



COMMUNITY DEVELOPMENT DIVISION

Department of Planning and Development Review

Frederick County, Maryland 21701

30 North Market Street

Frederick County, Maryland 21701

(301) 600-1138

July 31, 2012

TO Frederick County Planning Commission

FROM Eric Soter, Director
Community Development Division

RE Agenda Packet/Staff Report for August 22nd Landsdale DRRA and Phase 1
Amendment Public Hearing

Please bring all materials from your packet for the public hearing from the August 8th worksession for both the DRAFT Development Rights and Responsibilities Agreement (DRRA) and the Phase 1 PUD Amendment.

Please note there will actually be two separate public hearings, one for the PUD, wherein, the Planning commission, will be making a recommendation on the proposed amendments to the zoning application, and lastly, for the DRRA, the commission will be making a finding of whether or not the DRRA is consistent with the Countywide Plan. The second page of this memo provides some guidance with respect to the finding of consistency.

As noted in our discussion, regarding the DRRA, there were no substantive changes anticipated following your worksession. However, on Tuesday August 14th, the staff presented additional language to be included in the DRRA.

In subsequent discussions with the Developer, the following language was discussed, which would add new Sections 4.1.2.1.3 and 4.2.2.1.3 to the DRRA as follows:

In light of the unique history and circumstances of the Age Restricted [All Age] PUD Project, the County and the Developer agree that the Developer may be entitled to a credit of up to \$3.16 million against future sewer capacity fees to be paid for the Project. The total amount and method for determining the amount of the capacity fee credit and other details of the capacity fee credit may be agreed to in a separate Memorandum of Understanding between the County and the Developer.

This language does not require the BOCC to provide capacity fee credits to the Developer, but adds a maximum amount and acts as a “placeholder” for future negotiations about the possibility of capacity fee credits for the Landsdale PUD. Therefore, the last sentence in Section 11.1.3 of the DRRA would be deleted as it specifically stated the developer was entitled to the credit. A copy of the complete staff report to the BOCC can be found on the August 14th BOCC agenda web page and clicking on the agenda item related to this issue.

http://www.frederickcountymd.gov/documents/264/1154/6601/8.14.Demosky%20Landsdale%20PUD%20DRRA_201208140850250962.pdf

ISSUE

The FCPC role in the review of the *Developers Rights and Responsibilities Agreement (DRRA)* for the Landsdale PUD development is to determine whether the proposed agreement is consistent with the Comprehensive Plan.

BACKGROUND

DRRA Process and Procedures

Developer Rights and Responsibilities Agreement (DRRA) review and approval procedures are found in §1-25 of the County code. If a DRRA is requested concurrent with any other development approval such as a rezoning or adequate public facilities approval, those provisions in §1-19 and/or §1-20 of the County Code would apply respectively. The rezoning and APFO while running concurrent with the DRRA approval are separate actions.

The staff report from August 8th worksession includes the key provisions and provided the background on the following:

- *Summary Development History, Summary of Proposed DRRA, Development Rights, Development Responsibilities, Summary of Proposed Changes and Key Development Issues*

Finding of Consistency:

As for the Planning Commission's role, it is limited as prescribed in Article 66B and in §1-25 of the County Code. In addition, recent amendments to Article 66B (as provided for in 2009 SB-280) provide further guidance in making recommendations with respect to "findings of consistency". The bill indicates that:

"...REQUESTS THAT AN ACTION BE "CONSISTENT WITH" OR HAVE "CONSISTENCY WITH" A COMPREHENSIVE PLAN, THE TERM SHALL BE DEFINED TO MEAN AN ACTION TAKEN THAT WILL FURTHER, AND NOT BE CONTRARY TO, THE FOLLOWING ITEMS IN THE PLAN: (1) POLICIES; (2) TIMING OF THE IMPLEMENTATION OF THE PLAN; (3) TIMING OF DEVELOPMENT; (4) TIMING OF REZONING; (5) DEVELOPMENT PATTERNS; (6) LAND USES; AND (7) DENSITIES OR INTENSITIES."

Lastly, in an effort to provide even more clarity on how to define consistency, the following excerpt is from the Maryland Department of Planning Models and Guidelines Document titled: '*Achieving Consistency under the Planning Act*'. It states:

The fundamental concept of "consistency" under the new Planning Act is that land use regulations and decisions should agree with, and implement what the Plan recommend and advocates. A consistent regulation or decision may show clear support for the Plan. It may also be neutral – but it should never undermine the Plan.

To that end, the proposed DRRA for the Landsdale PUD is proposed on land that is planned for Low Density Residential (LDR) and the proposed densities and intensities are within the limits as prescribed in the Frederick County Comprehensive Plan. Further, the timing of development and infrastructure improvements outlined within the DRRA provide a mechanism to stage development consistent with the policies of the Comprehensive Plan. In addition, the existing age-restricted and proposed amendment to convert to all-age development, along with the proposed land use plan will further community design policies of the Comprehensive Plan.

RECOMMENDATION:

To that end, Staff recommends that the Frederick County Planning Commission find:

1. That the location, character, and extent of the proposed Development Rights and Responsibilities Agreement for the Landsdale PUD are consistent with the Frederick County Comprehensive Plan.

DRAFT
DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT

THIS DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT (“Agreement”), made as of the _____ day of _____, 2012, by and between MONOCACY VENTURES LLC, MONOCACY INVESTMENTS MC, LLC and MONOCACY INVESTMENTS CI, LLC (collectively, the “Developer”), and THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, a body politic and corporate (the “BOCC”).

RECITALS

1. Maryland law, Land Use Article §-7-301 through §7-306 (formerly Article 66B, § 13.01) of the Maryland Annotated Code, grants the BOCC the authority to establish procedures and requirements for the consideration and execution of Development Rights and Responsibilities Agreements (“DRRA”).
2. The BOCC has adopted Ordinance No. 07-33-473 creating Chapter 1-25 of the Frederick County Code (the “County Ordinance”) authorizing DRRAs.
3. This document is intended to constitute a DRRA as provided for in Land Use Article §7-301 through §7-306 and the County Ordinance.
4. The Developer is the owner of certain real property in Frederick County, Maryland, described in Exhibit A, attached hereto and made part hereof, (collectively referred to as the “Subject Properties”). [Section 1-25-4(A)(3).]
5. The names of all parties having an equitable or legal interest in the Subject Properties, including lien holders, are set forth in Exhibit B, attached hereto and made a part hereof [Section 1-25-4(A)(2)] and certified to by counsel to the Developer (Exhibit “C”). [Section 1-25-4(A) (1).]
6. On March 14, 2012, Developer petitioned the BOCC to enter into this Agreement (“Petition”). [Section 1-25-3.]
7. During a public meeting held on April 12, 2012, the BOCC reviewed this Petition and determined to accept the Petition and initiate the process of considering a DRRA. [Section 1-25-3(E).] Developer has paid to the County the Petition fee established by a separate Resolution adopted by the BOCC [Section 1-25-3(F).]

