

# Frederick County Board of County Commissioners

Winchester Hall, 12 East Church Street, Frederick, MD 21701

## ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING

### Casey Charitable Foundation PUD Project

The following Letter of Understanding (“LOU”) between the Frederick County Board of County Commissioners (“BOCC” or “County”), its successors or assigns, and the Eugene B. Casey Foundation (the “Charitable Foundation”), its successors or assigns, sets forth the conditions and terms which the BOCC deems the minimum necessary improvements dealing with roads, schools, water and sewer service that must be in place for the property described below (the “Property”) to be developed in compliance with the Adequate Public Facilities Ordinance (“APFO”), which is codified as Chapter 1-20 of the Frederick County Code (the “County Code”). The proposed planned unit development (hereinafter, sometimes the “PUD” and sometimes the “Project”) is a residential PUD that includes 1,017 residential dwelling units and 3.0 ± acres of land designated for retail use. Concurrent with the processing of this LOU, the Charitable Foundation is seeking approval by the BOCC of the PUD Phase I Plan, as well as concurrent approval by the BOCC of a Development Rights and Responsibilities Agreement (“DRRA”) under Section 1-25 of the County Code.

The Charitable Foundation hereby agrees and understands that compliance with the terms and conditions of this LOU is required for the development of the Project to proceed. While this LOU is subject to approval by the BOCC through the process of, and concurrent with, the DRRA, it is expressly agreed that the LOU is a document which is separate and apart from the DRRA and that the LOU may be amended by the parties, by written amendment to be approved by the Frederick County Planning Commission, with no requirement to amend the DRRA.

The Property is comprised of 634 ± acres of land shown and described on **Exhibit A** attached hereto and made a part hereof, located on Crickenberger Road between MD Route 75 and Boyers Mill Road in the New Market Planning Region of Frederick County. The Property is zoned PUD. The Property will be developed with a maximum of 1,017 residential units, including approximately 680 single-family detached dwelling units and 337 single-family attached dwelling units, or any variation of dwelling unit mix such that the school APFO analysis is not increased above that analyzed herein and/or the intensity of total peak hour vehicle trips is not increased above that analyzed with the Traffic Impact Analysis prepared on behalf of the Charitable Foundation for the Project by Wells & Associates dated July 15, 2013, revised on March 28, 2014, and supplemented on May 16, 2014 (the “TIA”). Provided the Project in totality stays within these identified parameters that are the subject of the APFO analysis leading to this LOU, and provided the APFO approval validity period has not expired, any changes to the mix of uses approved for the Project that occur through the entitlement processes will not be subjected to additional APFO analyses.

This LOU is express evidence that APFO approval has been granted for the Project, subject to the terms of the LOU, and this APFO approval will be effective for a period of thirteen (13) years from the date of this LOU.

## **1. PUBLIC WATER AND SEWER**

The Property has a water and sewer classification of Planned Service, indicating planned public water and sewer service within 11-20 years. The Division of Utilities and Solid Waste Management (DUSWM) has provided a finding of conditional approval regarding sewer and water facilities to serve the Project based on a water study prepared by Whitman, Requardt & Associates, LLP (WR&A) dated November 2005 and a wastewater study prepared by WR&A dated March 2004. The Project will be served by a network of both public and private water and sewer mains and service connections. Programmed improvements to Frederick County's water and sewer systems serving this region will be provided to the Project through the following developer-funded and certain County Capital Improvements Program ("CIP") improvements:

### **A. Water:**

The Charitable Foundation shall construct or cause to be constructed the following water improvements listed below, all of which are necessary to provide water service to the Project (to clarify, a map is attached as **EXHIBIT B**):

1. 700 Zone Water Distribution Line: Construct approximately 7,500+/- linear feet of twelve inch (12") water line from the existing terminus of the 12" line along MD 75 located approximately at near the entrance to Woodspring (along MD 75) and the Property's 700 Zone located at the eastern areas of the Property between elevations 510 and 560 feet.
2. 700 Zone Water Distribution Line Loop: Design and construct 3,300 +/- linear feet of twelve inch (12") water line to the Projects southern limits through the adjoining Delaplaine property providing connection to the property to facilitate the ability to loop the distribution line.
3. 610 Zone Water Distribution Line: Construct approximately 12,000+/- linear feet of twelve inch (12") water line to be located between the existing twelve inch (12") water line in the "Westwinds" community and the future water storage tank serving the Property's 610 Zone.
4. 610 Zone Water Storage Tank: Construct, if and when deemed necessary, an elevated water storage tank sized to accommodate the Project and properties within the portion of the water and sewer service area on the eastern part of the Property at an elevation less than an elevation of 510, or participate in the costs to

construct a regional water storage tank, at a size estimated to be 750,000 gallons, as determined by Division of Utilities and Solid Waste Management (DUSWM) based upon information provided by the Charitable Foundation and any third party developer's engineer approved by DUSWM. Timing of the construction of the Water Tank will be based on a Water Systems Modeling Study to be approved by DUSWM, prior to Preliminary Plan approval.

