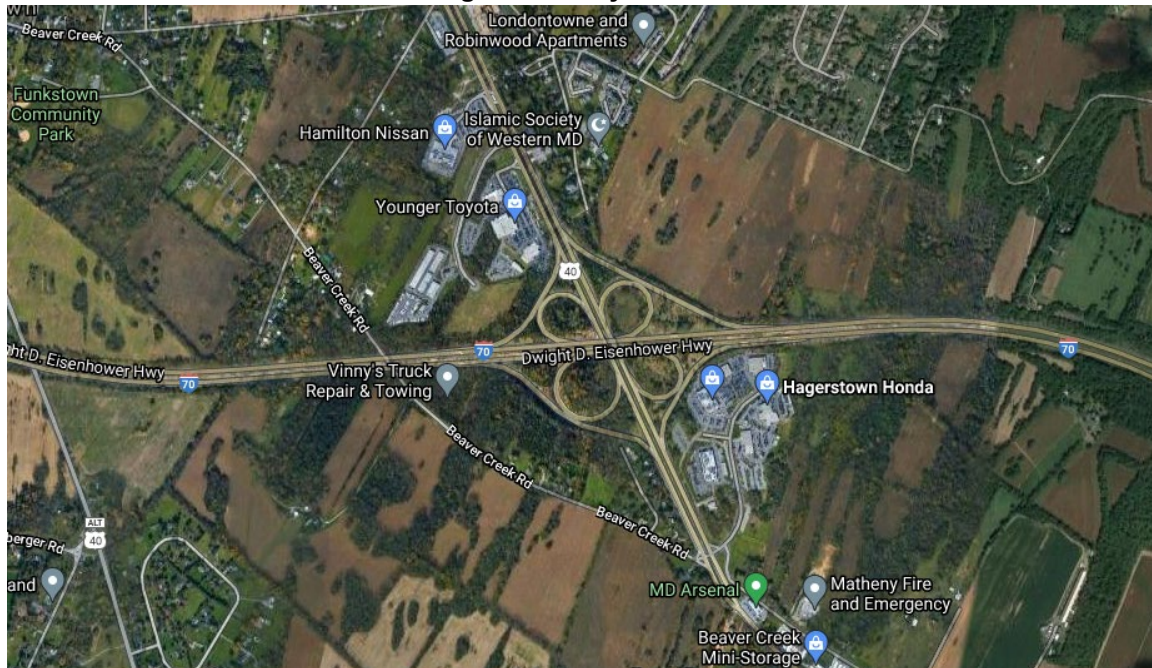


I-70 forms a convenient dividing line for noting differences in zoning classifications in this area, as shown on Map 1 above. North of I-70 there is mostly a mix of residential zoning of various densities, along with multiple areas with HI zoning in the vicinity of the I-70 interchange at Dual Highway. Parcel size increases below I-70 in many cases which, correspondingly, results in reduced residential density as one travels further from the Urban Growth Area. Lands immediately south of the interchange are solidly HI. The subject parcels (currently zoned RM) are contiguous to this block of properties zoned HI. Residential Urban zoning is applied to many properties west of the site, above and below Poffenberger Road.



## B. Land Use

Image 1: Vicinity Land Use



Source: Google Maps

Commercial businesses surround the I-70 interchange on all sides, particularly automobile dealerships. The stretch of Beaver Creek Road that provides access to the subject properties has historically been used for farming, woodlands or single family residential land uses. More recently however, a couple of commercial businesses (Vinny's Truck Repair & Towing, U.S. Lawns) have opened along this part of Beaver Creek Road. Below I-70, housing tends to be of a low density nature and notable areas are still in active agricultural production.

Heading east on National Pike towards Frederick, one finds a variety of low intensity commercial businesses (storage facilities, truck repair shops, construction contractors, shooting range). The Londontowne and Robinwood Apartments provide higher density housing options just off Dual Highway to the North.

Active residential subdivisions in this area include Claggetts Mill and Gaver Meadows.