8. On _____, 2012, the BOCC held a duly advertised public hearing on this Agreement. The public had an opportunity to comment at this public hearing. [Section 1-25-6.]

9. This Agreement was referred to the Frederick County Planning Commission (the "Planning Commission") for a determination of whether this Agreement is consistent with the Countywide Comprehensive Plan for Frederick County (the Comprehensive Plan"). This determination was made by the Planning Commission at a public meeting held on _____, 2012. [Section 1-25-5.]

NOW, THEREFORE, in consideration of the foregoing recitals, which are not merely prefatory but are hereby incorporated into and made a part of this Agreement, and the mutual covenants and agreements set forth below, and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the BOCC and the Developer hereby agree as follows:

ARTICLE I **DEFINITIONS**

1.1. *Definitions.* The following words, when used in this Agreement, shall have the following meanings:

(a) "Agreement" means this Development Rights and Responsibilities Agreement.

(b) "Age Restricted PUD" and "Age Restricted PUD Project" means the approved Planned Unit Development for 1,100 aged restricted dwelling units and all associated requirements and conditions as initially approved for Green Valley Active Adult by Ordinance No. 04-10-354 approved by the BOCC on June 24, 2004, and including approvals for Phase I (approved by the BOCC concurrent with the above Ordinance approving PUD zoning), Phase II (in the form of A/P Number 2640 approved by the Planning Commission on March 9, 2005) and Phase III (in the form of Preliminary Plan of Subdivision A/P Number 4685 approved by the Planning Commission on October 11, 2006).

(c) "Age Restricted APFO LOU" means the Adequate Public Facilities Ordinance Letter of Understanding dated April 13, 2005 for the Age Restricted PUD, attached hereto as Exhibit "D".

(d) "All Age PUD" and "All Age PUD Project" means the Planned Unit Development for 1,100 dwelling units that will be available without regard to age and that is approved with Phase I approval by the BOCC concurrent with approval of this DRRA, with associated terms, requirements and conditions independent, separate and apart from those associated with the Age

Restricted PUD to be constructed on the Subject Properties, also sometimes referred to as the “Project.”

(e) “All Age APFO LOU” means the Adequate Public Facilities Ordinance Letter of Understanding that is pending approval by the BOCC concurrent with Phase I approval and approval of this DRRA for the All Age PUD, attached hereto as Exhibit “E”.

(f) “BOCC” means the Board of County Commissioners of Frederick County, Maryland, a body politic.

(g) “Bush Creek Interceptor PWA” means the Bush Creek Sewer Interceptor Design Public Works Agreement dated May 2, 2006 and amended on October 14, 2010.

(h) “Bush Creek Special Use Park” means 96.5+/- acres of land proffered by the Developer as a special use park along Bush Creek.

(i) “County Code” means the Code of Frederick County, Maryland in effect on the Effective Date of this Agreement.

(j) “County Ordinance” means the County Ordinance No. 07-33-473 creating Chapter 1-25 of the Frederick County Code and authorizing Development Rights and Responsibilities Agreements.

(k) “Department” means the Frederick County Community Development Division.

(l) “Developer” means Monocacy Ventures LLC, Monocacy Investments MC, LLC, and Monocacy Investments CI LLC, its successors and assigns in ownership of the Subject Properties.

(m) “Development Approval” means final governmental approval of Subdivision Plat(s), Adequate Public Facilities Ordinance (“APFO”) requirements, PUD Phase I, II, and III as to the Age Restricted PUD and Phase I and II for the All Age PUD (including all Preliminary Plans and Site Plans as applicable), and all conditions of said approvals that have been satisfied, and all applicable appeal periods have expired without the filing of any appeal, or if an appeal(s) was filed, the appeal has been defeated beyond the possibility or existence of further appeal of any kind.

(n) “Effective Date of this Agreement” means the date the last party executes this Agreement.

(o)“Improvements” means those improvements to be made to road, sanitary sewer (sewerage), water, stormwater, parks, and other infrastructure, and other facilities necessary to service the Subject Properties.

(p)“Phase” means any portion of the Age Restricted PUD or All Age PUD, as applicable, which has received Development Approval.

(q)“Phase I approval” means the Justification Phase involving the approval of a concept plan by the BOCC as applicable to either the Age Restricted PUD or the All Age PUD.

(r)“Phase II approval” means The Planned Development Phase involving the approval of the Planning Commission as applicable to the Age Restricted PUD or the Execution Phase involving the approval of a preliminary plan and site plan by the Planning Commission for the All Age PUD.

(s)“Phase III approval” means the Execution Phase involving approval of a preliminary plan of subdivision by the Planning Commission for the Age Restricted PUD.

(t)“Planning Commission” means the Planning Commission for Frederick County Maryland.

(u)“Public Improvement Agreement” or “PIA”, or “Public Works Agreement” or “PWA” means an agreement between the County and Developer providing for the construction of public infrastructure by Developer.

(v)“Public School Site” means that portion of the All Age PUD shown on the Phase I Plan for the All Age PUD which the Developer has proposed to convey to the Frederick County Board of Education for the purpose of building a public school to serve the Project and the surrounding community.

(w)“Subdivision Plat” means a final plat(s) of subdivision for the Age Restricted PUD or the All Age PUD, whichever is applicable, or any respective Phase thereof, prepared in accordance with the County Code and approved by the Planning Commission.

(x)“Subject Properties” means all of the real property described in Exhibit A attached hereto.

(y)“SWM Approval” means administrative waivers approved by the County in AP Nos. 10960, 10961, and 11021.

ARTICLE II

PROTECTED DEVELOPMENT DESCRIPTION

2.1. *Intent.* By virtue of those Development Approvals of the Age Restricted PUD as set forth in Exhibit “J”, the Developer has the right and at its discretion may choose to develop in full the Age Restricted PUD in accordance with the Development Approvals and subject to the Age Restricted APFO LOU, attached hereto and made a part hereof as Exhibit “D”. Alternatively, the Developer is pursuing Development Approvals necessary to develop the All Age PUD in accordance with the Phase I Plan approved by the BOCC concurrent with the review and approval of this DRRA and further subject to the All Age APFO LOU evidencing APFO approval by the BOCC also approved concurrent with Phase I approval, attached hereto and made a part hereof as Exhibit “E”.

This DRRA is expressly intended to contractually bind the Developer and the County as to the development of the Subject Properties with either the Age Restricted PUD or the All Age PUD in accordance with the terms hereof. By operation of the approval by the Planning Commission of a non-appealable Phase II approval of the All Age PUD, the Age Restricted PUD shall no longer be valid and shall be deemed as a matter of fact and law to be void and of no further effect. This DRRA is intended to protect, preserve and facilitate the full development of the Age Restricted PUD pursuant to the terms of the Age Restricted PUD Development Approvals, the Age Restricted APFO LOU, and this DRRA, until such time as the All Age PUD is in effect as outlined above.

