

# Shelley's Fields

## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (this "Agreement") made this day of 2007 by and among, **SHELLEY MIDDLETOWN ROAD HOLDINGS, LLC**, a Maryland limited liability company (referred to hereafter as "Shelley" or Developer"); the **HEREFORD ZONE RECREATION & PARKS COUNCIL** (the "Rec Council"); and the **FREELAND COMMUNITY ASSOCIATION, INC.**, a Maryland corporation (referred to hereafter as the "Association").

### **RECITALS:**

WHEREAS, Shelley is the developer of four (4) parcels of land, located on the north and south sides of Cotter Road and on the south side of Middletown Road, in the 6<sup>th</sup> Election District of Baltimore County, which Shelley is proposing for residential development and for open space common uses (as shown on the State Tax Map No. 11 for Baltimore County, Maryland, Parcel No. 1, Parcel No. 319, and Parcel No. 320, and Tax Map No. 6, Parcel No. 42) (collectively referred to as the "Development Land"); and

WHEREAS, a portion of the Development Land is presently zoned RC-5, pursuant to the *Baltimore County Zoning Regulations* ("BCZR") and a total 36 residential lots (including two, existing lots) are permitted in that zoned area; and

WHEREAS, the remaining portion of the Development Land is zoned RC-2 and a total of two residential lots are permitted in that zoned area; and

WHEREAS, in accordance with the Development Regulations of Baltimore County, Shelley submitted a conceptual plan of development of the Development Land proposing: i) within the RC-5 zoned area, a total of 19 residential lots (including the two, existing residential lots) to be located on the north and south sides of Cotter Road (the "initial residential lots"); and ii) within the RC-2 zoned area, certain "open space, common uses" to include six (6) recreational fields, one indoor facility consisting of approximately 32,000 square feet, a pavilion with snack bar and restrooms and a playground and 591 paved parking spaces (collectively referred to as the "proposed open space uses"); and

WHEREAS, once final approval of the proposed open space uses is obtained, Shelley intends to convey to the Rec Council or a qualified recreational entity of the Rec Council's designation the RC-2 zoned portion of the development property; and

WHEREAS, Freeland filed with the Zoning Commissioner for Baltimore County, pursuant to BCZR § 500.7, a Petition for Special Hearing requesting that the Commissioner determine whether or not the proposed open space uses were permitted in the RC-2 zoned area of the Development Land, which petition was docketed as Case No. 06-422-SPH; and

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DEVELOPER'S

EXHIBIT NO.

WHEREAS, the Deputy Zoning Commissioner for Baltimore County issued *Findings of Fact and Conclusions of Law*, dated July 10, 2006, in Case No. 06-422-SPH, and determined that the proposed open space uses are permitted in the RC-2 zone under the BCZR as presently codified (the "Zoning Decision"); and

WHEREAS, on August 4, 2006 Freeland noted an appeal of the Zoning Decision to the County Board of Appeals for Baltimore County (the "Appeal") and the Appeal is pending a *de novo* hearing before that Board; and

WHEREAS, the Developer submitted a development plan entitled "Shelley's Fields" which proposed development of the initial residential lots and the proposed open space uses (the "development plan"); and

WHEREAS, Freeland, together with David A. Raymond, Leah Zimmennan, Gary D'Addario and Mary D'Addario (referred to collectively herein as the "Individual Appellants"), have agreed to dismiss the February 9, 2007 appeal taken by them of the January 11, 2007 variance to forest buffer granted by the Baltimore County Department of Environmental Protection and Resource Management, identified by Tracking No. 03-06-219 (the "Forest Buffer Appeal"); and

WHEREAS, beginning on December 21, 2006, the Deputy Zoning Commissioner, sitting as the Hearing Officer for Baltimore County, opened the first day of public hearing on the development plan at which time Shelley introduced as Developer's Exhibits No. IA and 1B, a redlined version of the development plan (the "redlined development plan"); and

WHEREAS, additional days of hearing have been conducted during which Shelley, Freeland, the Rec Council and others have presented testimony and evidence regarding the redlined development plan, Shelley in support of approval and Freeland in opposition to approval; and

WHEREAS, during a lapse between hearing dates, Shelley, the Rec Council and Freeland have had an opportunity to discuss, in settlement and resolution of the concerns expressed by Freeland, certain modifications to the redlined development plan and certain restrictions on the development proposed for the Development Land; and

WHEREAS, the parties hereto intend to resolve the concerns raised by Freeland related to the redlined development plan, through a revised plan of development for the Development Land (referred to herein as the "Revised Development Plan") which is attached hereto and incorporated herein as Exhibit "A" and further in accordance with the agreements and provisions hereof; and

WHEREAS, the parties hereto acknowledge that the Revised Development Plan will be reviewed by County and State agencies in accordance with the Development Regulations of Baltimore County at a Development Plan Conference and, thereafter any agency comments will be addressed by redlining the Revised Development Plan (the "Redlined Revised Development Plan") prior to submission for approval at the next scheduled Hearing Officer's Hearing.