## C. Historic Sites

Another important component of compatibility is the location of historic structures on and around the parcels being proposed for rezoning. According to the Washington County Historic Sites Survey there are 6 existing historic sites located within an approximate ½ mile radius of the proposed rezoning areas. The subject rezoning site also contains the standing ruins of a limestone farm complex that was destroyed by fire in the late 20<sup>th</sup> century.

Below is a listing of existing historic resources within a ½ mile radius of the subject parcels:

- WA-II-142: "Adams-Paulsgrove Farm," Mid-19<sup>th</sup> century farm complex consisting of a 2-story limestone house, a frame bank barn, a log kitchen and other outbuildings

- WA-II-143: "Grossnickle Farm," Late 19<sup>th</sup> farm complex encompassing 2-story brick house, stone bank barn, outdoor root cellar.
- WA-II-229: "Blarneystone Farm (Kelly's Delight)" Early 19<sup>th</sup> century, 2-story stone home built in two parts, stone out-kitchen and stone bank barn
- WA-I-421: "Welty Farm," Late 19<sup>th</sup> Century farm complex including 2-story log home encased in brick, barn and outbuildings
- WA-I-432: "Deep Meadow Farm," Early 19<sup>th</sup> century farm complex including two part, 2-story log and stone home and stone bank barn
- WA-II-1113: "Bridge," 1936 stone and concrete bridge over Landis Run on National Pike

## **2. Relationship of the Proposed Change to the Adopted Plan for the County:**

The purpose of a Comprehensive Plan is to evaluate the needs of the community and balance the different types of growth to create harmony between different land uses. In general, this is accomplished through evaluation of existing conditions, projections of future conditions, and creation of a generalized land use plan that promotes compatibility while maintaining the health, safety, and welfare of the general public.

Both properties are located in the **Low Density Residential** sub-policy area. The Comprehensive Plan offers the following definition for this policy area:

*"This policy area designation would be primarily associated with single-family and to a lesser degree two-family or duplex development. It is the largest policy area proposed for the Urban Growth Area and becomes the main transitional classification from the urban to rural areas."<sup>3</sup>*

## **3. "Change or Mistake" Rule**

When rezonings are not part of a comprehensive rezoning by the governing body, individual map amendments (also known as piecemeal rezonings) are under an obligation to meet the test of the "Change or Mistake" Rule. The "Change or Mistake" Rule requires proof by the applicant that there has been either: a substantial change in the character of the neighborhood since the last comprehensive zoning plan (2012), or a mistake in designating the existing zoning classification.

As part of the evaluation to determine whether the applicant has proven whether there has been either a change or mistake in the zoning of a parcel, the Maryland Annotated Code Land Use Article and the Washington County Zoning Ordinance state that the local legislative body is required to make findings of fact on at least six different criteria in order to ensure that a consistent evaluation of each case is provided. Those criteria include:

*1) population change; 2) the availability of public facilities; 3) present and future transportation patterns; 4) compatibility with existing and proposed development for the area; 5) the recommendation of the planning commission; and 6) the relationship of the proposed amendment to the local jurisdiction's Comprehensive Plan.*

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<sup>3</sup> 2002 Washington County, Maryland Comprehensive Plan, Page 243

Even when change or mistake has been sufficiently sustained, it merely allows the local governing body the authority to change the zoning; it **does not require** the change. When conditions are right for a change the new zone must be shown to be appropriate and logical for the location and consistent with the County's Comprehensive Plan.

## **II. Staff Analysis:**

The analysis of a rezoning request begins with a strong presumption that the current zoning is correct. It is assumed that the governing body performed sufficient analysis, exercised care, and gave adequate consideration to all known concerns when zoning was applied to a parcel of land. However, there are instances by which a case can be established to show that the governing body either erred in establishment of the proper zoning of a property or that the neighborhood surrounding the property has changed enough since the governing body's last assessment to require a new evaluation of the established zoning designation.