ARTICLE III

LIMITATIONS, PERMITS AND PLAN CONSISTENCY

3.1. *Age Restricted PUD.*

3.1.1 *Background.* The Age Restricted PUD was approved for 1,100 dwelling units restricted to occupancy by persons aged 55 and over in accordance with Phase II approval dated April 13, 2005 and the Age Restricted APFO LOU dated April 13, 2005. The Age Restricted PUD shall be developed as a planned unit development pursuant to former Section 1-19-321 of the County Code (attached hereto and made a part hereof as Exhibit “F”).¹

¹The County Code was amended in 2010 such that the PUD provisions were repealed and a new section, Planned Development Residential (“PDR”) was established. The County Code was further amended in 2011 to restore the PUD replacing all references to “PDR” with “PUD”. These changes are now reflected in Division 5 of Chapter 1-19 (Section 1-19-10.500, *et seq.*) of the County Code. The BOCC and the Developer agree and hereby acknowledge that the Age Restricted PUD was previously approved under, and shall be developed under, the applicable PUD statutory requirements and development standards in place at the time of the Development Approvals (Exhibits “G”, “H”, and “I”).

3.1.2 *Development Limitations*- The permissible uses on the Subject Properties for the Age Restricted PUD are those permitted in the County Code [Section 1-25-4(5)]. The Subject Properties shall be developed in accordance with, and subject to the conditions and requirements of the Development Approvals, including but not limited to, Phase I approval, Phase II approval, Phase III approval and the Age Restricted APFO LOU approval, which are attached hereto as Exhibits “G”, “H” “I” and “D”, incorporated by reference herein. Total density of residential development on the Subject Properties shall not exceed, collectively, 1,100 dwelling units, and there will be no commercial development. The mix of units shall be at Developer’s discretion up to a maximum of 800 single-family units, with the balance of the maximum 1,100 dwelling units allowable as townhomes. [Section 1-25-4(A)(6).] Setbacks, building heights and other development standards shall be as established by the Development Approvals; provided, however, Developer shall not be required to provide greater than 35% of all dwelling units with rear alley access. [Section 1-25-4(7).]

3.1.3 *Permits*- The BOCC and the Developer agree that the permits, approvals and agreements required by the County, and those already approved for the Age Restricted PUD are those set forth in Exhibit “J”, attached hereto and made a part hereof. [Section 1-25-4(A)(8).]

3.2. All Age PUD.

3.2.1 *Background*. The All Age PUD has received Phase I approval (concurrent with the approval of this DRRA) for 1,100 dwelling units, in accordance with the All Age APFO LOU also approved by the BOCC concurrent with this DRRA (and Phase I approval). The Developer shall seek all required Development Approvals to allow the All Age PUD Project to be developed as a planned unit development pursuant to Division 5 of Chapter 1-19 [Section 1-19-10.500, *et seq.*] of the County Code (attached hereto and made a part hereof as Exhibit “K”).²

3.2.2 *Development Limitations* –The permissible uses on the Subject Properties for the All Age PUD are those permitted in the County Code. [Section 1-25-4(5).] The Subject Properties shall be developed in accordance with, and subject to the conditions and requirements of amended Development Approvals that are required pursuant to County Code, which Development Approvals shall be based upon, the terms and conditions of this Agreement. [Section 1-25-4(5).] Total density of residential development on the Subject Properties shall not exceed, collectively, 1,100 dwelling units, and there will be no commercial development. The mix of units shall be at Developer’s discretion, up to a maximum of 800 single-family units, with the balance of the maximum 1,100 dwelling units allowable as townhomes. [Section 1-25-4(A)(6).] Setbacks, building height and other development standards on the Subject Properties shall be as established

² The County Code was amended in 2010 such that the PUD provisions were repealed and a new section, Planned Development Residential (“PDR”) was established. The County Code was further amended in 2011 to restore the use of the term “PUD”, replacing all references to “PDR” with “PUD”. These changes are now reflected in Division 5 of Chapter 1-19 (Section 1-19-10.500, *et seq.*) of the County Code. The BOCC and the Developer agree and hereby acknowledge that the Non-Age Restricted PUD shall be approved and developed under Division 5 of Chapter 1-19 of the County Code, notwithstanding any further changes and amendments to the County Code made after the date of this DRRA.

by the Development Approvals; provided, however, Developer shall not be required to provide greater than 35% of all dwelling units with rear ally access. [Section 1-25-4(7).]

3.2.3 *Permits*- The BOCC and the Developer agree that the permits, approvals and agreements required by the County, and those already approved for the All Age PUD are those set forth in Exhibit “L”, attached hereto and made a part hereof. [Section 1-25-4(A)(8).]

3.3. *Regulation and Plan Consistency*. On _____, 2012, the Planning Commission made the necessary determination as to whether this Agreement is consistent with the Frederick County Comprehensive Plan. [Section 1-25-4(A)(9).] By execution of this Agreement, the BOCC has determined that this Agreement is consistent with the Frederick County Comprehensive Plan.

**ROAD IMPROVEMENTS, SEWER IMPROVEMENTS,
WATER IMPROVEMENTS, SCHOOL DEDICATION**

4.1. Age Restricted PUD

4.1.1 *Road Improvements*. In satisfaction of either rezoning conditions or APFO requirements, the Developer is required to either construct or fund the construction of certain road improvements or contribute to an escrow fund for road improvements all as is comprehensively set forth in the approved Age Restricted APFO LOU, which is hereby incorporated by reference herein. [Section 1-25-4(A) (10).]

4.1.1.1 *Building Excise tax*. Currently, the building excise tax provided for in Section 2-7-131 of the Public Local Laws of Frederick County is established at \$0 by Ordinance No. 11-23-589. The building excise tax paid by the Developer shall be determined by the ordinance in effect at the time of building permit application for dwelling units in the Age Restricted PUD.

4.1.2 *Sewer Improvements*. Public Sewer shall be extended to the Property as provided for in the Age Restricted APFO LOU. As to sewer improvements required of the Developer, the improvements may be constructed by Developer through a PIA between Developer and the County. The BOCC shall process the Developer’s application to amend the County Water and Sewerage Plan in a timely manner to ensure full build-out of the Age Restricted PUD, and the County shall allocate and reserve sufficient capacity within the County’s sewer system to ensure a timely, complete and uninterrupted build-out of the Age Restricted PUD as is otherwise set forth in this Agreement. The Developer will pay tap fees in accordance with, the current fee schedule in effect at the time of building permit application, and the County shall issue such tap approvals in the normal course as a ministerial function. Sewer tap credits shall be allowed as set forth in the Code and any other applicable regulations pertaining to the provision of public sewer to the Subject Properties. [Section 1-25-4(A) (10).]

4.1.2.1 *Bush Creek Middle Phase Sewer Interceptor (“Bush Creek Sewer Interceptor”)*.

