

FREDERICK COUNTY PLANNING COMMISSION
October 14, 2015

TITLE: **Linton at Ballenger: Letter of Understanding Amendment**

FILE NUMBER: **S-1128 (AP# 2121)**

REQUEST: **Letter of Understanding (LOU) Amendment**

Requesting a 7th amendment to the approved Letter of Understanding, executed March 9, 2005 for the Linton PUD.

PROJECT INFORMATION:

LOCATION: Located on the north side of Elmer Derr Road, east and west of Ballenger Creek Pike (MD 351).
ZONE: Planned Unit Development (PUD)
REGION: Adamstown
WATER/SEWER: W-3, S-3
COMP. PLAN/LAND USE: Medium Density Residential

APPLICANT/REPRESENTATIVES: (as applicable)

OWNER/APPLICANT: Linton Green, LLC/Ausherman Homes, Inc.
ENGINEER: N/A
ATTORNEY: Andrew C. DiPasquale

STAFF: Ron Burns, Traffic Engineer

RECOMMENDATION: Approval

Enclosures:

Exhibit #1 – Original LOU, executed March 9, 2005
Exhibit #2 – Applicant Requested and Proposed Seventh Amendment to APFO LOU

STAFF REPORT

BACKGROUND

In 2003, the Ausherman Development Corporation filed an application to rezone the Linton Property, which consists of 138.7 acres, from Agriculture classification to the Planned Unit Development (PUD) classification to permit the development of a mixed-use residential community containing a maximum of 763 dwelling units. On March 11, 2004, the Applicant received approval from the Board of County Commissioners (BOCC) for the rezoning request with twenty-six (26) conditions.

The Phase II Plan for the development was conditionally approved at the October 20, 2004 Planning Commission meeting. The site is located within the Adamstown Planning Region, with a comprehensive plan designation of Medium Density Residential.

The original letter of understanding (LOU) was executed on March 9, 2005 (Exhibit #1) and was originally in effect for 10 years beyond the Planning Commission approval date of October 20, 2004. With two recent extensions, the APFO approval is now set to expire on October 20, 2020.

Since the original LOU was approved there have been six subsequent amendments:

1. October 18, 2006 – involving the schools section
2. December 13, 2007 – modifying the limits of the Elmer Derr Rd. improvement (first bullet on page 3)
3. June 10, 2010 (executed) – modifying limits of the MD 351/Elmer Derr Rd intersection improvement (third bullet on page 3)
4. September 8, 2010 – involving the annual dwelling unit recordation cap
5. June 8, 2011 – detailing the timing of road completion requirements relating to building permit issuance
6. June 13, 2012 – amend the specific timing conditions attached to the construction and completion of certain roadway improvements

ANALYSIS

The purpose of this Seventh Amendment (Exhibit #2) is to permit a full fee-in-lieu of construction to be paid to the County for a lane addition to Ballenger Creek Pike at Corporate Drive. As permitted in the APFO (Section 1-20-12 (F)):

“The Planning commission may approve a special fee-in lieu payment escrow account contribution request, as determined by the state or county, which shall not be subject to proportionate share requirements, if the improvements necessary to establish adequacy are practically infeasible due to circumstances beyond the control of the applicant but may be feasible if constructed as a public project by others.”

In this case, the minor improvement in question is scheduled for construction by “others” - the developer of the Ballenger Run development, as part of its much more comprehensive divided

Linton 7th LOU Amendment

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highway improvements to Ballenger Creek Pike. Should the Ballenger Run development not move forward in a timely fashion and its required road improvements fall behind, the additional lane as a stand-alone improvement would not be needed in the foreseeable future, so there is no risk to the County to accept the full fee-in-lieu payment from the Linton developers.

Specifically, this proposed Seventh Amendment to the Linton PUD LOU states that the Developer's obligation to construct an additional northbound approach and receiving lane on Ballenger Creek Pike shall for all purposes be deemed satisfied upon Developer's delivery of a fee-in-lieu payment in the amount of \$170,051, which amount reflects the estimated costs, plus contingency, of the agreed upon scope of work for the improvement, as well as a payment schedule for same. The ability to choose the fee-in-lieu option shall expire unless these conditions are met no later than 90 days after the execution of the Seventh Amendment.