The applicant of this case has indicated in their justification statement that they believe that a **mistake** was made by the local legislative body to rezone the property in 2012. As noted in the prior section describing the "Change or Mistake" Rule, the Washington County Zoning Ordinance requires data to be presented to the local legislative body on factors such as population change, present and future traffic patterns, the availability of public facilities, the relationship of the proposed change to the Comprehensive Plan and its compatibility with existing and proposed development in order to determine how the area subject to rezoning has evolved since the comprehensive rezoning.

### **1. Evidence for Mistake in the Current Zoning**

In order to demonstrate that a mistake was made by the regulatory body in applying the existing zoning classification to the parcel, the applicant must establish that an error occurred as a result of factors such as:

1. A failure to take into account projects or trends probable of fruition;
2. Decisions based on erroneous information;
3. Facts that later prove to be incorrect;
4. Events that have occurred since the current zoning; or
5. Ignoring facts in evidence at the time of zoning application.

The last Comprehensive Rezoning in Washington County was completed in 2012, affecting the Urban Growth Area (UGA) that surrounds the City of Hagerstown and the towns of Williamsport and Funkstown. The rezoning affected approximately 17,000 parcels and 38,000 acres of land.<sup>4</sup> Information such as population projections, growth trends, transportation and infrastructure data, and the recommendations of the Comprehensive Plan were considered as a part of this effort. The input of property owners, local officials, County staff and the general public was also solicited and considered in the assignment of each parcel affected by the Comprehensive Rezoning. Landowners were also given the opportunity to appeal the rezoning of their property at that time if they felt aggrieved by the Board's decision.

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<sup>4</sup> Washington County Ordinance No. ORD-2012-08

The applicant contends that the Board of County Commissioner's (BOCC) erred in their decision during the 2012 UGA Comprehensive Rezoning to rezone the lots in question to RM. The applicant claims that factors such as following were not fully considered by the Board in their 2012 decision:

- The properties cannot meet the requirement of the RM Zoning District to be served by public water and sewer service;
- Other similarly situated parcels that are within the County's Urban Growth Area, but outside of the City's Medium Range Growth Area (MRGA) were zoned HI in 2012

**i. Recent Zoning History**

- These properties were rezoned to the present **RM** designation in conjunction with the Comprehensive Rezoning of the Urban Growth Area in 2012 (RZ-10-005).

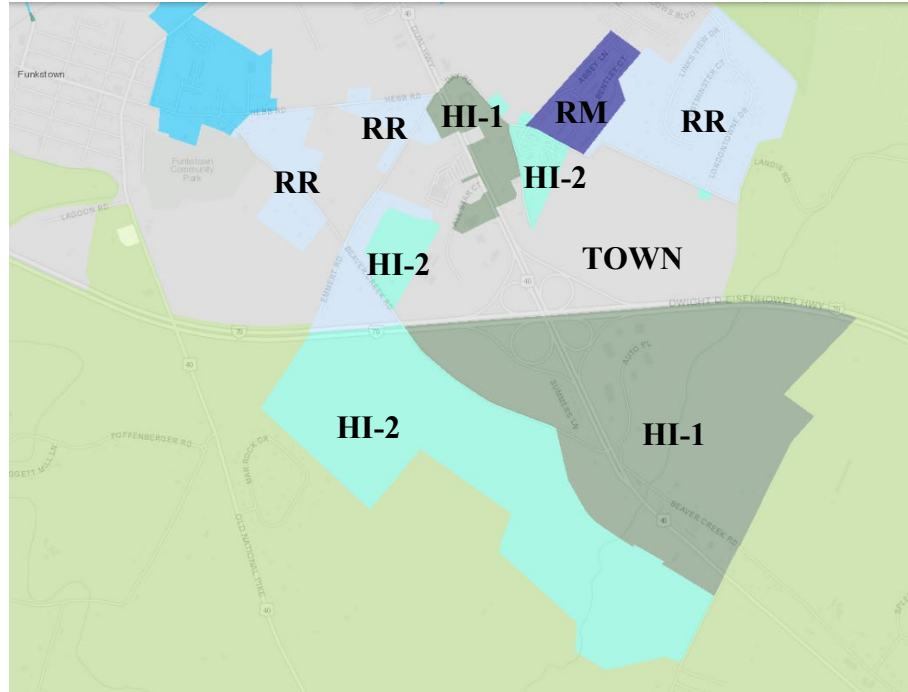
RM zoning was recommended by the Urban Growth Area Advisory Committee, a body appointed by the BOCC to study and make recommendations on several issues that impacted the Comprehensive Rezoning of the UGA. The intent was to create additional opportunities for multi-family housing development in the County.