4.1.2.1.1 *Bush Creek Sewer Interceptor Design Public Works Agreement* (“*Bush Creek Interceptor PWA*”). The Developer and the BOCC have previously executed the Bush Creek Interceptor Design PWA, dated May 2, 2006 and as amended on October 14, 2010, which is specifically incorporated in whole as part of this DRRA. Pursuant to the PWA, Developer has funded the design of the Bush Creek Sewer Interceptor. With respect to sewer capacity, the Developer’s ability to record plats shall be determined in accordance with the County’s current policy titled “Interpretation of §1-16-106 of the Frederick County Code,” attached hereto as Exhibit “R”.

4.1.2.1.2 *Bush Creek Sewer Interceptor Construction*. In addition to other required improvements as provided below, the construction of Bush Creek Sewer Interceptor may be constructed by Developer and completed as a component of the “Pilot Program” approved by the BOCC with Resolution No. 11-23, approved on August 25, 2011 (and attached hereto as Exhibit “M”). In accordance with the Pilot Program, the Developer and the County would execute a PIA requiring that the Developer enter into a construction contract with a qualified contractor for the construction of Bush Creek Sewer Interceptor and requiring Developer to manage the construction contract through completion and acceptance of the improvements by the County. The PIA would also obligate Developer to retain a third-party inspection firm to ensure construction in accordance with the approved design. To the extent that other development projects are approved in reliance upon the completion of the Bush Creek Middle Phase, the Developer reserves the right to seek to have the developers of any such projects participate pro-rata in the funding of the Bush Creek Middle Phase (design and construction), including seeking to have such participation set forth as a conditional requirement of development approval for any such development project. The Applicant recognizes that the County currently has no authority to require such pro-rata reimbursement as a condition of approval. The general formula for participation to be sought by the Developer shall be consistent with the formula set forth in a letter to Frederick County dated September 14, 2004 attached to the Age Restricted LOU as Attachment “1”. Pursuant to Section 1-20-51(E) of the APFO, upon completion of construction of the Bush Creek Middle Phase, as set forth above, the PUD shall be considered vested for the sewer capacity required for the PUD.

4.1.2.1.3 In light of the unique history and circumstances of the Age Restricted PUD Project, the County and the Developer agree that the Developer may be entitled to a credit of up to \$3.16 million against future sewer capacity fees to be paid for the Project. The total amount and method for determining the amount of the capacity fee credit and other details of the capacity fee credit may be agreed to in a separate Memorandum of Understanding between the County and the Developer.

4.1.3 *Water Improvements* [Section 1-25-4(A) (11) (a) & (d)]. Public water shall be extended to the Subject Properties in accordance with the Age Restricted APFO LOU. As to water infrastructure improvements required to be made by Developer, the improvements may be constructed by Developer through a PIA between Developer and the County. The BOCC shall process the Developer’s application to amend the County Water and Sewerage Plan in a timely manner.

4.1.4 *Park Land.*

4.1.4.1 *Bush Creek Special Use Park.* The Developer may, if desired by County, dedicate 96.5± acres of parkland to the County for a special use park along Bush Creek (the “Bush Creek Special Use Park”) in accordance with, and as shown on, Exhibit “H”. The Bush Creek Special Use Park shall be dedicated upon recordation of the first Subdivision Plat for the Age Restricted PUD Project. Public access to the Bush Creek Special Use Park and connectivity of the Age Restricted PUD Project and Bush Creek Special Use Park shall be provided by Developer as shown on Exhibit “H”. [Section 1-25-4(A) (10.) If the County does not desire the dedication of the Bush Creek Special Use Park, the Developer may, if desired by the County, deed an easement to the County for a path or trail system in the same vicinity of the proposed Bush Creek Special Use Park as shown on Exhibit “H”. If the County does request the dedication of the Bush Creek Special Use Park, the Developer will remove or provide for the removal of all structures located on the parkland property.

4.1.4.2 *Future Public Use Site.* Developer shall, if desired by the County, as required by Phase III (Preliminary Plan No. 4685) approval, dedicate a 3.4± acre public use site for future discretionary use by County as shown on Exhibit “H” hereto, which dedication shall occur by recordation of the first plat.

4.1.5 *Public/Private Site Improvements* [Section 1-25-4(A) (11) (a)].

(a) Developer shall provide all public use improvements for the Age Restricted PUD Project as shown on the approved Phase II plan. Exhibit “H”.

(b) Developer shall provide all improvements intended for the benefit of the residents of the PUD as shown on the approved Phase II plan. Exhibit “H”.

4.1.6 *School Improvements.* Since the Age Restricted PUD will be restricted to persons 55 years of age or older, it will not have a direct impact on school enrollments. Section 1-20-7(E) of the County Code exempts projects for “housing for older persons” from the school APFO test if certain prescribed criteria are met. The PUD Project meets all prescribed criteria and, therefore, the school APFO test is inapplicable to this Project. Any school impact taxes otherwise required for developments approved in the County have been, and are hereby determined to be, waived.

4.1.7 *Payment for Discretionary Use.* Developer shall contribute \$250 per dwelling unit within the Age Restricted PUD to County prior to release of each building permit, to be held by County in a segregated account and to be applied by County towards operational or capital needs for the

volunteer fire, rescue, or ambulance company serving the Age Restricted PUD Project or such other suitable service or facility as agreed upon by Developer and County after appropriate input from the community.

4.1.8 *Public Improvement Guarantees.* Developer guarantee of any public improvements required pursuant to this DRRA or otherwise required for the Projects may, at Developer's discretion, be by surety bond in accordance with Resolution No. 11-22, approved by the BOCC on September 1, 2011 (attached hereto as Exhibit "N"). In the event that Resolution No. 11-22 does not allow the Developer to provide a surety bond to secure certain public improvement, then a letter of credit shall be provided in accordance with County regulations in effect on the effective date of this Agreement.

4.2. All Age PUD

4.2.1 Road Improvements [Section 1-25-4(A) (10) & (11)(d)].

4.2.1.1 *APFO and Other Road Improvements.* In satisfaction of APFO for the All Age PUD, Developer is required to either construct or fund the construction of certain road improvements or contribute to an escrow fund for road improvements, all as is comprehensively set forth in the All Age APFO LOU approved concurrent with Phase I PUD approval and made a part hereof as Exhibit "E". In addition, Developer agrees to construct and/or provide funding or partial funding for other road improvements as set forth in the All Age APFO LOU approved concurrent with Phase I and attached hereto as Exhibit "E", which All Age APFO LOU may be amended by the parties thereto without requiring amendment of this Agreement.

4.2.1.2 *Building Excise tax.* Currently, the building excise tax provided for in Section 2-7-131 of the Public Local Laws of Frederick County is established at \$0, by Ordinance No. 11-23-589. In recognition of the overall package of improvements being funded by Developer for the All Age PUD, including substantial funding contributions for regional road improvements beyond the requirements of APFO as set forth in the All Age PUD LOU attached hereto as Exhibit "E", the excise tax shall be \$0 for the term of this Agreement.

4.2.2 *Sewer Improvements.* Public Sewer shall be extended to the Property as provided for in the All Age LOU. As to sewer improvements required of the Developer, the improvements may be constructed by Developer through a PIA between Developer and the County. The BOCC shall process the Developer's application to amend the County Water and Sewerage Plan in a timely manner. The Developer will pay tap fees in accordance with the current fee schedule in effect at the time of building permit application, and the County shall issue such tap approvals in the normal course as a ministerial function.