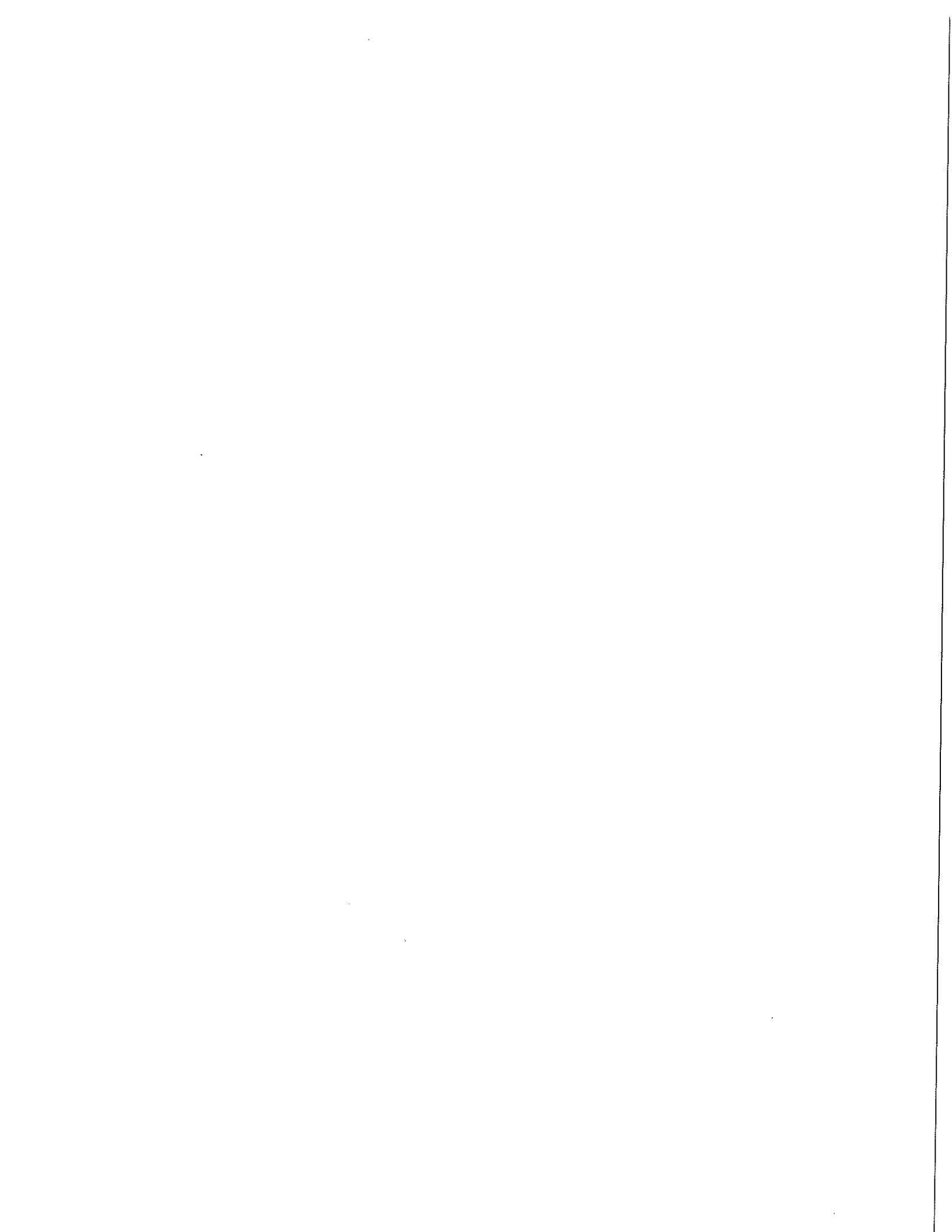
As with all earlier amendments, the termination date for APFO approval will remain unchanged.

FINDINGS

Staff finds that this Seventh Amendment meets the intent of the original LOU, the APFO and its Guidelines, and provides a more efficient and practical implementation of the improvement, by permitting a full fee-in-lieu of construction to be paid.

RECOMMENDATION

Staff recommends approval of the Seventh Amendment of the LOU, subject to no additional conditions.