Planning staff recommended Residential Transition (RT) for the parcel based upon the Low-Density Residential designation in the 2002 Comprehensive Plan.

- Prior to 2012, they were zoned Highway Interchange District **HI-2**.

The HI-2 zoning district was intended to serve as a transitional zone between HI-1 zones and nearby residential areas. Typically, HI-1 areas were designated on lands closest to interstate highway interchanges, with HI-2 zones then buffering adjacent lands in the vicinity of the interchanges. HI-2 allowed low intensity business and industrial uses as well as a residential development at varying densities. Permitted uses were pulled from the BT, RM, PUD, IT, RR, RS and RU Districts. It did not require connection to public water and sewer, but merely allowed higher density development if connection was possible. The HI-2 zoning district was eliminated during the 2012 UGA Rezoning.

**Map 2: 2005 Zoning Classifications**



**ii. Public Water and Sewer Requirements in RM and HI Zones**

The applicant's major argument in support of a mistake in the current zoning is the inability of these properties to access public water and sewer as mandated for properties given the RM zoning classification.

First, a review of previous versions of the Washington County Zoning Ordinance reveals that the requirement to connect to public water and sewer has been a consistent and long-standing policy within the RM Zoning District (Article 10). This policy was in place at the time the property was rezoned to RM in 2012.

The requirement to connect to public water and sewer facilities is not absolute, however. Section 10.6 with the RM Zoning District states that:

***“1. The Planning Commission may waive this requirement after consultation and advice from the Health Department.”***

This section goes on to describe the criteria that should be considered by the Planning Commission in deciding whether or not to grant a waiver:

- i. The need to protect environmental resources from potential pollution from failing septic systems.***
- ii. The availability and proximity of existing public water and sewer facilities.***



- iii. The status of any available plans for utility extensions in the future that may serve the area.*
- iv. The existence and operation of private, on-site health facilities in the vicinity.*
- v. Recommendations of the Washington County Health Department.*
- vi. The adopted Washington County Water and Sewerage Plan.*
- vii. Recommendations of the potential service provider.*
- viii. Any grant of a waiver to allow the use of a private, on-site well or septic system is conditional upon the agreement to abandon the private system and connect to the public utility when it becomes available.*
- ix. When the Planning Commission has determined that a waiver from the required use of public water and sewer facilities is appropriate the minimum lot size shall be as specified in Section 10.5. Lot dimensions shall also conform to any applicable minimum requirements affecting lot size, width or separations imposed by the Washington County Health Department.*
- x. Any private on-site well or septic system shall meet all Health Department requirements.*

Thus, while current zoning regulations for RM Districts mandate connection to public water and sewer in most cases, it is possible that development could occur on well and septic in this zoning District.

Of equal importance in this discussion is that **the Highway Interchange Zoning District requested by the applicant also requires connection to public water and sewer.**<sup>5</sup> Again, however, the Planning Commission may waive this requirement after consultation with the Health Department, based upon the same criteria as outlined above. The language relating to the requirement to connect to public water and sewer facilities is identical in both the RM and HI zoning districts and was present in each at the time of the Comprehensive Rezoning of the Urban Growth Area in 2012.

Therefore, whether the Board had rezoned these properties to HI or RM in 2012 would not have mattered from a water and sewer perspective, as they would have had to meet the same requirements. Accordingly, it is difficult to call this choice a mistake.

### **iii. Consistency With the Comprehensive Plan**

The actual choice in zoning classification that was being deliberated in 2012 for these properties was not between HI and RM, however. As noted previously in the Zoning History section of this report, decision makers were choosing between RM and RT. RT is the least dense residential district in the Growth Areas allowing a density of 2-4 dwelling units per acre.

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<sup>5</sup> Washington County Zoning Ordinance Article 19, p. 176)

Staff, following the Low-Density Residential designation of these parcels in the 2002 Comprehensive Plan Land Use Plan and surely considering the lack of availability of public water and sewer to the site, recommended RT.

The Urban Growth Area Advisory Committee advocated for RM to create additional opportunities for multi-family housing development in the County. Ultimately the Board chose to follow the Committee's recommendation and apply the RM designation to these parcels in 2012.

Other parcels in the vicinity were rezoned to HI in 2012, most notably adjacent parcel 101 (19515 Beaver Creek Road). Given that similar development constraints applied to that parcel as those subject to this rezoning, (i.e. – lack of access to public water and sewer, the likely need to make road improvements for a more intensive land use), one would likely surmise that decision makers simply felt that applying HI to some, but not all parcels in this stretch of Beaver Creek Road near the interchange, was a reasonable compromise to achieve various land use goals.

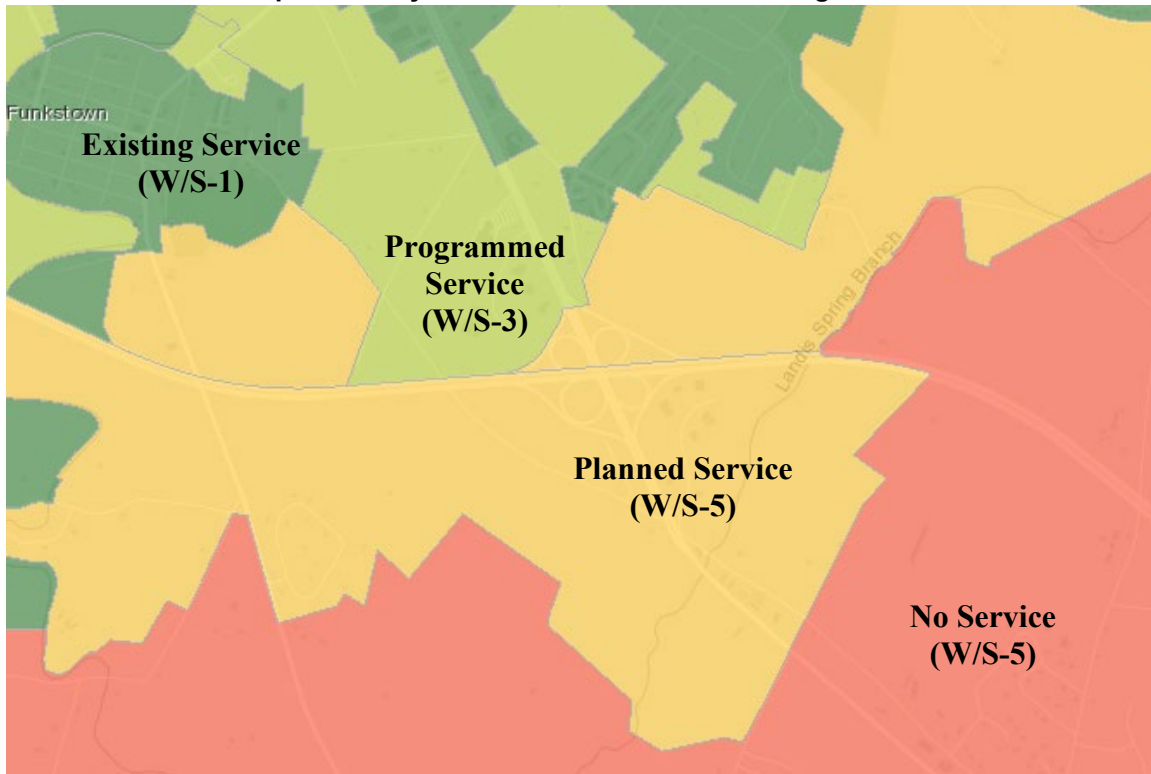
#### **iv. Availability of Public Water and Sewer**

Past history aside, water and sewer service policies established in long range plans produced by the County and City of Hagerstown go a long way to determining the present development potential that these properties have.

First, from the County perspective, W-5 and S-5 designations denoting Long Term Planned Service have been consistent for these properties both in the most recent County Water and Sewer Plan (2009) and in prior versions of the Plan as well. This designation reflects plans by service providers to eventually, but not immediately, connect these properties to public utility systems. In the event of connection to public utilities, the County would be the service provider for sewer and the City of Hagerstown would provide water.

As shown in the Map below, public water and sewer has not been extended below I-70 in this immediate area. The Claggetts Mill subdivision, located approximately 1.5 miles west, is the closest area below I-70 that has an existing water and sewer service designation (W/S-1).

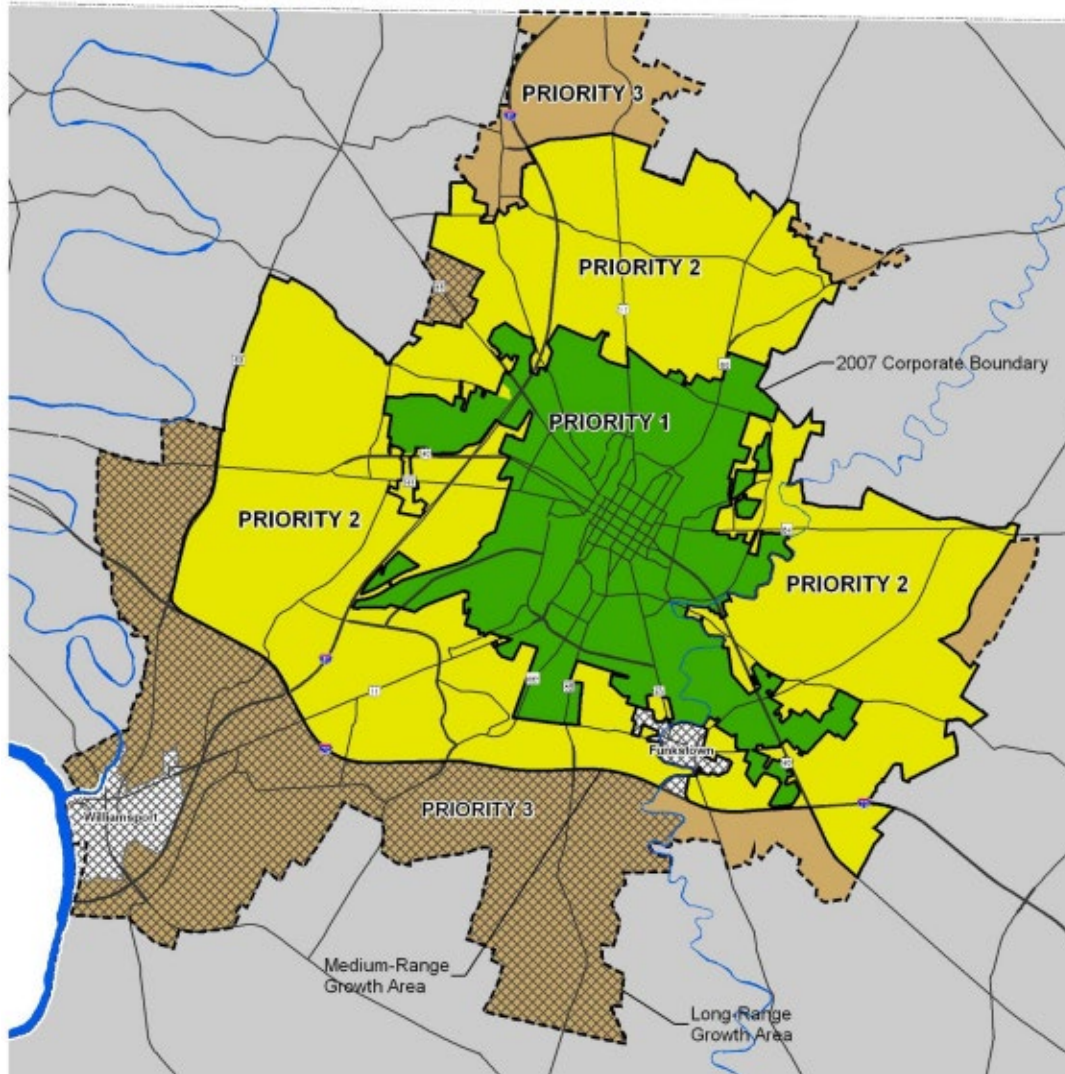
**Map 2: Vicinity Current Water and Sewer Designations**



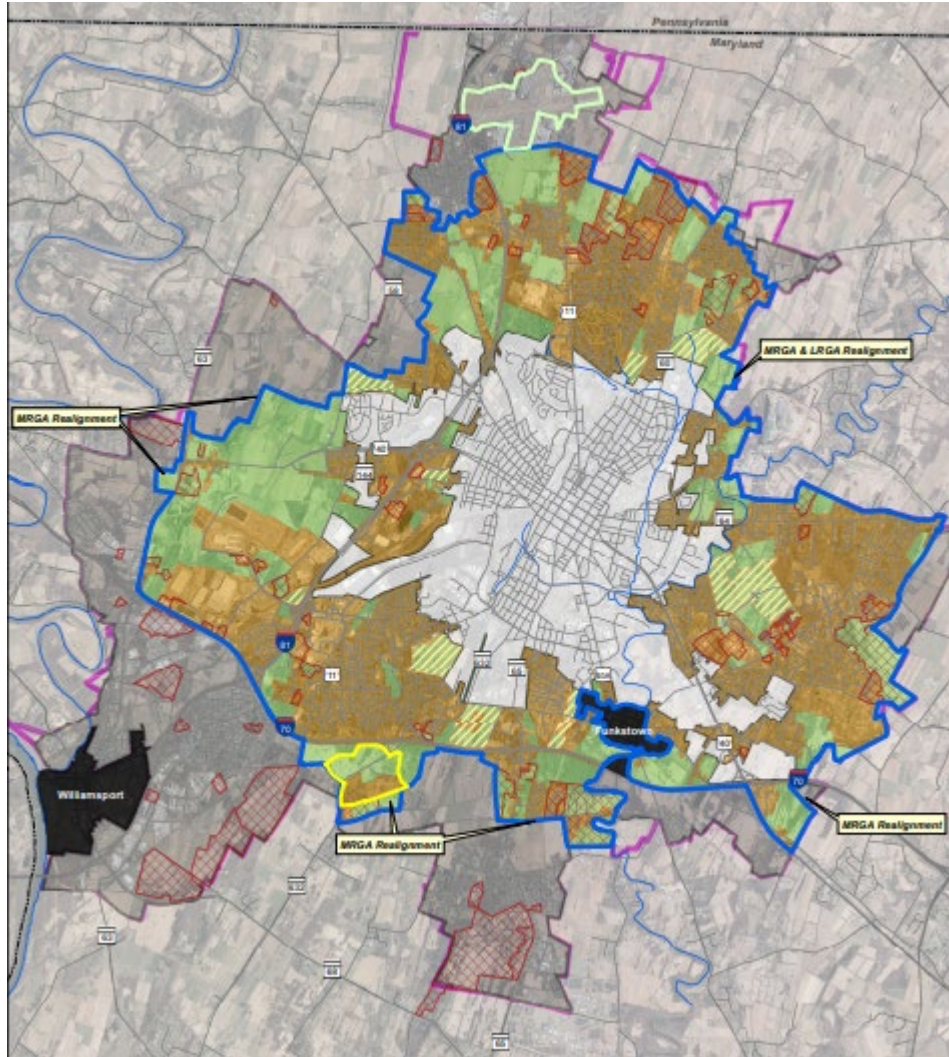
From the City's perspective, these parcels lie outside the City's Medium-Range Growth Area boundary. Properties within the MRGA are prioritized by the City for connection to public water or sewer service when it becomes available. **Those outside the MRGA are not eligible for connection unless a special exception applies.** It is not likely that this site would qualify for a special exception under the City's water and wastewater connection policies.

As shown in the maps below, while falling within the County's Urban Growth Area, these properties have never been inside of the City's MRGA, including at the time of the 2012 Comprehensive Rezoning. Major updates occurred to Hagerstown's Comprehensive Plan in 2008 and 2018. The MRGA boundary was not realigned to include the subject properties in either Plan.

**Map 3: Hagerstown 2008 Comprehensive Plan Water and Wastewater Priority Areas**



**Map 4: visionHagerstown 2035 Growth Area Boundaries**



### **III. Conclusion:**

The applicant has claimed that a mistake was made to rezone these properties from HI-2 to RM in 2012 because they cannot meet the requirement of the RM Zoning District to be served by public water and sewer. The burden of the applicant in a “Mistake” case is to provide evidence that the Board:

1. Failed to take into account projects or trends probable of fruition,
2. Made decisions based on erroneous information,
3. Used facts that later prove to be incorrect,
4. Couldn't have foreseen Events that have occurred since the current zoning
5. Ignored facts in evidence at the time of zoning application.

Regarding the charge or mistake, it has been demonstrated that water and sewer requirements for the RM and HI zoning districts were identical in 2012. Connection to public water and sewer was required by each district, but both provide the potential that this requirement could



be waived by the Planning Commission in consultation with the Health Department. So, there would not have been a difference between assigning either RM or HI to these properties in 2012 when looked at through the lens of water and sewer requirements.

Staff analysis has also noted that neither the current RM zoning designation nor the HI zoning requested by the applicant are consistent with the 2002 Comprehensive Plan's Land Use Plan. This plan applied a Low Density Residential designation to these properties which was very likely influenced by the lack of water and sewer service to these parcels. These limitations are still in place today, regardless of the zoning applied.

Development should occur where there is adequate infrastructure to serve it. At best, it would be very difficult economically to make a multi-family development work under the current RM Zoning without access to public water and sewer, due to the infrastructural upgrades that would be necessary in this location to adequately serve the development. Road improvements could be considerable, and the property falls within school districts that are largely over capacity already (South Hagerstown High School District). This is why, from a general planning perspective, considerations such as these dictate that the intensity of development should lessen the further away one is from a city center where there is less likely to be adequate infrastructure to support high intensity land uses.

An HI zoning classification makes a lot of sense for these properties when viewing them from perspective of their proximity to the I-70 interchange, and the corresponding similarity to neighboring properties in terms of existing zoning designations and land uses. From that angle, what the applicant is proposing is not in conflict with the character of the surrounding neighborhood. As previously stated, proximity to the interchange was very likely a significant reason why some neighboring properties were rezoned from HI-2 to HI in 2012.

The lack of access to public water and sewer, however, hampers the development potential of these properties under an HI zoning classification for similar reasons as described above for the current RM zoning. Service is not likely to be extended to this parcel in the foreseeable future, which limits the appropriateness of many land uses permitted with the HI Zoning District, particularly the more intensive uses. Beaver Creek Road is also ill-suited to serve high intensity development in its present capacity. Despite these significant caveats, less intensive uses permitted in the HI District that are able to be developed on well and septic systems could, however, be potentially feasible from an economic and land use intensity standpoint in this location.

Staff advises that decision makers carefully consider the wide range of land uses permitted under the HI zoning requested by the applicant for their compatibility with the neighborhood that surrounds this site. The adequacy of infrastructure to serve development is a key consideration in this case. It will continue to be a major factor for Washington County and the City of Hagerstown going forward as long range land use plans are updated to reflect the present limitations of key systems that facilitate development, such as access to public water and sewer.

Respectfully Submitted,

Travis Allen  
Comprehensive Planner