4.2.2.1 *Bush Creek Middle Phase Sewer Interceptor (“Bush Creek Sewer Interceptor”).*

4.2.2.1.1 *Bush Creek Sewer Interceptor Design Public Works Agreement (“Bush Creek Interceptor PWA”).* The Developer and the BOCC have previously executed the Bush Creek Interceptor Design PWA, dated May 2, 2006 and as amended on October 14, 2010, which is specifically incorporated in whole as part of this DRRA. Pursuant to the PWA, Developer has funded the design of Bush Creek Sewer Interceptor. With respect to sewer capacity, the Developer’s ability to record plats shall be determined in accordance with the County’s current policy titled “Interpretation of §1-16-106 of the Frederick County Code,” attached hereto as Exhibit “R”.

4.2.2.1.2 *Bush Creek Sewer Interceptor Construction.* In addition to other required improvements as provided below, the construction of Bush Creek Sewer Interceptor may be constructed by Developer and completed as a component of the “Pilot Program” approved by the BOCC with Resolution No. 11-23, approved on August 25, 2011 (and attached hereto as Exhibit “M”). In accordance with the Pilot Program, the Developer and the County would execute a PIA requiring that the Developer enter into a construction contract with a qualified contractor for the construction of Bush Creek Sewer Interceptor and requiring Developer to manage the construction contract through completion and acceptance of the improvements by the County. The PIA would also obligate Developer to retain a third-party inspection firm to ensure construction in accordance with the approved design. To the extent that other development projects are approved in reliance upon the completion of the Bush Creek Middle Phase, the Developer reserves the right to seek to have the developers of any such projects participate pro-rata in the funding of the Bush Creek Middle Phase (design and construction), including seeking to have such participation set forth as a conditional requirement of development approval for any such development project. The Applicant recognizes that the County currently has no authority to require such pro-rata reimbursement as a condition of approval. The general formula for participation to be sought by the Developer shall be consistent with the formula set forth in a letter to Frederick County dated September 14, 2004 attached to the Age Restricted LOU as Attachment “1”. Pursuant to Section 1-20-51(E) of the APFO, upon completion of construction of the Bush Creek Middle Phase, as set forth above, the PUD shall be considered vested for the sewer capacity required for the PUD.

4.2.2.1.3 In light of the unique history and circumstances of the All Age PUD Project, the County and the Developer agree that the Developer may be entitled to a credit of up to \$3.16 million against future sewer capacity fees to be paid for the Project. The total amount and method for determining the amount of the capacity fee credit and other details of the capacity fee credit may be agreed to in a separate Memorandum of Understanding between the County and the Developer.

4.2.3 *Water Improvements* [Section 1-25-4(A) (11) (a) & (d)]. Public water shall be extended to the Subject Properties in accordance with the All Age APFO LOU. As to water infrastructure improvements required to be made by Developer, the improvements may be constructed by

Developer through a PIA between Developer and the County. The BOCC shall process the Developer's application to amend the County Water and Sewerage Plan in a timely manner.

4.2.4 *Park Land.*

4.2.4.1 *Bush Creek Special Use Park.* The Developer may, at the discretion of County, dedicate $96.5 \pm$ acres of parkland to the County for a special use park along Bush Creek (the "Bush Creek Special Use Park") in accordance with, and as shown on, Exhibit "O". The Bush Creek Special Use Park shall be dedicated upon recordation of the first Subdivision Plat for the All Age PUD Project. Public access to the Bush Creek Special Use Park and connectivity of the All Age PUD Project and Bush Creek Special Use Park shall be provided by Developer as shown on Exhibit "O". [Section 1-25-4(A) (10.) If the County does not desire the dedication of the Bush Creek Special Use Park, the Developer may, if desired by the County, deed an easement to the County for a path or trail system in the same vicinity of the proposed Bush Creek Special Use Park as shown on Exhibit "H". If the County requests the dedication of the Bush Creek Special Use Park, the Developer will remove or provide for the removal of all structures located on the Parkland property.

4.2.4.2 *Future Public Use Site.* Developer shall dedicate, if desired by the County, a $3.4 \pm$ acre public use site for future discretionary use by County as required by Phase III (Preliminary Plan No. 4685) approved for the Age Restricted PUD, which will be shown on a new Phase II (preliminary plan) approval for the All Age PUD, which dedication shall occur by recordation of the first plat.

4.2.5 *Public/Private Site Improvements* [Section 1-25-4(A) (11) (a)].

(a) Developer shall provide all public use improvements for the All Age PUD Project to be shown on the approved Phase II plan.

(b) Developer shall provide all improvements intended for the benefit of the residents of the Project to be shown on the approved Phase II plan.

4.2.6 *Schools.*

4.2.6.1 *APFO.* In satisfaction of the APFO, the Developer shall mitigate the impact of the All Age PUD Project on the public schools, in accordance with the All Age PUD APFO LOU attached hereto as Exhibit "E", by payment of the School Construction Fee³ in effect at the time

³The School Construction Fee was established by Ordinance 11-18-584, enacted on July 20, 2011 with a sunset provision of five years from the effective date. Notwithstanding a sunset of

of plat recordation, due for each dwelling unit upon recordation of its respective plat, in accordance with the fee schedule attached hereto as Exhibit "P". The Developer shall pay the school impact fee per dwelling unit at the time of the issuance of building permits provided; however, that Developer shall pay the school construction fee for the equivalent of 100 dwelling units concurrent with the recordation of the first Subdivision Plat for the All Age PUD in order to advance funds for use by County in the design of a new elementary school.

4.2.6.2 School Site Dedication. The Developer shall convey in fee simple to the Frederick County Board of Education ("BOE"), with no consideration paid, a school site totaling a minimum of 13 acres for the construction of an Elementary level school to serve the Project and the surrounding region. The Public School Site will be conveyed to the BOE upon: i) the recordation of the subdivision plat including the Public School Site; and ii) BOE's acceptance of the conveyance of land for the Public School Site. At such time as shall be determined at the sole discretion of the BOE, by written notification to the Developer, the Public School Site shall be conveyed, but no earlier than recordation of the first plat for lots in the Project and not later than the recordation of the plat for the 501st lot in the Project. In the event that the BOE determines not to accept the Public School Site within the time stated above, Developer shall retain fee simple ownership of the Public School Site, and may use the Public School Site in a manner consistent with other uses with the PUD. [Section 1-25-4(A) (11) (a).] The Public School Site is intended to have frontage on Ed McClain Road and Developer shall support efforts by the BOE to gain direct access to Ed McClain Road and further agrees to not unreasonably withhold access to streets internal to the PUD. As further set forth below, requirements for satisfaction of the Forest Resource Ordinance ("FRO") and stormwater management quantity control for the Public School Site shall be addressed within the overall Project, allowing the Public School Site to be conveyed net of such requirements. A separate Memorandum of Understanding between the BOE and Developer shall be executed by the time of Preliminary Plan approval for the Project (assuming commercially reasonable efforts by both parties), which BOE MOU shall establish and control other aspects of the Public School Site and the rights and responsibilities of the parties relative to the Public School Site and the construction of an elementary school. In the event, that the BOE MOU conflicts with any provision of this Agreement, the BOE MOU shall be the prevailing document with regard to the Public School Site, and the BOE MOU may be amended by the parties thereto without amending this Agreement.