**DIVISION OF PERMITTING AND DEVELOPMENT REVIEW
FREDERICK COUNTY, MARYLAND**

Department of Development Review

Winchester Hall • 12 East Church Street • Frederick, Maryland 21701
www.co.frederick.md.us

ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING

LINTON PUD

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**DEPARTMENT OF
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Elisabeth S. Smith, P.E.
Chief, Engineering

The following Letter of Understanding (Letter) between the Frederick County Planning Commission ("Commission") and Ausherman Development Corporation, ("Developer") or assigns, sets forth the conditions and terms which the Commission deems to be the minimum necessary improvements, including but not limited to, roads, schools, water and sewer, that must be in place (or guaranteed as set forth below) for the property known as the Linton Property PUD ("the PUD") to be developed, in compliance with Section 1-20-9 of the Adequate Public Facilities Ordinance, as adopted on October 15, 1991 as amended ("APFO"), and the approved Phase II Development Plan for the PUD. These improvements and the timetable for completion of the improvements are in response to a Developer's Option Letter submitted to the Commission dated September 22, 2004. The Developer hereby agrees and understands that unless the terms and conditions discussed herein are complied with, in accordance with the Development Phasing Schedule prescribed by this Letter, development will not be permitted to proceed.

This Letter concerns the Linton Farm, a 138.7 acre parcel of land which is zoned Planned Unit Development (PUD), located on the East and West side of Ballenger Creek Pike and North of the intersection with Elmer Derr Road and designated as Linton Property Phase II PUD ("**Phase II PUD**") on the Phase II Plans entitled, "Linton Property Phase II Land Use Plan" (Exhibit 1), "Linton Property Phase II Development Phasing Plan" (Exhibit 2), "Linton Property Phase II Water and Sewer Facilities Plan" (Exhibit 3), and the "Linton Property Phase II Green Space and Amenities Plan" (Exhibit 4). The APFO approval discussed herein will be effective for a period of ten (10) years from October 20, 2004 for the Linton Property shown on the Phase II PUD Plans, which were conditionally approved by the Commission on October 20, 2004 for up to 763 residential dwelling units as shown on the Phase II Plan ("**Project**").

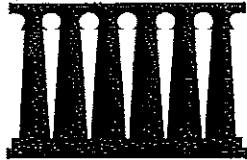
Triggering Mechanisms

The Developer agrees to the following requirements and prerequisites to the identified "development approvals".

1. **Record Plat:** Prior to the recording of final residential subdivision lots, the Developer shall guarantee, pursuant to County procedures, all infrastructure improvements required under this Letter for the given development phase or stage in which the lots are recorded.
2. **Permit Issuance:** Prior to the issuance of building permits for the residential construction in a given development phase or stage, the improvements required for that stage as required under this letter shall be "available for service". The phrase "available for service" shall mean:

- **Roads:** Construction completed to the extent that the required roadway improvement is open to traffic. Subject to the approval of the Frederick

CHARACTER COUNTS!



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COURAGE • CITIZENSHIP

County Division of Public Works (DPW) and/or State Highway Administration (SHA), a required road improvement may be deemed operational and open to traffic prior to the final completion and acceptance for maintenance.

- Water and Sewer: Construction completed to the extent that the required water and sewer improvements are conditionally accepted by DPW and deemed operational by the Division of Utilities and Solid Waste Management (DUSWM).

While the public water and sewer facilities proposed to serve the Project will be adequate for this development, the Developer is aware that capacity is not guaranteed until purchased. APFO approval for water and sewer does not guarantee that plats will be recorded and 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 regulations, including but not limited to Sec. 1-16-106 (of Subdivision Regulations). Plats cannot be recorded until water and sewer improvements to the property line are available within (90) days of completion.

Water Improvements

The proposed water system to serve the Project will consist of a network of public water mains and private service connections, as shown on the Developer's Phase II PUD Water & Sewer Facilities Plan (Exhibit 3), and as such shall be approved by DUSWM. These proposed mains and service laterals will connect to an existing 16-inch water main located south of the intersection of Ballenger Creek Pike at Lambert Drive, approximately 100 feet north of the Project.