**NOW, THEREFORE**, in consideration of the sum of One Dollar (\$1) and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree as follows:

1. The above recitals form an integral part of this Agreement and are incorporated herein as if set forth again in their entirety.

2. The Revised Development Plan will propose development of the RC-5 zoned portion of the Development Land as follows:

2.1. The RC-5 zoned portion of the Development Land will be developed with a total of eighteen (18) residential lots, including the two existing residential lots (the "RC-5 lots"); and

2.2. The RC-5 lots shall be limited by a separate restrictive covenant, to be included as part of the Developer's restrictive covenants recorded and made applicable to the RC-5 lots, prohibiting clearing on any lot in excess of 25,000 square feet.

3. The Revised Development Plan and the Revised Redlined Development Plan will propose development of the RC-2 zoned portion of the Development Land as follows:

3.1. Two residential lots (identified as Lot Nos. 19 and 20) will be located in the RC-2 zoned area as shown on Exhibit "A" (the "RC-2 lots"). The larger of the two, the Conservation Lot (Lot No. 20), will contain a restriction that no organized active recreational use is permitted. All of the RC-2 zoned area outside of the RC-2 lots is defined herein as the "recreational area".

3.2. There will be a total of four playing fields on the recreational area: three full-sized fields and one multi-purpose field that can be used as two junior playing fields. The owner will have the option to have one or more fields lay fallow during any season, but is not required to do so. The parties to this Agreement reserve the right to reconsider the addition of an additional multi-purpose field on the recreational area; if an additional field is agreed upon in the future the parties will execute an amendment to this Agreement.

3.3. A maximum of four tournaments will be held on the recreational area per calendar year.

3.4. With the exception of the four tournaments per year (i.e. Friday evening) there will be a restriction of only one game per field during week nights.

3.5. No game on the recreational area shall start after 8:00 p.m.

3.6. No festivals, fundraisers, flea markets, etc. shall be permitted to occur in the recreational area.

3.7. The storage building shown on Exhibit "A" hereto shall be used to store equipment and recreational items. A restrictive covenant shall be recorded prohibiting the use of the storage building for any active recreational use.

3.8. The playing fields shall not be lighted. The parties to this Agreement reserve the right to reconsider the field lighting restriction based on potential future advances in lighting technology; if some form of field lighting is agreed upon in the future the parties will execute an amendment to this Agreement.

3.9. Any lighting on the parking areas constructed will be extinguished not later than one hour after sunset.

3.10. Subject to the requirements and approval of Baltimore County, a single storm water management facility in the recreational area has been shown on Exhibit "A" for approval by Baltimore County. The parties recognize that the final design of stormwater management for the Development Land shall be required to meet County and State requirements.

3.11. The recreational area will be gated with a steel tube gate that is well anchored or similar substantial barrier and locked on a daily basis.

3.12. There will be a total of 338 paved parking spaces and overflow parking, if needed, will occur on grassed areas, all as shown more particularly on Exhibit "A".

3.13. A four-foot high berm will be created along Middletown Road where grades and sight lines permit. Along those sections of the recreational area adjacent to Middletown Road where a berm is not practical, landscaping will be installed and the plant material used for landscaping shall be coordinated with the County landscape architect.

4. The parties, following final, non-appealable approval of the Revised Redlined Development Plan, will jointly request that the Petition for Special Hearing, presently on appeal to the County Board of Appeals (Case No. 06-422-SPH), be remanded to the Zoning Commissioner for a determination that the relief requested is moot.

5. Upon complete execution of this Agreement and delivery of an executed copy to legal counsel for Freeland, Freeland shall immediately file with the County Board of Appeals a dismissal with prejudice of the Forest Buffer Appeal, said dismissal to be signed by Freeland and all of the Individual Appellants named herein,

6. Freeland agrees to support the Revised Redlined Development Plan before the Hearing Officer for Baltimore County and the parties hereto agree that a copy of this Agreement shall be submitted to the Hearing Officer for incorporation into any Order granting approval of the Revised Redlined Development Plan.

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7. In the event that the Redlined Revised Development Plan is approved consistent with Exhibit "A" and this Agreement (the "approved plan") and that approval is overturned or modified on appeal, this Agreement shall terminate automatically and neither it nor Exhibit "A" as attached shall be of any further force or effect. In the event of an appeal of the approved plan by any person or entity, including without limitation the Baltimore County Office of People's Counsel, the parties to this Agreement agree to participate in support of the approved plan, each at their own expense, at all stages of appeal. J. Carroll Holzer, Esquire will not represent any other parties in these proceedings other than Freeland and shall participate actively in any appeal proceedings on behalf of Freeland as if Freeland were a named party to any such appeal.

8. Prior to any party hereto seeking judicial enforcement of this Agreement, Shelley or Freeland or either of them as case may be, shall give the other written notice of the alleged grievance as provided herein. Within twenty-one (21) days thereafter representatives of the respective parties to this Agreement shall meet to attempt to resolve amicably the alleged non-compliance or grievance. Failure to comply with the dispute resolutions of this enumerated paragraph shall nullify the complaining party's ability to enforce the alleged grievance.

9. After the dispute resolution provisions contained herein have been complied with, any party to this Agreement that is required to institute legal or equitable action in enforcement hereof, shall be deemed to have standing to institute such action, including without limitation an action for injunctive relief. Any party that is successful in obtaining a favorable outcome of any action filed in enforcement of this Agreement, whether by mediation, arbitration, settlement and/or trial shall be entitled to recover reasonable attorney's fees and court costs of the action from the person or entity who did not prevail in such action. The provisions of this enumerated paragraph shall not be applicable unless and until the dispute resolution provisions set forth herein have been followed strictly.

10. Freeland, pursuant to a majority vote of its voting members present, voted that it shall not in any way, directly or indirectly, privately or publicly oppose or offer any means of support or opposition by others of the Redlined Revised Development Plan, the final development plan the record plat and any other required federal, state or county approval applicable to the Development Land provided that the same are in accordance with this Agreement and the development shown on the Redlined Revised Development Plan.

11. Upon approval of the Redlined Revised Development Plan for the Development Land as submitted to the Hearing Officer for Baltimore County in accordance with the information shown thereon and this Agreement, Freeland and its current members waive irrevocably the right to appeal any and all development approvals necessary for the Development Land.

12. If the Redlined Revised Development Plan for the Development Land is not approved as submitted to the Hearing Officer for Baltimore County in accordance with the information shown thereon and this Agreement, this Agreement and Exhibit "A" thereto shall automatically terminate and be null and void and of no further force and effect.

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13. The parties hereto agree that reasonable adjustments in the location of fields, proposed grading, lot lines, septic reserve areas, landscaping, well locations, building envelopes and building locations (residences only), and other features of the development of the Development Land, exclusive of the Forest Buffer and/or the Forest Conservation Easement Areas unless required by Baltimore County, shall be permitted provided that the same meets with approvals obtained from the governmental agency having jurisdiction thereover.

14. This Agreement shall be construed, interpreted and enforced according to the laws of the State of Maryland, without regard to principles of conflict of law. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms of any such provision shall be more strictly construed against one party or the other by reason of the rule of construction that a document is to be construed most strictly against the party who itself or through its agent who prepared the same, it being agreed that the agents of all parties hereto have participated in the preparation of this Agreement.

15. This Agreement contains the full and complete agreement of the parties hereto and no oral agreements, past, present or future shall be effective or binding on or against the parties unless the same shall be reduced to writing and executed in the same manner as this Agreement.

16. Each of the parties hereto warrant that they or it have the authority to enter into this Agreement and to bind themselves hereby and have carefully read and understand this Agreement and are cognizant of the terms and conditions hereof and the obligations associated herewith.

17. The parties hereto each warrant and represent that they have the power and requisite legal authority to bind themselves, their organization if acting in a representative capacity and their respective successors and assigns to the agreements herein contained, and if a corporation, limited liability company, partnership or similar entity, each further warrants and represents that it is duly organized and is in existence in accordance with Maryland law and that it has taken all necessary action required to be taken by its charter, by-laws, or other organizational documents to authorize the execution of this Agreement.

18. Any notices required or permitted to be given by either party to the other shall be addressed to the parties as follows:

with a copy to:

To Shelley: Shelley Investments LLC  
2601 Cotter Road  
Millers, MD 21102  
Howard L. Alderman, Jr., Esquire  
Levin & Gann, PA  
Nottingham Centre, 8<sup>th</sup> Floor  
502 Washington Avenue  
Towson, Maryland 21204

To Rec Council: Hereford Zone Recreational & Parks Council  
Attn: Roger Fitzgerald  
17301 York Road  
Parkton, MD 21120

with a copy to: Lawrence E. Schmidt, Esquire  
Gildea & Schmidt LLC  
600 Washington Avenue, Suite 200  
Towson, MD 21204

To Freeland: Freeland Community Association, Inc.  
Attn: Andrew Rathgeber, President  
3800 Baker Schoolhouse Road  
Freeland, MD 21053

with a copy to: J. Carroll Holzer, Esquire  
Holzer & Lee, PA  
508 Fairmount Avenue  
Towson, Maryland 21286

19. Any notice that is required to be given pursuant to this Agreement shall be in writing, and shall be deemed given upon actual receipt and shall be sent to all other parties by certified or registered mail, prepaid, or by federal express or other commercial overnight courier service to the last known address of the receiving party.

20. This Agreement is binding on the parties hereto and their respective successors and/or assigns and may be amended only by a subsequent written instrument and signed by the parties hereto or their respective successors and/or assigns.

21. The failure in any instance to enforce any of the covenants, restrictions and conditions contained in this Agreement shall in no event constitute a waiver or estoppel of the right to enforce the same or any other covenant, restriction or condition in the event of another violation occurring prior or subsequent thereto. In the event any one or more of the covenants, restrictions and conditions herein contained should for any reason be declared invalid, the remaining covenants, restrictions or conditions shall continue in full force and effect.

22. Each of the parties hereto have had the benefit of private legal counsel before entering into this Agreement and each has agreed to be responsible for their respective counsel fees.

23. This Agreement may be executed in counterparts, each of which shall be deemed an original for all purposes, all of which shall together constitute a single and the same Agreement; each counterpart may be signed and transmitted initially by telefacsimile and the facsimile shall be considered as containing original signatures, provided that said counterpart is provided subsequently to each other party in its original form.

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24. The parties hereto covenant and agree to execute such instrument or instruments as may be necessary from time to time to carry out the intent of the Agreement or to amend this Agreement as may be required by any governmental agencies having jurisdiction over the development of the Development Land approved by the Hearing Officer in order to obtain all required approvals required and to otherwise comply with all applicable laws, regulations and codes in keeping with the spirit and intent of this Agreement.

25. Notwithstanding any provision hereof to the contrary and irrespective of any rule, construction or precedent under the common law of the United States and/or Maryland, neither this Agreement nor any provision hereof shall be binding on any party hereto nor shall any portion of this Agreement be enforceable in any proceeding or otherwise disclosed to any person or entity other than the parties hereto and their respective legal counsel unless and until the complete signatures of all parties to this Agreement have been affixed hereto as provided herein.

26. In the event that this Agreement is not completely executed by all parties hereto and a fully executed original delivered to legal counsel for the developer prior to the next scheduled Hearing Officer's Hearing on Shelley's Fields, this Agreement and all prior agreements, negotiations, proposals, suggestions, discussions and the like by and among the Developer, its representatives and Freeland and its representatives and/or members shall be automatically and without further writing or communication rendered null and void and of no further force or effect.

[N WITNESS WHEREOF, the parties hereto have affixed their respective hands and seals the date and year first above written.

**WITNESS/ATTEST:**

**DEVELOPER/SHELLEY:**

Shelley Middletown Road Holdings, LLC, a  
R~n4~l~H. Shelley, Authorized Member

Maryland limited liability company

By: (SEAL)

REC COUNCIL:

Council (SEAL)  
Roger Fitzgerald, resident

*[signatures continued on next page]*

FREELAND:

(SEAL)

Freeland Community Association, Inc., a Maryland  
corporation:

[PRINTED (~ TYPED) NAME]

[TITLE/CAPACITY/AUTHORITY]

EXHIBIT "A"

*[Revised Redlined Development Plan]*

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