4.2.7 Payment for Discretionary Use. Developer shall contribute \$250 per dwelling unit within the All Age PUD to County prior to release of each building permit, to be held by County in a segregated account and to be applied by County towards operational or capital needs for the volunteer fire, rescue, or ambulance company serving the All Age PUD Project or such other

the School Construction Fee Ordinance, the parties intend that the Developer shall be bound to pay the School Construction Fee as a condition of APFO approval of the Non-Age Restricted PUD, and this provision shall survive the sunset of the Ordinance, shall run with the full term of this Agreement and any duly approved extensions thereof.

suitable service or facility as agreed upon by Developer and County after appropriate input from the community.

4.2.8 *Public Improvement Guarantees.* Developer guarantee of any public improvements required pursuant to this DRRA or otherwise required for the Projects may, at Developer's discretion, be by surety bond in accordance with Resolution No. 11-22, approved by the BOCC on September 1, 2011 (attached hereto as Exhibit "N"). In the event the provisions of Resolution No. 11-22 do not allow the developer to guarantee the public improvements with a surety bond, then the Developer shall post a letter of credit in accordance with County policies in effect on the effective date of this Agreement.

ARTICLE V

RIGHT-OF-WAY FOR PUBLIC INFRASTRUCTURE

5.1. Some of the public infrastructure improvements required by this DRRA to be made by the Developer will require public right-of-way from third-party property owners. Where securing the public right-of-way is required of the Developer, the Developer shall exercise commercially reasonable efforts to secure such right-of-way without the assistance of the County. In the event that the Developer is unable to secure right-of-way notwithstanding provision to the County of evidence of commercially reasonable efforts, the County may assist in the acquisition of the needed right-of-way at the Developer's sole cost and expense. In the event, due to circumstances beyond the Developer's control, public right-of-way cannot be acquired in a manner consistent with the timely construction of public infrastructure by the Developer, Developer shall be permitted to make a contribution equal to the anticipated construction costs of the public infrastructure to the County in lieu of actual construction.

ARTICLE VI

MODERATELY PRICED DWELLING UNITS

6.1. For either the Age Restricted PUD or the Non-Age Restricted PUD, the Developer shall pay a sum of \$ 2,607,500 in lieu of provision of MPDUs, as provided for in the Payment In Lieu of Provision of MPDUs' Agreement recorded among the Land Records of Frederick County in Liber 8924 folio 324, attached hereto and made a part hereof as Exhibit "Q".

ARTICLE VII

APPLICATION OF CERTAIN ENVIRONMENTAL REGULATIONS

7.1. *Stormwater Management.* Stormwater management shall be provided for the Subject Properties, whether developed with the Age Restricted PUD or the All Age PUD in accordance with the 2000 Maryland Department of Environment Stormwater Management regulations in effect and made applicable to the Subject Properties with administrative waivers approved by the County in AP 10960, AP 10961, and AP 11021 (the “SWM Approval”), provided that the All Age PUD does not increase the impervious area of the PUD over that which was the basis of the SWM Approval. The SWM Approval shall also be deemed to apply to the Public School Site being conveyed to the BOE (as set forth above), and stormwater management quantity requirements for the Public School Site shall be addressed with the overall Project (with any quality control requirements remaining to be addressed by the BOE as part of the construction of the public school). The SWM Approval shall be valid and fully applicable to the development of the Subject Properties for the term of this DRRA, or for so long as the conditions of the administrative waiver provided in Ordinance No. 10-09-544, including the time limits detailed therein, are satisfied, whichever comes first. Accordingly, the BOCC agrees to avoid undue delay and to use reasonable efforts to ensure that all conditions of the administrative waivers are satisfied.

7.3 *Waterbody Buffers.* Neither the Age Restricted PUD nor the All Age PUD shall be subjected to the Waterbody Buffer Requirements set forth in Section 1-19-9.400 of the Frederick County Code. Because the density established with the Age Restricted PUD (1,100 dwelling units) will not be exceeded with the All Age PUD, this Section 1-19-9.400 shall not apply to the Phase I amendment or any other Development Approvals for the All Age PUD.

7.4 *Forest Resource.* The Development Approvals in place relative to forest resource conservation, afforestation, and reforestation (AP 8543) for the Age Restricted PUD are valid until September 12, 2013, or as extended in accordance with applicable law. Forest Resource easements and sureties for the Age Restricted PUD required in accordance with AP 8543 shall be recorded or in effect by September 12, 2013, or the date of any extension thereof. Should the Developer fail to execute the approved Forest Resource plan by or before September 12, 2013 (or the date of any extension), lot recordation, grading activities, and construction activities shall be placed on hold by the County until a new Forest Resource application is approved by the County and the required mitigation is provided. Forest Resource requirements for the Public School Site shall be satisfied by the Forest Resource Plans approved for the Project (and accordingly there will be no Forest Resource requirements for construction by the BOE of the Public School Site). The Developer shall be required to submit new FRO applications for review if any revisions to the development plans for the Project change the FRO easement areas as shown on the approved FRO plan.

7.4. *Sediment and Erosion Control.* The Development Approvals in place relative to sediment and erosion control (AP 7072) for the Age Restricted PUD shall also apply and be made applicable to the All Age PUD, and shall be in full satisfaction of all requirements of the Sediment and Erosion Control Ordinance (Section 1-10 et seq.), unless precluded by State law. Grading of the Subject Properties shall be permitted in accordance with the sediment and erosion control laws and regulations in effect at the time of grading permit approvals.

ARTICLE VIII **DEVELOPMENT REVIEW**

8.1. *Timely Development Review.* The BOCC agrees to use reasonable efforts to ensure that all remaining Development Approvals, including but not limited to, preliminary plan approval, site development plan approval, final subdivision and final improvement plan review are performed in a succinct, timely manner, without undue delay, consistent with the County's development review process.

8.2 *Timely Submission of Documents.* The Developer agrees to use its best efforts to submit complete and succinct plans and documents for the remaining development approvals as required per County codes, ordinances or other policies and procedures in a timely manner.

ARTICLE IX **SURVIVAL AND TRANSFER OF OBLIGATION**

9.1. *Nature, Survival, and Transfer of Obligations.* The Developer agrees that this Agreement shall be binding upon it, its successors and assigns, and upon any and all successor owners of record of all or any portion of the Subject Properties. To assure that all such successors, assigns, and successor owners have notice of this Agreement and the obligations created by it, the Developer agrees that it shall:

(a) Have this Agreement recorded among the Land Records of Frederick County within 20 days after the effective date of this Agreement;

(b) Incorporate, by reference, this Agreement into any and all real estate sales contracts entered into after the effective date of this Agreement for the sale of all or any portion of the Subject Properties.