The Developer shall construct a 16-inch water trunk line loop extension from the existing 16-inch main, south along Ballenger Creek Pike to Elmer Derr Road. From that 16-inch trunk line extension, the Developer will construct a 16-inch loop water line, east through the Project along "Street A", and a parallel 16-inch loop water extension east along Elmer Derr Road, both as schematically delineated on the Phase II PUD Water and Sewer Facilities Plan. The timing of these trunk waterline extensions shall be phased with the construction of adjacent infrastructure within the Project.

Sewer Improvements

Sanitary Sewer Lines shall be connected to an existing 24-inch public sewer line located along Ballenger Creek to the north of the Project, as shown on the Phase II PUD Water and Sewer Facilities Plan (Exhibit 3). In order to adequately serve the Project, the Developer will extend that 24-inch sewer line approximately 750 feet to the west along the northern side of Ballenger Creek, from which a 12-inch sewer line will be extended approximately 900 feet to the internal street/sewer service laterals within the Project.

Schools

Pursuant to Section 1-20-11 of the APFO, the Developer shall provide all funding necessary to design, build and equip an addition to Tuscarora High School (THS) in order to increase its student capacity to approximately 1600 students. An addition to THS is recommended in the approved Board of Education "Educational Facilities Master Plan." The specific financing arrangements and means and methods of design and construction shall be incorporated into a separate agreement between the Developer and the Board of Education. The Board of Education shall have final authority in connection with this separate agreement. No residential lots within the Project may be recorded until the addition to THS is under construction. If the THS addition is not under construction by July 1, 2009, Phase II approval shall be null and void and no residential lots in the Project shall be recorded.

Phasing of Improvements

The Developer shall submit quarterly progress reports to the Department of Development Review indicating the number of permits issued for each land bay as noted on the Linton Property Phase II Development Phasing Plan

(Exhibit 2), in order to allow the Department to monitor the issuance of building permits in accordance with this Letter.

Road Improvements

The Developer shall construct the following Roadway Improvements in accordance with the findings and conclusions of the Traffic Impact Study for the Project as proposed by Wells and Associates, LLC, dated June 8, 2004 and revised August 9, 2004. The Developer shall provide improvements to the S-Curve in accordance with the July 27, 2004 memo from Robert Shen, attached as Exhibit #5 and incorporated herein by reference, and in compliance with the rezoning conditions adopted under FCBOCC Ordinance Number 04-03-347. The Developer shall provide all on site and off site improvements as agreed upon between Maryland State Highway Administration (MSHA) and the Developer in accordance with the letters, attached hereto and incorporated herein by reference, dated July 23, 2004 (Exhibit #6), August 5, 2004 (Exhibit #7) and August 30, 2004 (Exhibit #8), and subject to County approval.

- Improvements to Elmer Derr Road west of Ballenger Creek Pike (frontage and entrance improvements to Frederick County Minor Arterial Standards per rezoning condition #6), shown in red on the Linton Property Phase II Development Phasing Plan (Exhibit 2) and improvements to the Elmer Derr Road "S-curve" west of the Project, shall be guaranteed prior to the recordation of the 1st residential lot in Land Bay "A" and completed within 12 months. *(see Amendment language)*
- Installation of Street "C" (subject to regulatory approvals), shown as a gray dashed line on the Linton Property Phase II Development Phasing Plan (Exhibit 2), shall be guaranteed prior to the recordation of the 151st residential lot in Land Bay "A" per August Planning Commission comments.
- Intersection improvements at Ballenger Creek Pike/Elmer Derr Road (improvements to the intersection shall be agreed upon between the Developer, MSHA and Frederick County Traffic Engineering), shown in orange on the Linton Property Phase II Development Phasing Plan (Exhibit 2), shall be completed within 36 months after the recordation of the 1st residential lot in the Project. *(See Amendment language)*
- Improvements to Ballenger Creek Pike from northern property line to the area south of Street "A" and as required in order to get an access permit from MSHA, shown in yellow on the Linton Property Phase II Development Phasing Plan (Exhibit 2), shall be guaranteed prior to the recordation of the 1st residential lot in Land Bay "B" and completed within 12 months.
- Installation of Street "A"- Phase 1, shown in green on the Linton Property Phase II Development Phasing Plan (Exhibit 2), shall be guaranteed prior to the recordation of the 1st residential lot in Land Bay "B" and completed with 12 months.
- Installation of Street "A"- Phase 2, shown in fuchsia on the Linton Property Phase II Development Phasing Plan (Exhibit 2), shall be guaranteed prior to the recordation of the 151st. residential lot in Land Bay "C" and completed within 12 months.
- Improvements to Ballenger Creek Pike south of Street "A", shown in purple on the Linton Property Phase II Development Phasing Plan (Exhibit 2), shall be guaranteed prior to the recordation of the 1st residential lot in Land Bay "D" and completed within 12 months.
- Improvements to Elmer Derr Road east of Ballenger Creek Pike (frontage and entrance improvements to Frederick County Major Arterial Standards per rezoning condition #6 and approved by Frederick County Traffic Engineering), shown in blue on the Linton Property Phase II Development Phasing Plan (Exhibit 2), shall be guaranteed prior to the recordation of the 1st residential lot in Land Bay "D" and completed in 12 months.
- Conduct analysis of Traffic Signalization at Ballenger Creek Pike and Lambert Drive subsequent to the opening of the new elementary school on Lambert Drive (subject to MSHA Signal Warrant approval)-timing of signal installation (if warranted), by the Developer, to be determined by MSHA
- Improvement of the intersection of Ballenger Creek at Corporate Drive (scope of improvements to be agreed upon between Developer and MSHA consistent with the Traffic Impact Study prior to the recordation of the 600th residential building lot within the Project and completed within 12 months.

The scope of all roadway installations and improvements shall be agreed upon by MSHA and DPW, and consistent with Traffic Study and Street and Roads Design Manual.

Phasing of the Amenities:

The Developer agrees to the following phasing plan as delineated on the Linton Property Phase II Development Phasing Plan (Exhibit 2). Developer also agrees that, if the order of land bay development changes, it may change the phasing of the amenities, and require the submittal and re-approval of the phasing plan.

- The Neighborhood Park will be opened by date of issuance of the final building permit (164th) for Land Bay "A".
- The Community Center for the entire development will be opened by the date of issuance of the 400th Building permit for the Project.
- Tot lot 1 shall be open by the date of issuance of the 130th building permit for Land Bay "B." This will likely equate to 50% Occupancy.
- Tot lot 2 shall be open by the date of issuance of the 270th permit for Land Bay "C," and Tot lot 3 shall be open by the date of issuance of the 50th permit for Land Bay "D." This will likely equate to 75% of the building permit issuance for these land bays.
- Multi-Use Trail: Part 1, shown as a dotted red line on the Linton Property Phase II Development Phasing Plan (Exhibit 2), shall be completed prior to the date of issuance of the final building permit (164th) for Land Bay "A".
- Multi-Use Trail: Part 2A, shown as a dotted orange line on the Linton Property Phase II Development Phasing Plan (Exhibit 2), shall be completed prior to the date of issuance of the 400th building permit for the Project.
- Multi-Use Trail: Part 2B, shown as a yellow dotted line on the Linton Property Phase II Development Phasing Plan (Exhibit 2), shall be completed prior to the date of issuance of the 1st building permit for Land Bay "D".
- School/ Park Site dedication shall occur prior to the date of issuance of the final building permit (174th) for Land Bay "B". The developer shall grade and seed the School/Park Site to standards as set forth on a Grading Plan, consistent with what is required for a finished community recreation field, to be prepared by the developer and approved by the Division of Permitting and Development Review, with advice from the FCPS/Board of Education, such approval not to be unreasonably withheld. Building permits may continue to be issued beyond the 174 permit limit referenced above even if the FCPS/Board of Education is not prepared to accept dedication of the School Site at such time, provided that the School/Park Site has been graded and seeded in accordance with the approved Grading Plan.
- Public Use Site Dedication will occur prior to the date of issuance of the 1st building permit in Land Bay "D" or 18 months from the date that the County gives written notice of its desire to have the site conveyed to the County.
- Final plat recordation shall be restricted to no more than 150 dwelling units per calendar year.

. Nothing herein shall be deemed to confer any rights or benefits upon any third party, nor shall anything herein be deemed to require the Developer to construct or otherwise provide any infrastructure items set forth herein except as a condition to the development of the PUD.

The APFO approval shall be for a period of ten (10) years from the date of the Planning Commission approval, (October 20, 2014), subject to any exceptions in this Letter or under current law.

In the event of any inconsistency between this Letter and any exhibits or attachments, the terms and conditions of this Letter shall govern.

AUSHERMAN DEVELOPMENT CORPORATION

By: [Signature]
Name:

Title: PRESIDENT

Attest: [Signature]

Date: 2-25-05

FREDERICK COUNTY PLANNING COMMISSION

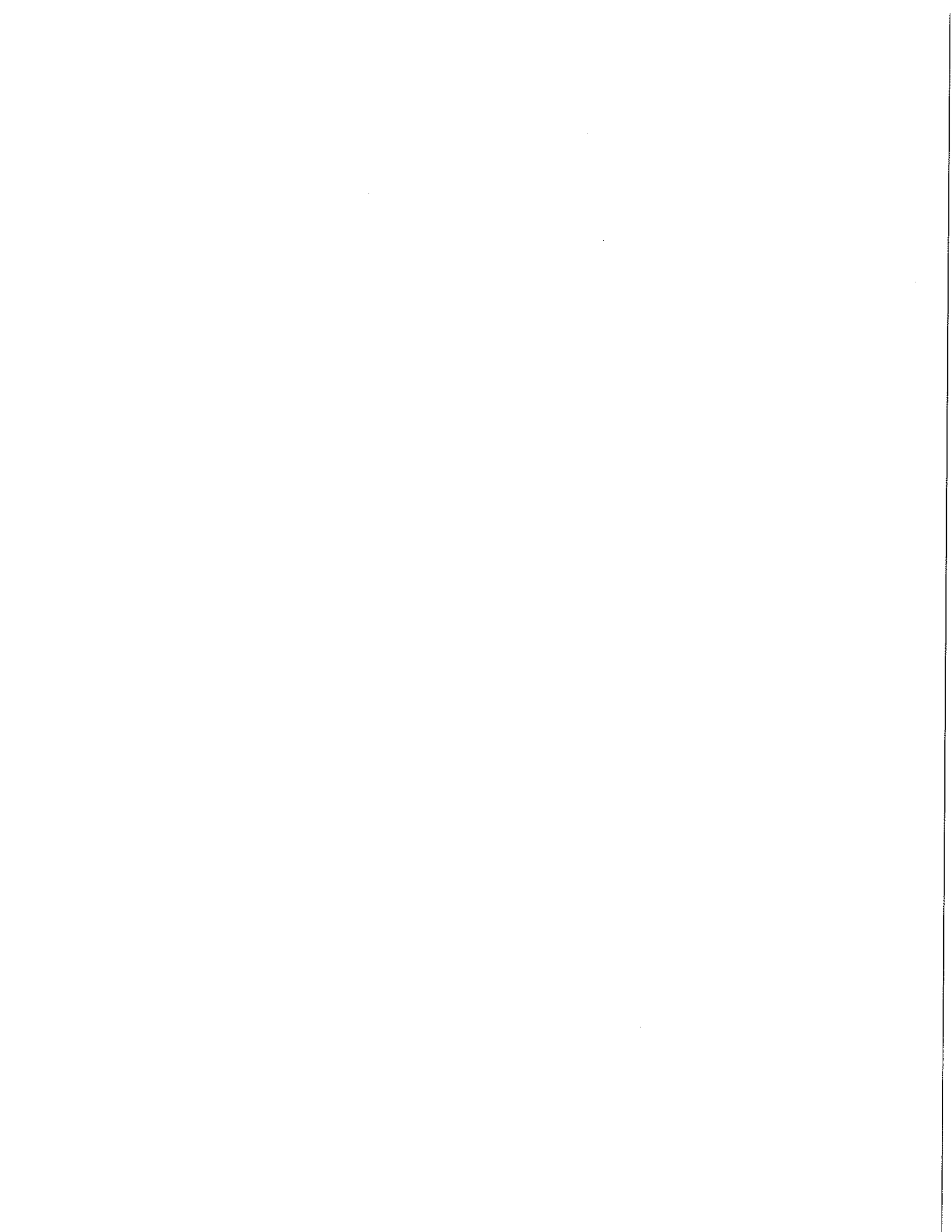
By: [Signature]
Joan Aquilino-McIntyre; Chairperson

Date: 3/9/05

[Signature]
Gary Hessong
Director, Division of Permitting &
Development Review

Date: 3-9-05

KLM
2-23-05
JFA
3/2/05



SEVENTH AMENDMENT TO
ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING
LINTON PUD

This Seventh Amendment (“Seventh Amendment”) to Adequate Public Facilities Letter of Understanding, Linton PUD, dated March 9, 2005, between the Frederick County Planning Commission (“Commission”) and Ausherman Development Corporation (“Developer”), (inclusive of all previous Amendments, referred to herein as “Letter”), is made this ___ day of _____, 2015, by and between the Commission and Ausherman Homes, Inc. and Linton Green, LLC (Ausherman Homes, Inc. and Linton Green, LLC, as successors in interest to Developer).

Explanatory Notes:

A. This Seventh Amendment is made for the purpose of amending the application and operation of certain prerequisites and limitations to the issuance of residential building permits within the Linton PUD Project, and to otherwise supplement the terms relating to the Developer’s construction of certain roadway improvements within the Project. Specifically, this Seventh Amendment serves to facilitate an agreed upon “fee-in-lieu” option, affording the Developer the right and option to pay to the County a fee in lieu of the Developer’s actual construction of certain identified roadway improvements.

B. The ninth bullet point (·) under the heading “Road Improvements” on page 3 of the Letter requires, in pertinent part, that Developer construct certain improvement(s) “to be agreed upon by Developer and MSHA [MD State Highway Administration]” at the intersection of Ballenger Creek Pike and Corporate Drive.

C. Through discussions and agreements between the MSHA, the County and the Developer, the required improvement was identified as an additional northbound auxiliary lane on Ballenger Creek Pike, north and south of Corporate Drive (the “Required Improvement”).

D. Because the scope of those roadway improvements required to be constructed by the developer of the adjacent Ballenger Run PUD [pursuant to, and in accordance with, the Ballenger Run PUD Adequate Public Facilities Letter of Understanding] *include* and *exceed* the scope of the Required Improvement, the County has determined that it is both practical and reasonable to accept and escrow a full “fee-in-lieu” of Developer’s construction of the Required Improvement; it being the mutual intent of the Developer and the County that such fee be escrowed by the County for application towards the actual costs of the Ballenger Run PUD roadway improvements, as and when required to be constructed by the developer of the adjacent Ballenger Run PUD.

Therefore, the parties hereto agree that the Letter is hereby amended as follows:

1. The Explanatory Note set forth above is incorporated into the Letter as if fully restated herein.

2. Unless otherwise expressly defined herein, all capitalized terms used herein shall have the meanings set forth for such terms in the Letter.

3. The tenth bullet point (•) under the heading “Road Improvements” on page 3 of the Letter is hereby supplemented by adding the following language:

County and Developer have agreed that Developer’s obligation to construct the Required Improvement shall for all purposes be deemed satisfied upon Developer’s delivery of a fee-in-lieu payment in the amount of \$170,051.00 (the “Fee-In-Lieu Amount”), which amount reflects the estimated costs, plus contingency, of the agreed upon scope of work for the Required Improvement, such costs being more particularly detailed on the Cost Estimate, dated May 28, 2015, and prepared by Rodgers Consulting, Inc. (attached hereto as Exhibit 1). Should this payment not be made within thirty (30) days of the mutual execution of this Seventh Amendment, the County reserves the right to adjust the Fee-In-Lieu Amount, based on an engineering cost index. The Developer’s right and option to pay the Fee-In-Lieu Amount, in lieu of constructing the Required Improvement, shall expire ninety (90) days after the parties’ mutual execution of this Seventh Amendment.

Except as expressly modified by this Seventh Amendment, the Letter shall remain unchanged and in full force and effect.

[Signatures Follow on Next Page]

AUSHERMAN HOMES, INC.

By: _____ (SEAL) _____
Name/Title: _____ Date

LINTON GREEN, LLC

By: _____ (SEAL) _____
Name/Title: _____ Date

FREDERICK COUNTY PLANNING COMMISSION:

By: _____
Chair Date:

ATTEST:

By: _____
Name: _____ Date: _____
Title: _____

Planner's Initials/Date _____

County Attorney's Office Initials/Date _____
(Approved as to Legal Form)