The timing of the water improvements will be agreed to with DUSWM prior to the approval of a Preliminary Subdivision Plan for the Project. The ability to record plats shall be determined in accordance with MD Environment Article 9-512 *et. seq.* and Frederick County's current policy for interpretation of §1-16-106 of the County Code, attached hereto as **EXHIBIT C**.

#### **B. Sewer:**

The Project will be served with public sanitary sewer service, with treatment capacity provided by the Ballenger-McKinney Wastewater Treatment Plant (which currently is adequate to serve the Project pursuant to Section 1-20-51(B) of the County Code as the programmed improvement is already fully funded in the County's CIP, and is scheduled for construction completion (publicly funded) in the first two years of the CIP (currently under construction with expected substantial completion July 2014.) Subject to the results of the flow-monitoring program provided for in subsection 12 below, and subject further to the right of the Charitable Foundation to exercise the options set forth in Section 1-20-11 of the County Code (including the option to wait for public facilities to become adequate by improvements made by others, specifically including those improvements already required in connection with the development of Eaglehead on the Lakes as discussed more fully hereinbelow), the Charitable Foundation shall construct or cause to be constructed the following sanitary sewer improvements listed below, which are necessary to provide sanitary sewer service to the Project. These improvements are shown on the maps attached as **EXHIBITS D and E**. Sanitary sewer lines to serve the Project will be appropriately sized and approved pursuant to DUSWM requirements and connected at appropriate connection points, as will be further identified and engineered as the Project progresses through the development approval process.

1. Off-site Sewer Interceptor: Construct a fifteen inch (15") diameter sewer main from the existing Ben's Branch Sewer Pump Station to the Property, for a distance of approximately 2,500 +/- linear feet.
2. On-site Sewer Interceptor: Construct a fifteen inch (15") diameter sewer main from the Off-site sewer interceptor to the eastern landbays in the Project, for a distance of approximately 10,000 +/- linear feet.
3. Ben's Branch Pump Station: Improve pump station to provide sufficient

operational capacity to serve the Project (with the timing of such improvements to be determined through the flow monitoring process described herein below and coordinated with the overall development of the Project) or participate in the costs to construct the regional improvement to the pump station identified in the East County Wastewater Master Plan Update, March 2004, Appendix G (which requires the operational capacity of Ben's Branch Pump Station to be increased to 5.1 MGD in order to satisfy the projected needs of this region), as agreed upon between the Charitable Foundation, Division of Utilities and Solid Waste management (DUSWM) and any third party developer.

4. Interceptor 2: Replace 18" outfall from MH 155 (132-SW) to MH 157 (132-SW) with 24" for a distance of approximately 438 +/- linear feet in conjunction with the Bens Branch Pump Station Improvements described in item 3 above.

Further, the following improvements were identified in the APFO LOU for the Eaglehead on the Lakes PUD effective July 11, 2013 (the "Eaglehead LOU"). In the event that any of these improvements are necessary to provide adequate conveyance capacity for the Project, the Charitable Foundation acknowledges that, in accordance with Section 1-20-11 of the APFO, it will either have to construct the improvement(s), wait for them to be constructed in accordance with the Eaglehead LOU (or as a CIP project) or contribute to the construction of the respective improvements as part of a separate agreement with third-party developer(s), as the necessity for these improvements will be determined by: the timing and cumulative build out of the Charitable Foundation Property, Eaglehead on the Lakes PUD, Blentlinger Property and other potentially impacting developments within the water and sewer service area; the construction and/or contribution towards these improvements by those other potentially impacting developments and/or by others; as well as determined by the flow monitoring program described in section 1(B) 12 below.

5. Interceptor 2 – Upper Reach (*Eaglehead APFO Section I (B)1*). Design and construct the replacement of the existing esplanade sewer and the existing eighteen inch (18") sewer main interceptor between the esplanades from Manhole 65 to Manhole 61 with a twenty-four inch (24") sewer main, for a distance of 750 +/- linear feet.
6. Interceptor 1 (*Eaglehead APFO Section I (B)2*). Replace, the existing twenty-four inch (24") sewer main interceptor from Manhole P-10C to Manhole P-3 with a twenty-seven inch (27") sewer main, for a distance of 3,820 +/- linear feet, to include provision of lakeshore stabilization prior to pipe replacement, monitoring and covering of the existing pipe, if this improvement is determined to be necessary by the flow monitoring program described in

section 1(B) 12 below.

7. Interceptor 2 – Upper Reach (*Eaglehead APFO Section I (B)3*). Replace all existing eighteen inch (18”) sewer pipe segments from Manhole 57 to Manhole 61 with twenty-four inch (24”) sewer mains, for a distance of 3,100 +/- linear feet, to eliminate sewer with reverse slopes and sags, prior the platting of the 1,401<sup>st</sup> unit in the combined areas of the Hamptons East portion of Eaglehead on the Lakes property and the adjoining Blentlinger property, and other potentially impacting developments within the water and sewer service area.
8. Interceptor 2 – Lower Reach. (*Eaglehead APFO Section I (B)4*) Replace all existing eighteen inch sewer pipe segments from Manhole 39 to Manhole 57 with twenty-seven inch (27”) sewer mains, for a distance of 3,600 +/- linear feet, to eliminate sewer with sags and exposure to the lake, prior to the platting of the 1,401<sup>st</sup> unit in the combined areas of the Hamptons East portion of Eaglehead on the Lakes property and the adjoining Blentlinger property, and other potentially impacting developments within the water and sewer service area.
9. Interceptor 2 – Lower Reach. (*Eaglehead APFO Section I (B)5*) Design and lower discharge of Boyers Mill Road siphon by approximately two feet (2’) and re-install interceptor to Boyers Mill Road Pump Station, for a distance of 360 +/- linear feet, no later than the platting of the 1,551<sup>st</sup> unit in the combined areas of the Hamptons East portion of Eaglehead on the Lakes property and the adjoining Blentlinger property, and other potentially impacting developments within the water and sewer service area.
10. Interceptor 1 – Lower Reach. (*Eaglehead APFO Section I (B)8*) Replace the existing twenty-four inch (24”) sewer main, from Manhole 15 to Manhole X, with a twenty-seven inch sewer main, for a distance of 2,222 +/- linear feet, if this improvement is determined to be necessary by the flow monitoring program described in section 1(B) 12 below.
11. Bens Branch Pump Station. (*Eaglehead APFO Section I (B)9*) Replace the existing eighteen inch (18”) sewer main from the Bens Branch sewer force main to Interceptor 2 with a twenty-four inch (24”) sewer main, for a distance of 715 +/- linear feet, prior to platting of the 1,401<sup>st</sup> unit in the combined areas of the Hamptons East portion of Eaglehead on the Lakes property and the adjoining Blentlinger property, and other potentially impacting developments within the water and sewer service area.

The timing of the sewer improvements will be agreed to with DUSWM prior to the approval of a Preliminary Subdivision Plan for the Project. However, some of the infrastructure improvement listed above may not be required if total sewerage flows in the service area for the respective improvements do not require the installation of certain improvements at the time of Project completion. To that end, the Charitable Foundation agrees to work with DUSWM to develop a procedure for monitoring sewage flows in such lines and facilities needed to serve the Project for the purpose determining whether and at what time improvements to the aforesaid lines and facilities may be required to be constructed to serve the Project.

#### 12. Flow Monitoring Program -

The Charitable Foundation agrees to conduct flow monitoring for sewer lines and facilities when DUSWM determines such monitoring necessary (but in no event prior to the issuance of the first occupancy permit for a residential dwelling unit in the Project, exclusive of model homes), and to do so during seasonal peak flow periods, which are anticipated to last between 30 and 120 days.

The Charitable Foundation shall, if determined by DUSWM to be reasonably necessary, construct, pay the cost to construct, or pay a pro-rata share of the cost of construction of downstream sanitary sewer improvements required by DUSWM to provide adequate sewer conveyance capacity specifically required for this Project and allow the recordation of the first residential subdivision plat for the Project.

In the event that one or more of the improvements listed in this Section 1(B) is determined not to be necessary, as a result of flow monitoring testing, to serve the Project by the date of expiration of the APFO approval for the Project, the Charitable Foundation shall have no further obligation to the County to fund or construct such improvements.

The ability to record plats shall be determined in accordance with Frederick County's current policy for Interpretation of §1-16-106 of the Frederick County Code, attached hereto as **EXHIBIT C**.

#### C. Phasing:

The number of dwelling units ("DU") listed for each section of the Project as depicted on the Concept Plan **EXHIBIT F** is less than the maximum number of dwelling units or amount of commercial square footage that can be served by public water and sewer service in such section based on the WR&A study. The actual number of units or amount of square footage that will be

constructed in each land bay shall be determined based on approved PUD Phase II plans for the Project. The number of residential units to be constructed in each land bay may be increased from the amounts show on **EXHIBIT F** provided the Charitable Foundation demonstrates to DUSWM’s satisfaction that adequate water and sewer capacity is or will be available to serve such units at the time of PUD Phase II (preliminary plan) approval in accordance with §1-16-106 of the Frederick County Code.

1. 700 Water Zone

Prior to the recordation of the subdivision plats for residential units or commercial square feet in Land Bays or portions thereof in the 700 Water Zone, generally comprising Land Bays A, B, and C of the Project) and estimated to be approximately 300 dwelling units as identified on **EXHIBIT F**, the following shall be completed, funded or guaranteed, as described below

Water:

a: the improvements to the 700 Zone Water Distribution Line as described in Section 1(A)1 above prior to the recordation of the first lot in the 700 Zone.

b. The improvements to the 700 Zone Water Distribution Line as described in Section 1(A)2 above prior to the recordation of the 301<sup>st</sup> lot in the 700 Zone, or when the results of modeling of the 700 Zone System requires this improvement. The water model shall be approved by DUSWM prior to subdivision approval.

Sewer: The improvements as described in section 1(B) 1 and 1(B) 2 above and to the extent the flow monitoring program indicates and required by DUSWM, the improvements in section 1(B) 3 and 1(B) 4 above.

2. 610 Water Zone

Prior to the recordation of the subdivision plats for residential units in Land Bays or portions thereof in the 610 Water Zone, generally comprising Land Bays D, E, F, G, H of the Project) and estimated to be approximately 717 dwelling units as identified on **EXHIBIT F**, the following shall be completed, funded or guaranteed, as described below

Water: The improvements to the 610 Zone Water Distribution Line as describe in section 1(A) 3 section 1(A) 4 above.

Sewer: The improvements as described in section 1(B) 1 and 1(B) 2 above and to the extent the flow monitoring program indicates and required by DUSWM, the improvements in section 1(B) 3 and 1(B) 4 above.

**C. Other.**

All connections constructed by the Charitable Foundation will be adequate to accommodate Frederick County's required operating pressure and minimum residual pressure criteria for the Project, at the worst case conditions (peak day plus fire flow) and considers the height and location of residential types, e.g., multi-story townhomes or other structures, where a booster pumping station may be required (or avoided, with proper planning) for construction. Should over-sizing of any of the above-described water and sewer improvements be desired by the County to serve other projects in this service area, the Charitable Foundation shall design and construct the oversized lines or facilities, provided appropriate measures are in place to ensure that the costs of such over-sizing design and/or construction are borne by others (either the County or other developers). The Charitable Foundation may request water and sewer capacity fee credits pertaining to the provision of public water and sewer to the Property, if the applicable requirements of the Frederick County, Maryland Water and Sewer Rules and Regulations (or equivalent statutory regulations) are satisfied. To the extent that other development projects are approved in reliance upon an improvement described in Section 1(A) and/or 1(B) of this LOU, the Charitable Foundation reserves the right to seek to have the developer(s) of any such project(s) participate (or reimburse the Charitable Foundation) pro-rata in the funding of said improvement (design and construction), including seeking to have such participation (and/or reimbursement) set forth as a conditional requirement of development approval for any such development project. The Charitable Foundation recognizes that the County currently has no authority to require such pro-rata reimbursement as a condition of approval; however, the County will pursue, in good faith, an equitable distribution of the costs of those improvements described in Section 1(A) and/or 1(B) between any and all development projects approved in reliance thereon.

Based upon these proposed water and sewer infrastructure improvements, the BOCC has been able to make a determination that public water and sewer facilities will be adequate to serve the Project; however, water and/or sewer capacity is not guaranteed until purchased or otherwise contractually committed (with appropriate guarantees by the Project). The Charitable Foundation reserves the right to request multi-year water and sewer tap agreements with the County reserving sufficient capacities to serve the Project.

APFO approval for water and sewer does not guarantee that plats will be recorded or building permits issued. Plat recordation and building permit issuance is subject to compliance with the Annotated Code of Maryland, Environment Article Section 9-512 *et seq.* and all applicable County policies and regulations.

## **2. ROAD IMPROVEMENTS**

The TIA has determined that Project will generate 272 a.m. peak hour trips and 342 p.m. peak hour trips by the end of Phase 1; a cumulative 496 a.m. peak hour trips and 670 p.m. peak hour trips by the end of Phase 2; and a total of 651 a.m. peak hour trips and 849 p.m. peak hour trips by the time of full build-out. Road improvements intended to create additional road network capacity adequate to serve the Project and enhance the safety and circulation of the road network serving the Project and the surrounding neighborhood have been identified and are set forth below.

The roadway impacts for each development phase of the Project will be mitigated through either construction or a pro-rata contribution to existing and/or future County-held escrow accounts (where applicable) in accordance with Frederick County APFO and Guidelines for Preparation of Traffic Impact Analyses for Development Applications, adopted September 6, 2011, by the BOCC by Resolution No. 11-24 (“TIA Guidelines”). The Charitable Foundation agrees to construct or contribute to the following improvements and phasing schedule as identified in the TIA in order to mitigate the effects upon the transportation network serving the Project:

### **A. APFO Road Improvements and/or Full Fee-in-lieu Funding:**

In satisfaction of APFO requirements to fully mitigate site-generated trips (and in addition to the escrow contributions set forth in Section 2 (B) below) the Charitable Foundation shall construct or cause to be constructed the following road improvements during the three (3) phases of development of the Project:

#### **1. Phase 1, 2017 (1-500 Residential Units)**

The Phase 1 Improvements shall be guaranteed prior to the issuance of any building permits, other than models, for residential lots in the Project with completion prior to issuance of a building permit for the 100<sup>th</sup> residential dwelling unit in the Project or one year, whichever occurs first:

- a. Construct an additional lane on the southbound MD 75 to westbound I-70 slip ramp.
- b. The developer will provide a \$100,000 payment to Frederick County to be used to mitigate operational issues as deemed necessary by Frederick County and the SHA at the MD 75/I-70 Interchange. This contribution would be made prior to the first recorded plat for a residential lot in the Project.

2. Phase 2, 2022 (501- 800 Residential Units)

The Phase 2 Improvements shall be guaranteed prior to the issuance of a building permit for the 501<sup>th</sup> residential lot in the Project, with completion within one (1) full year of the issuance thereof, or prior to issuance of the building permit for the 600<sup>th</sup> dwelling unit in the Project, whichever occurs first:

- a. Construct an additional westbound left turn lane (dual lefts) along MD 144 approaching MD 75; and,
- b. Widen MD 75 to provide a 3-lane section along the site frontage, and provide a Florida-T intersection at the site driveway.

3. Phase 3, 2027 (801-1,017 Residential Units and 10,000 square feet of retail)

Phase 3 Improvements shall be guaranteed prior to issuance of the building permit the 801<sup>st</sup> residential dwelling unit in the Project or any commercial use, with completion within two (2) full years of the issuance thereof, or prior to issuance of a building permit for the 1,000<sup>th</sup> dwelling unit in the Project, whichever occurs first:

- a. Construct an additional eastbound through lane along MD 144 approaching MD 75; and,
- b. Reconfigure the I-70/MD 75 interchange to provide a divergent diamond, substantially in accordance with the preliminary concept plan shown on **EXHIBIT G** attached hereto and incorporated by reference herein, or an alternative improvement that will result in the I-70/MD 75 on and off ramps functioning at LOS “E” or better, as mutually agreed upon by SHA, County and the Charitable Foundation;

4. The Charitable Foundation shall provide full fee-in-lieu funding for the construction of roadway improvements that would result in the MD 75/Baldwin East and MD 75/Baldwin west intersections functioning at LOS “E” or better, as mutually agreed upon by the County and the Charitable Foundation. As determined by DPDR-Traffic Engineering Staff, the full fee in lieu for this road improvement is \$1,250,000, which shall be provided prior to recordation of the subdivision plat for the 601<sup>st</sup> residential lot in the Project. If mutually agreed upon by SHA and the County, these funds may be transferred to escrow account No. 3891 and allocated for the relocation of MD 75 just south of I-70.

5. The Charitable Foundation shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3891 for improvements to MD 75 between I-70 and MD 355 inclusive. As determined by DPDR-Traffic Engineering Staff, the Charitable Foundation’s pro-

rata contribution to this road improvement is to be determined, based on a calculation of \$17,171 per PM peak hour trip assigned to MD 75 south of the I-70 interchange. Since there are 169 PM peak hour trips, the total contributions will be \$2,901,899 minus the \$1,250,000 provided for corridor improvement in A.4 above equaling \$1,651,899. The total contribution divided by 1,017 dwelling units would be \$1,624 per unit. The per unit fee shall be paid at the time of lot recordation for each recorded residential lot. If the Charitable Foundation constructs the improvements to the I-70/MD 75 interchange described in subparagraph 3(b) above, in whole or in part (including but not limited to construction through a road club or public-private partnership), the County agrees to reimburse the Charitable Foundation for its cost to construct said improvements (up to its proportionate share as defined below), first by delivering to the Charitable Foundation any contributions made by other developers for this SCR Improvement in accordance with subparagraph 2(C) below, and to the extent that said funds are insufficient to fully reimburse the Charitable Foundation, then, in accordance with Section 1-20-12(K) of the APFO, by making funds contributed by the Charitable Foundation into Existing Escrow Account No. 3891 available to the Charitable Foundation to defray the construction costs of said improvements minus the Charitable Foundation's proportionate share of these improvements. As determined by DPDR-Traffic Engineering Staff, the Charitable Foundation's proportionate share of the improvements to the I-70/MD 75 interchange, as described in subparagraph 3(b) above), is 17.75%.

The Charitable Foundation shall have the right, in accordance with Section 1-20-11 of the APFO to either guarantee said improvements for completion and construct them when and as required above, or to wait until said improvements are constructed by others; provided that the Charitable Foundation, County and/or SHA reserve the right to enter into a public-private partnership and/or for the Charitable Foundation and another developer(s) to form a road club in order to jointly accomplish these improvements, so long as such agreement results in the required improvements being fully funded for completion, and the parties hereby agree that such agreements may be reflected in a separate or supplemental agreement without the need to revise this LOU. The Charitable Foundation shall conduct one signal warrant analysis when deemed necessary by the SHA/County at the MD 75/Site Driveway intersection, but no later than the issuance of the last building permit in the Project, to determine if signalization is warranted, justified and deemed necessary. The Charitable Foundation shall install a traffic signal at this intersection within twelve (12) months of the determination that a signal is warranted. Should the signal still not be warranted and justified by the time of issuance of the last building permit for the project, then others shall therefore be responsible for its implementation.

**B. Escrow Accounts:**

In full satisfaction of the requirements in Section 1-20-12 of the APFO to contribute fair share contributions to existing escrow accounts, prior to the recordation of the first record lot for the Project, except as otherwise noted below, the Charitable Foundation shall pay into County-held escrow accounts the following pro rata contributions:

1. The Charitable Foundation shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3309 for Old National Pike and Bartholows Road for improvement to this intersection by others. As determined by DPDR-Traffic Engineering Staff, the Charitable Foundation's pro-rata contribution to this road improvement is \$3,646.
2. The Charitable Foundation shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3299 for Old National Pike and Morning Gate Lane for improvement to this intersection by others. As determined by DPDR-Traffic Engineering Staff, the Charitable Foundation's pro-rata contribution to this road improvement is \$6,084.
3. The Charitable Foundation shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3801 for Old National Pike and Boyers Mill Road for improvement to this intersection by others. As determined by DPDR-Traffic Engineering Staff, the Charitable Foundation's pro-rata contribution to this road improvement is \$3,200.
4. The Charitable Foundation shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3251 for MD 75 and I-70 Eastbound off/on Ramp for improvement to this intersection by others. As determined by DPDR-Traffic Engineering Staff, the Charitable Foundation's pro-rata contribution to this road improvement is \$18,120.
5. The Charitable Foundation shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3252 for MD 75 and I-70 Westbound off/on Ramp for improvement to this intersection by others. As determined by DPDR-Traffic Engineering Staff, the Charitable Foundation's pro-rata contribution to this road improvement is \$24,000.
6. The Charitable Foundation shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3933 for MD 75 at Old New London Road for improvement to this intersection by others. As determined by DPDR-Traffic Engineering Staff, the Charitable Foundation's pro-rata contribution to this road improvement is \$20,384.

2. Total of All Escrow Contributions: The Charitable Foundation agrees to pay the amount of \$75,434 to the escrow accounts described above prior to the recordation of the first residential plat. Should these payments not be made within one (1) year of the execution of this LOU, the County reserves the right to adjust this amount based on an engineering cost index. As outlined in Section 2(C) below, additional escrow payments may be required, when deemed necessary by the County, if road improvements required in Section 2(A) are built in part or

whole by others.

### **C. Surplus Capacity Reimbursement Improvements.**

The Charitable Foundation has agreed to construct or cause to construct certain infrastructure improvements to serve the Project which could result in the creation of excess capacity in such improvements that could benefit other development projects. The parties agree that the following road improvements have been determined to be “Surplus Capacity Reimbursement Improvements” (“SCR Improvements”) as that term is defined in Chapter 12 of the TIA Guidelines:

1. MD 75/I-70 Interchange reconfiguration (divergent diamond); and,
2. MD 75/MD 144 improvements to include the following:
  - a. Additional westbound approach lane to provide dual left turn lanes and an additional southbound to westbound I-70 slip ramp lane.
  - b. Additional eastbound through lane to provide two eastbound through lanes.

All contributions made by other developers for improvements to the MD 75/MD 144 intersection and/or the MD75/I-70 Interchange, as well as any other future escrow accounts along any of these roadways or sections thereof whose identified improvements would no longer be needed with the construction of the SCR Improvements, shall be paid by the County to Charitable Foundation for the construction of the SCR Improvements above.

Further to that provided above relating to funding adjustments applicable to proportional requirements of the Charitable Foundation for the Project, in the event that other approved development projects add “trips” to any off-site road improvements listed above and thus are required to pay their pro rata share of the construction cost of said roads into escrow, the Charitable Foundation shall be entitled to reimbursement of the cost of the SCR Improvements, up to but not beyond its own identified fair share (either through reimbursement of actual construction costs incurred by the Charitable Foundation if the Charitable Foundation constructs said roads or through the reimbursement of the full fee-in-lieu escrow funds paid by the Charitable Foundation as provided above), subject to compliance with and in accordance with the requirements of Chapter 12 of the TIA Guidelines, from non-exempt developers of projects identified by the County Traffic Engineer, whether or not the SCR Improvements are located inside or outside of the contributing project’s study area. If any of the off-site road improvements listed above as a construction obligation of the Charitable Foundation are constructed or funded by others, then the Charitable Foundation shall pay its fair share of the construction costs for each constructed road into an escrow account based on trips generated by the Project and the fair share calculation methodology identified in the current TIA Guidelines, as then determined by the County. Prior to approvals being issued by the County to other developer(s) to contribute toward any or all of the above-described improvements in Section 2 (A) above, the Charitable Foundation shall have the opportunity to review and comment on the

County Traffic Engineer’s calculation of the “fair share” of the cost of such improvements attributable to the Project relative to other developers upon request by the Charitable Foundation or as offered by the County.

**E. Right-of-Way Acquisition Necessary for Roadway Improvement(s).**

1. In the event that some of the public infrastructure improvements required by this LOU to be made by the Charitable Foundation require the acquisition of public right-of-way from third-party property owners, the Charitable Foundation shall exercise commercially reasonable efforts to secure such right-of-way without the assistance of SHA or the County.

2. In the event that the Charitable Foundation has demonstrated to SHA and the County that it is unable to secure any or all of such public right-of-way despite its commercially reasonable efforts to do so in a timely manner consistent with the construction of public infrastructure improvements, the Charitable Foundation may request SHA or the County to assist in the acquisition of the needed right-of-way at the Charitable Foundation’s sole cost and expense. If SHA or the County approves the Charitable Foundation’s request, then SHA or the County shall have two years to acquire the needed right-of-way.

3. Should SHA or the County decide not to acquire the right-of-way, or if the two years has elapsed, then the Charitable Foundation may be permitted to make a contribution to the County, equal to the entire anticipated improvement construction cost, which shall include but not be limited to costs for: design, engineering, right-of-way acquisition, management, construction, inspection, etc. in lieu of constructing the public infrastructure improvement(s). Also, should SHA unreasonably (in the County’s discretion) refuse or fail to grant the permits necessary for the construction of improvements referenced in Section 2(A) above, the Charitable Foundation may be permitted to make a contribution to the County (and/or other governmental agencies as applicable), equal to the entire anticipated improvement construction cost described above. Upon payment of the entire anticipated improvement construction cost (as described in hereinabove), the Charitable Foundation shall have satisfied its APFO obligation concerning the particular improvement and may proceed with development of the Property.

**3. SCHOOLS**

In accordance with a school adequacy test conducted by the Frederick County Board of Education, the Project is projected to generate 275 elementary school students, 122 middle school students, and 180 high school students at the time of full build-out. Based on these numbers and considering enrollment projections from pipeline development, the Project will not pass the school adequacy test at the elementary and high school levels at the time of full build out (as determined pursuant to Section 1-20-61 of the County Code). Accordingly, the

Charitable Foundation has elected to utilize the statutory option provided, at the discretion of the applicant, to mitigate the inadequacy of the public school capacity by paying the School Construction Fee for the elementary and high school levels in accordance with the criteria set forth in Section 1-20-62 of the County Code (and in accordance with the DRRA).<sup>1</sup>

The Charitable Foundation shall pay the School Construction Fee per unit type for the elementary and high school levels, based upon the fee schedule in effect at the time of subdivision plat recordation and payment, as set forth in Section 1-20-62(E) of the APFO. The School Construction Fee was established by Ordinance 11-18-584, enacted on July 20, 2011 and codified as Section 1-20-62 of the APFO, with a sunset provision of five years from the effective date. Notwithstanding a sunset of the School Construction Fee Ordinance, the Charitable Foundation (similar to other projects utilizing the option that have been previously approved) shall be bound to pay the School Construction Fee as a condition of APFO approval for the Project, and this obligation shall survive the sunset of the School Construction Fee Ordinance and shall run with the full term of this LOU and any duly approved extensions thereof. The Charitable Foundation acknowledges that School Construction Fees shall be in addition to and not in lieu of Public School Impact Fees under Chapter 1-22 of the Frederick County Code. The School Construction Fee shall be paid at the time of record plat for subdivision lots in accordance with Section 1-20-62(F).

**4. DISCLAIMER:** This LOU pertains to APFO approval only, and shall not be construed to provide any express or implied rights to continue the development process. The Project remains subject to all applicable rules and regulations, including but not limited to those related to zoning, water and sewer, and subdivision. The BOCC's jurisdiction and authority is limited by State and County law, and approvals may be required from other local or state governmental agencies before the proposed development can proceed.

**5. NO THIRD PARTY BENEFICIARY STATUS:** It is expressly stated that the representations and commitments made herein by the Charitable Foundation are solely for the benefit of the Charitable Foundation and the Project and may not be construed to confer any rights upon any third party in regards to the future construction of any of the facilities set forth above or to the granting or reservations of any easements, rights-of-way, or other matters referenced herein. The rights and obligations of the Charitable Foundation under this LOU shall be binding on and inure to the benefit of the Charitable Foundation's successors and assigns. The purpose of this LOU is solely to set forth the improvements which the Charitable Foundation agrees to construct as a condition of completing the development of the Project, and no third party shall be entitled to reliance hereon for the benefit of any other project.

---

<sup>1</sup> The public benefits supporting this statutory option to mitigate impacts on the schools through the payment of the School Construction Fee have been thoroughly discussed in connection with the County's approval of several other development projects preceding the entitlement of this Project. By general reference, the Charitable Foundation adopts the rationale and public policy benefits supporting this option as if fully summarized and provided herein.

**6. VESTING:** Upon full mitigation (construction of improvements, full fee-in-lieu payment (as described in Section 2(A)(3) hereof) and/or fair share contributions to escrow payments) of APFO road improvements, as forth in Section 2 above, within the APFO approval period, the APFO road approval for the Project shall be vested for the capacity created by the improvements and shall not be subject to further APFO roadway testing unless there is an increase in site trips or a significant redistribution of site traffic because of a future change in land use or increase in site density as defined in the TIA Guidelines (Section 1-20-31(H)). Upon completion of construction of the APFO public water and sewer improvements set forth in subsections 1 (A) and (B) above, the APFO water and sewer approvals for the Project shall be vested for the capacity to be created by the improvements and shall not be subject to further APFO testing unless the density or intensity of the Project increases (Sections 1-20-41(E) and 1-20-51(E)). Upon payment of all school construction fees applicable to the Project, as set forth in Section 3 above, the Project shall not be subject to further testing for school adequacy unless the density of intensity of the development increases.

**7. Severability.** In case any one or more of the provisions contained in this LOU shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of the LOU, and this LOU shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this LOU.

**8. PERIOD OF VALIDITY:** The effective date of this LOU for the commencement of all APFO approvals referenced herein shall be \_\_\_\_\_, 2014, and it shall remain valid through \_\_\_\_\_, 2029.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date first above written.

WITNESS:

The Eugene B. Casey Foundation

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

Name: Betty Brown Casey

Title: Trustee

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF FREDERICK COUNTY, MARYLAND

\_\_\_\_\_  
Lori L. Depies, CPA  
County Manager

By: \_\_\_\_\_  
Blaine R. Young  
President

**EXHIBIT A**  
**(LEGAL DESCRIPTION OF PROPERTY)**

**EXHIBIT B**  
**(RECOMMENDED WATER SYSTEM IMPROVEMENTS)**

**EXHIBIT C**  
**(FREDERICK COUNTY POLICY FOR INTERPRETATION OF  
§1-16-106 OF THE FREDERICK COUNTY CODE)**

**EXHIBIT D**  
**(RECOMMENDED SEWER INTERCEPTOR AND  
PUMP STATION IMPROVEMENTS)**

**EXHIBIT E**  
**(RECOMMENDED SEWER IMPROVEMENTS)**

**EXHIBIT F**  
**(SEWER IMPROVEMENTS – CONCEPT PLAN)**

**EXHIBIT G**  
**(ROAD IMPROVEMENTS – DIVERGENT DIAMOND CONCEPT PLAN)**