9.1.1 *Binding Upon Successors and Assigns of the BOCC.* The BOCC agrees that all obligations assumed by it under this Agreement shall be binding on it, its agencies, governmental units, the Planning Commission and its and their respective successors and assigns.

ARTICLE X
BREACH AND REMEDIES

10.1. *Breach by Developer.*

(a) *Breach-General.* If the Developer shall fail or refuse to perform its obligations as required, then after sixty (60) days from receipt of written notice provided to the Developer by the BOCC indicating the nature of the default and if the Developer has not cured the default, the BOCC may within 120 days following a notice to cure seek and obtain equitable relief to enforce the terms and conditions of this Agreement either through a decree for specific performance or an injunction. Should the remedies of specific performance or injunction not be available to the BOCC because of actions of Developer, then the BOCC shall be entitled to bring a legal action for damages.

(b) Jurisdiction and venue for any proceedings brought with respect to this Agreement shall be in the Circuit Court for Frederick County, Maryland. Developer does hereby waive trial by jury in connection with any proceedings brought to enforce the terms of this Agreement.

10.2. *Breach by BOCC.*

(a) *Breach-General.* If the BOCC shall fail or refuse to perform its obligations as required, then after sixty (60) days from receipt of written notice provided to the BOCC by the Developer indicating the nature of the default and if the BOCC has not cured the default, the Developer may seek within 120 days following a notice to cure and obtain equitable relief to enforce the terms and conditions of this Agreement either through a decree for specific performance or an injunction. Should the remedies of specific performance or injunction not be available to Developer because of actions of the BOCC, then the Developer shall be entitled to bring a legal action for damages.

(b) Jurisdiction and venue for any proceedings brought with respect to this Agreement shall be in the Circuit Court for Frederick County, Maryland. Developer does hereby waive trial by jury in connection with any proceedings brought to enforce the terms of this Agreement.

ARTICLE XI
EFFECT OF DEVELOPMENT REGULATIONS

11.1. *Effect of Agreement.*

(a) The laws, rules, regulations and policies governing the use, density or intensity of the Subject Properties, including but not limited to those governing development, subdivision, growth management, impact fees, water, sewer, stormwater management,

environmental protection, land planning and design, adequate public facilities laws and architecture, (hereafter collectively the “Development Laws”) shall be the laws, rules, regulations and policies, if any, in force on the Effective Date of the Agreement, and the Developer shall comply with all federal, state and local Development Laws.

11.1.1(b) If the BOCC determines that compliance with Development Laws enacted or adopted after the Effective Date of this Agreement is essential to ensure the health, safety or welfare of residents of all or part of Frederick County, the BOCC may impose the change in laws, rules, regulations and policies and the effect thereof upon the Subject Properties. *Developer’s Reliance.* The BOCC understands that, but for their commitment to “freeze” County Development Laws for purposes of this Agreement to the maximum extent permitted by law as they apply to the development of the Projects, as set forth in this Agreement, the Developer would not make the considerations to the BOCC contained herein.

11.1.2 *Approvals Required.* Developer shall obtain all approvals necessary under any provision of local, state or federal law before proceeding. Notwithstanding anything to the contrary contained herein, this Agreement does not control or affect laws, regulations or approvals which are not within the control of the County. This Agreement does not address any approvals required by State or federal law and Developer shall be responsible for obtaining any approvals required by State or federal law. BOCC agrees to provide reasonable assistance to Developer, as necessary, appropriate and consistent with the spirit and intent of this DRRA in Developer’s pursuit of all required state and/or federal laws necessary to fully develop the Projects.

11.1.3 *Fees.* Developer shall pay all fees (specifically including but not limited to impact fees and water and sewer capacity fees) required by the County at the rate in effect at the time the fee is due. Nothing in this Agreement shall be construed as a waiver or reduction of any such fee.

11.1.4 *Moratorium.* In the event that a “moratorium” (as hereinafter defined) is imposed, then any lot recordation or development phasing schedule and the Developer’s rights to record a certain number of lots and construct residential units and commercial structures on the lots per calendar year pursuant to a Development Approval for any section of the Project shall be extended for one (1) additional day for each day during which such moratorium exists, and the Project shall not be subject to any additional regulation, legislation, limitation, phasing, contributions, penalties or delay in construction, or issuance of zoning certificates/building permits solely as a result of the moratorium. Further, in the event that a moratorium is imposed, then any deadline concerning (1) the Developer’s obligation to construct, install, fund or post financial guarantees for (a) the infrastructure improvements required pursuant to any Development Approval for the Project in accordance with the phasing requirements set forth therein, and (b) the road improvements described in this Agreement; and, (2) the Developer’s obligation to dedicate parkland to the County and to grant perpetual forest conservation easements to the County in accordance with the provisions of Article IV of this Agreement, shall be extended for one (1) additional day for each day during which such moratorium exists, and the Project shall not be subjected to any additional regulation, legislation, limitation, phasing, contributions, penalties or delay in construction, or issuance of zoning certificates/building permits solely as a result of the moratorium. In addition, should a moratorium prevent recordation in any calendar year of the number of lots (or equivalent dwelling units) provided for

in any Development Approval for the Project, the “shortfall” in the number of such lots shall be added to the number of lots in the calendar year following the year during which the moratorium was in effect. The term “moratorium” shall mean the implementation or declaration by the United States Government, State of Maryland, Frederick County, and/or any agency, department, division and/or branch thereof for purposes of a limitation, prohibition, restriction and/or phasing upon the review, recording, development and construction upon lots in the Project as intended by Developer, which is deemed to be essential to ensure the public health, safety, and welfare of County residents as determined above. Nothing in this Agreement shall be interpreted as exempting Developer from compliance with laws, regulations, and policies of the County or the State, including, without limitation, those of the Maryland Department of the Environment or the Frederick County Division of Utilities and Solid Waste Management concerning the allocation of water and sewer and related matters.

ARTICLE XII
MISCELLANEOUS

12.1. *Time of Essence.* Time is of the essence in the performance of all terms and provisions of this Agreement.

12.1.1 *Terms.* This Agreement shall constitute covenants running with the land and shall run with and bind the Subject Properties so long as the Age Restricted PUD or All Age PUD is under construction and development, but in any event this Agreement shall be void 25 years after the effective date of this Agreement unless extended by an amendment complying with all procedures required in this Agreement, the County Ordinance and the State Law. [Section 1-25-12.]

12.1.2 *Notices.* All notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof (1) when delivered in person on a business day at the address set forth below or (2) on the third business day after being deposited in any main or branch United States post office, for delivery by properly addressed, postage prepaid, certified or registered mail, return receipt requested, at the address set forth below, or (3) upon receipt if sent by telecopier to the telecopier numbers set forth below.

Notices and communications to the Developer shall be addressed to, and delivered at, the following address:

Monocacy Ventures, LLC
Monocacy Investments MC, LLC
Monocacy Investments CI, LLC
c/o Elm Street Development
1355 Beverly Road #240
McLean, Virginia 22101
Telephone: (703) 734-9730

With a copy to:

C. Robert Dalrymple, Esquire
Linowes and Blocher LLP
7200 Wisconsin Avenue, Suite 800
Bethesda, Maryland 20814
Telephone: (301) 961-5208

Notices and communications to the BOCC shall be addressed to, and delivered at, the following address:

The Board of County Commissioners for Frederick County
12 E. Church Street
Frederick, Maryland 21701
Attn: County Manager
Telephone: (301) 600-1100
With a copy to:

County Attorney
12 E. Church Street
Frederick, Maryland 21701
Telephone: (301) 600-1030

Director, Division of Permits and
Inspections
30 N. Market Street
Frederick, Maryland 21701
Telephone: (301) 600-2028

Director of Community Development
30 N. Market Street
Frederick, Maryland 21701
Telephone: (301) 600-1153

By notice complying with the requirements of this Section, each party shall have the right to change the address or addressee or both for all future notices and communications to such party, but no notice of a change of address shall be effective until actually received.

12.1.3 *Amendments.* The parties to this Agreement may terminate the Agreement by mutual consent after the BOCC hold a public hearing and comply with all applicable laws concerning amendment of a Developer Rights and Responsibilities Agreement. All amendments to this Agreement shall be in writing and shall be executed by the BOCC and the Developer. Unless the Planning Commission determines that the proposed Agreement is consistent with the County Comprehensive Plan, the parties may not amend or terminate this Agreement and the BOCC may not suspend or terminate the Agreement.

12.1.4 *Termination or Suspension.* The parties to this Agreement may terminate or suspend the Agreement by mutual consent after the BOCC hold a public hearing and comply with all applicable laws concerning termination or suspension of a Developer Rights and Responsibilities Agreement. If the BOCC determine that a suspension or termination is essential to ensure the public health, safety or welfare (exercising the same standards as prescribed in Paragraph 11.1(b)

above), the BOCC may suspend or terminate this Agreement following a public hearing. The laws, rules, regulations and policies governing the use and density or intensity of the Property shall be the laws, rules, regulations and policies in force at the time the BOCC and the Property Owner execute this Agreement.

12.1.5 *Authority to Execute.* The BOCC hereby acknowledges and agrees that all required notices, meetings, and hearings have been properly given and held by the County with respect to the approval of this Agreement and the BOCC and the Developer agree not to challenge this Agreement or any of the obligations created by it on the grounds of any procedural infirmity or any denial of any procedural right. The BOCC hereby warrants and represents to the Developer that the persons executing this Agreement on their behalf have been properly authorized to do so. The Developer hereby warrants and represents to the BOCC (1) that it is the fee simple, record owner of the Subject Properties, (2) that it has the right, power and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth herein and to bind the Subject Properties as set forth herein, and (3) that all legal actions needed to authorize the execution, delivery and performance of this Agreement have been taken.

12.1.6 *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

12.1.7 *Consent to Jurisdiction.* The parties irrevocably consent to the jurisdiction of the Circuit Court of for Frederick County, Maryland or any federal court sitting in the District of Maryland.

12.1.8 *Remedies Cumulative.* Each right, power and remedy of a party provided for in this Agreement, or any other agreement between the parties, now or hereafter existing, shall be cumulative and concurrent and in addition to every other right, power or remedy provided for in this Agreement or any other agreement between the parties, now or hereafter existing.

12.1.9 *Severability.* In case any one or more of the provisions contained in this Agreement 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 Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement.

12.1.10 *Recordation.* Any party may record this Agreement. Unless this Agreement is recorded in the Land Records of Frederick County within 20 days after the date on which the BOCC and the property owner executed the Agreement, the Agreement shall be void.

12.1.11 *Appeals.* Both the State law and the County Ordinance allow any person aggrieved by this Agreement to file an appeal to the Board of Appeals within 30 days of the date on which the parties execute the Agreement. If the effect of the decision of the Board of Appeals revises this

Agreement in anyway, any party to this Agreement may terminate the Agreement by providing notice to all parties within 30 days of the date the Board of Appeals decision becomes final and all appeals thereof have been finally determined.

12.1.12 *No Obligation to Approve.* This Agreement shall not be interpreted or construed to impose any legal obligation on the BOCC or any of its boards, agencies, commissions or employees to approve any development, use, density or intensity other than as provided specifically in this Agreement. This Agreement shall not be interpreted or construed to impose any legal obligation on the BOCC to accept any other development requests.

12.1.13 *No Third Party Beneficiary Status.* The parties specifically agree that this Agreement is not intended to create in the public or any member thereof, third party beneficiary status in connection with the performance of the obligations under this Agreement without the written consent of the BOCC and notwithstanding the BOCC's concurrence in or approval of the award of any contract or subcontract or the solicitation in fulfilling the obligations of this Agreement.

12.1.14 *Appropriation Contingency.* The BOCC's financial obligations, if any, under this Agreement are contingent upon sufficient appropriations and authorization being made by the BOCC for the performance of this Agreement. The BOCC's decision as to whether sufficient appropriations are available shall be accepted by the other parties to this Agreement and shall be final.

12.1.15 *Public Health, Safety and Welfare.* The BOCC has determined that the conditions, terms, restrictions or other requirements of this Agreement are necessary to ensure that the public health, safety and welfare of the citizens of Frederick County are protected.

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

WITNESS:

MONOCACY VENTURES LLC,

By: _____

Name: _____

Title: _____

MONOCACY INVESTMENTS MC, LLC

By: _____

Name: _____

Title: _____

MONOCACY INVESTMENTS CI LLC

By: _____

Name: _____

Title: _____

STATE OF MARYLAND
COUNTY OF FREDERICK

*
* to wit:
*

I HEREBY CERTIFY that on this _____ day of _____, 2012, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the _____ of _____, and that such person, in such capacity and being authorized so to do, executed the foregoing and annexed Development Rights and Responsibilities Agreement for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND

David Dunn
County Manager

By: _____
Blaine R. Young
President

STATE OF MARYLAND, COUNTY OF FREDERICK, to wit:

I HEREBY CERTIFY that on the _____ day of _____, 2012, before me, the subscriber, a Notary Public in and for the jurisdiction aforesaid, personally appeared Blaine R. Young, who acknowledged himself to be the President of the Board of the Board of County Commissioners of Frederick County, Maryland, a body corporate and politic, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained to be his act on behalf of said entity.

WITNESS my hand and notarial seal the year and day first above written.

NOTARY PUBLIC
Printed Name _____

My Commission Expires:

ATTORNEY'S CERTIFICATION

THIS IS TO CERTIFY that the undersigned is a Member, in good standing, of the Bar of the Court of Appeals of Maryland, and that the within instrument was prepared by him or under his supervision.

C. Robert Dalrymple

Upon Recordation Please Return To: