

Frederick County Board of County Commissioners

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

ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING

Monrovia Town Center Planned Unit Development

Preliminary Plat # S _____

AP # _____

The following Letter of Understanding (“LOU”) between the Frederick County Board of County Commissioners (“BOCC”), and 75-80 Properties, LLC and Payne Investments, L.L.C. (the “Developer”) its successors or assigns, sets forth the conditions and terms which the BOCC deems the minimum necessary improvements dealing with roads, schools, water and sewer service that must be in place for the property described below (the “Property”) to be developed in compliance with the Adequate Public Facilities Ordinance (“APFO”), which is codified as Chapter 1-20 of the County Code. Concurrent with the processing of this LOU for the Monrovia Town Center PUD, the Developer is seeking approval by the BOCC of a PUD Phase I, as well as the concurrent approval by the BOCC of a Development Rights and Responsibilities Agreement (“DRRA”) under Section 1-25 of the County Code.

The Developer hereby agrees and understands that compliance with the terms and conditions of this LOU is required for the development of the Monrovia Town Center PUD and the Off-Site Commercial Properties (as defined below) to proceed. While this LOU is subject to approval by the BOCC through the process of, and concurrent with, the DRRA, it is expressly agreed that the LOU is a document which is separate and apart from the DRRA and that the LOU may be amended, by written amendment to be approved by the Frederick County Planning Commission, with no requirement to amend the DRRA.

The Property is comprised of several parcels totaling +/- 394.54 acres of land zoned PUD, Planned Unit Development, located east of Ed McClain Road and west and east of Green Valley Road (MD 75). The Property will be developed with a maximum of 1,250 residential dwelling units, including 625 Age-Restricted units (375 single-family detached dwelling units; 250 attached units/townhome units/duplex units) and 625 all age units (525 single-family detached dwelling units; 100 attached units/townhome units/duplex units) (the “Monrovia Town Center PUD” or the “Project”). Or, any variation of dwelling unit mix, subject the following requirements: (A) a minimum of 50% of the Project’s residential dwelling units shall be Age-Restricted dwelling units; (B) a minimum of 70% of the total units shall be single-family detached units and a maximum of 30% shall be single-family attached units/townhome units/duplex units; (C) multi-family units/apartments are prohibited (for purposes of this LOU, “2-over-2” units shall be deemed multi-family units and shall be prohibited); and (D) the intensity of total peak hour vehicle trips or the school APFO analysis is not increased above that analyzed with the 1) Monrovia Town Center Traffic Impact

Analysis prepared November 2, 2012, as amended February 27, 2013, and as further amended on July 24, 2013 and _____, 2014, on behalf of the Developer by the Traffic Group (the “Monrovia Town Center TIA”) and 2) County APFO schools analysis test.

The Monrovia Town Center TIA also studied the properties zoned General Commercial located in the northwest quadrant of the intersection of MD 75 and MD 80 (equating to approximately 162,000 square feet of commercial/shopping center use) (the “Off-Site Commercial Properties”). The Off-Site Commercial Properties are not part of the Monrovia Town Center PUD, but are included for purposes of this LOU and are included in the properties covered by the DRRA. The term “Property” as used herein includes both the Monrovia Town Center PUD and the Off-Site Commercial Properties.

This LOU is express evidence that APFO approval has been granted for Monrovia Town Center PUD and the Off-Site Commercial Properties, subject to the terms of the LOU, and this APFO approval will be effective for a period of eighteen (18) years from the date of BOCC APFO approval.

PUBLIC WATER AND SEWER

The Property has a water and sewer classification of PS-Planned Service, indicating planned public water and sewer service within 11-20 years. The Project will be served by a network of both public and private water and sewer mains and service connections. Programmed improvements to the County's water and sewer systems serving this region will be provided to the Project through the following developer-funded and County CIP improvements, based on the “Monrovia Town Center Adequate Public Facilities Study, Frederick County, Maryland”, prepared by McCrone, Inc., dated July 23, 2013, as supplemented:

Water:

The proposed 16-inch water main will connect to the existing 18-inch water main in Baldwin Road. The preferred alignment of the 16-inch water main will run along Green Valley Road to a point approximately 1,600 feet north of Fingerboard Road. An alternative alignment over land adjacent to the New Market wastewater treatment outfall line to the Bush Creek Interceptor and then adjacent to the proposed Monrovia Town Center gravity sanitary outfall may be proposed by the Developer, or some combination of the preferred and alternative alignments, subject to review and approval by the Division of Utilities and Solid Waste Management (“DUSWM”), such review and approval not to be unreasonably withheld, conditioned or delayed. The waterline will then be extended through the Project to the site of the proposed 1,000,000 gallon elevated water storage tank in accordance with the Water Tank MOU (defined below).

The two distribution systems for the Landsdale PUD and the Project must be independently connected to the 18-inch water main in Baldwin Road, and both systems must be interconnected to each other prior to recordation of the Project’s 278th residential lot. The Developer will contribute fee-simple property for the elevated water storage tank in accordance

with a three-party Memorandum of Understanding (“Water Tank MOU”) between the Developer, the developer of the Landsdale PUD and Frederick County. The Developer will contribute its pro rata share of the management, design, inspection and construction costs (“Project Costs”) of the water storage tank, to service the Project and the adjoining Landsdale Planned Unit Development (Ordinance Nos. 04-10-354 & 12-26-621) (the “Landsdale PUD” or “Landsdale”), and possibly other properties in the region. It is intended that the Developer and the developer of Landsdale PUD will work together on a formula for funding construction of the tank, and necessary connections, and that the Developer and the developer of the Landsdale PUD will provide appropriate cash and/or surety on a schedule to be agreed upon between the Developer, the developer of the Landsdale PUD and Frederick County in accordance with the Water Tank MOU.

Upon completion of the interconnection referenced above, the Project may proceed and shall not be subject to any cap on dwelling units by reason of the need for the storage tank, it being the County’s responsibility to construct the tank and connect it to the public water system when necessary. The Developer shall have met its responsibility with regard to the storage tank by providing the cash and/or surety for its share of the storage tank Project Cost, in accordance with the Water Tank MOU to be executed by the Developer, the developer of the Landsdale PUD and Frederick County.

No record plats shall be recorded until an adequate public water line connection is available to serve the Project. Pursuant to Section 1-20-41(E) of the APFO, upon completion of the construction of the water line from Baldwin Road to the Project identified herein, the Project and the Off-Site Commercial Properties shall be considered vested for the water capacity created by the water line from Baldwin Road to the Project and shall not be subject to further APFO water testing unless the density or intensity of the development increases.. Availability of record plats shall be in accordance with the County's current policy for Interpretation of §1-16-106 of the Frederick County Code, attached hereto.

Sewer:

The Project’s gravity sewer will convey the wastewater from all the development on the west side of MD Route 75 and the pumped wastewater from the east side of MD Route 75 to the sewer connecting Landsdale to the Middle Bush Creek Interceptor. The Project’s sewer will connect to the Landsdale sewer before it flows into the interceptor.

The Project’s wastewater collection system, including the pump station on the east side of MD Route 75, may serve the following properties on the east side of MD Route 75:

- 250 residential units in the Project
- 118,000 square feet of commercial uses on a portion of the public use/high school site (zoned Commercial)
- Public use/high school site, with a potential 1,600 students
- Public use/parkland site
- 504 student elementary school outside the Project but inside the growth area

- Fire Station outside the Project but inside the growth area
- Bank outside the Project but inside the growth area
- 26 acres of properties zoned Commercial, not under control of the Developer, outside the Project, but inside the growth area.

The pump station will be designed to pump 542 gallons per minute and convey an average daily flow of 195,160 gallons per day, or as otherwise approved by the DUSWM. Properties other than the Project and the Offsite Commercial Properties identified to be served by the proposed sewer system are included for system sizing purposes only and may or may not be included in the PUD. Identification of such properties other than the Project and the Offsite Commercial Properties does not indicate or provide any form of development approval for such properties.

Other:

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

Based upon these proposed water and sewer infrastructure improvements, the BOCC has been able to make a determination that public water and sewer facilities will be adequate to serve the Property, however, water and/or sewer capacity is not guaranteed until purchased or otherwise contractually committed (with appropriate guarantees by the Project). Given the financial commitment that the Developer will be making to provide sewer service adequate to serve the Project and other master-planned build-out of this sewer shed, all in advance of receiving any record plats or building permits for the Project, the DRRA executed concurrently herewith is intended to provide necessary assurances to both the County and to the Developer that public infrastructure will be timely provided and that the Project, which is the primary funding source for the public improvements, will be allowed to proceed in accordance with an agreed-upon phasing schedule. If further assurances are deemed necessary by the Developer, the Developer reserves the right to request multi-year water and sewer tap agreements with the County reserving sufficient capacities to serve the Property.

ROAD IMPROVEMENTS

The Monrovia Town Center TIA was prepared to address APFO requirements stemming from the additional vehicle trips associated with the Project and the Off-Site Commercial Properties associated with site plan #SP13-03, and to propose mitigation and/or the funding of mitigation and a phasing schedule for required roadway facilities. The Monrovia Town Center TIA has determined that the Project and Off-Site Commercial Properties will generate 741 a.m. peak hour trips and 1,132 p.m. peak hour trips by the time of full build-out of the Project and the Off-Site Commercial Properties. Additional road improvements designed to enhance the safety and circulation of the road network serving the Project and the surrounding neighborhood have been identified and are set forth below.

The roadway impacts for this Project will be mitigated through either construction, full fee-in-lieu payment, or a pro-rata contribution to existing County-held escrow accounts (where applicable) in accordance with Frederick County standards. The Developer agrees to construct or contribute to the following improvements and phasing schedule as identified in the Monrovia Town Center TIA in order to mitigate the effects upon the transportation network serving the Project:

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

The road improvements program based on the Monrovia Town Center TIA will provide ultimate capacity for 741 a.m. and 1,132 p.m. total external weekday peak hour vehicle trips. Developer will construct the road improvements in multiple phases, with each phase of road improvements allowing an incremental increase in development of uses in the Project.

1. MD 75 Relocated – South of MD 80. Developer shall construct or cause to construct MD 75 Relocated from just north of its present intersection with MD 80 on the west side, to the existing southern portion of MD 75 approximately ½ mile south of MD 80, as a two lane road widening to a 4 lane divided road just south of MD 80, all within a nominal 100' right-of-way. This improvement shall be guaranteed (SHA permitted) prior to the recordation of the first plat for the Off-Site Commercial Properties (or building permit if no subdivision), the overall 300th residential unit, or when 50% of the funds are available in applicable escrow accounts, whichever comes first, and shall be open to traffic within 12 months after SHA access permit issuance. The County is responsible for right-of-way acquisition and its associated costs (per CIP No. HW5018), but if the County (or SHA) does not obtain a free and clear right-of-way to the land in a timeframe necessary to meet the above phasing requirements, or if SHA unreasonably fails to grant the permits necessary for the construction of the improvements described herein, the Developer may provide a full fee-in-lieu of construction to the County for full satisfaction of this condition.

2. MD 80 at Ijamsville Road/Big Woods Road. Developer shall either construct or cause to be constructed an additional through lane in each direction along MD 80, while keeping exclusive lanes for right turns. The construction shall be guaranteed (SHA permitted) prior to recordation of the 1100th residential lot and shall be open to traffic prior to issuance of the 1150th building permit of the Project.

3. MD 75/355 Signal and Extended northbound right turn lane. Developer shall install and construct, or cause to be installed and constructed (such construction limited to the extent of the extended right turn lane), the signal and any SHA required road widening when deemed necessary by SHA. Improvements shall be guaranteed prior to recordation of the first residential record plat, and shall be installed prior to issuance of the first residential building permit. Should others install the signal or should SHA deem it unnecessary, the Developer shall pay a fair share contribution of \$15,408 (7.70% of \$200,000) for the signal.

4. MD 75 at Northern Site Access (East-West Collector). Developer shall perform signal warrant analyses when deemed necessary by the SHA/County, but no later than the issuance of the last building permit in the Project, to determine if signalization is warranted and

justified. Developer shall install a traffic signal at this intersection within 12 months of the determination that a signal is warranted and justified. Should the signal still not be warranted and justified by the time of the issuance of the last building permit for the Project, then others shall thereafter be responsible for its completion.

5. MD 75 at Southern Site Access (Shopping Center). Developer shall perform signal warrant analyses when deemed necessary by the SHA/County, but no later than the issuance of the last building permit in the Project, to determine if signalization is warranted and justified. Developer shall install a traffic signal at this intersection within 12 months of the determination that a signal is warranted and justified. Should the signal still not be warranted and justified by the time of the issuance of the last building permit for the Project, then others shall thereafter be responsible for its completion.

6. MD 80 at Western Site Access. Developer shall perform signal warrant analyses when deemed necessary by the SHA/County, but no later than the issuance of the last building permit in the Project, to determine if signalization is warranted and justified. Developer shall install a traffic signal at this intersection within 12 months of the determination that a signal is warranted and justified. Should the signal still not be warranted and justified by the time of the issuance of the last building permit for the Project, then others shall thereafter be responsible for its completion.

7. MD 75 Relocated -- North of MD 80. Developer shall construct a 4 lane divided road from the just north of MD 80 to the northern limit of the Property in a nominal 100' right-of-way (plus additional right-of-way for possible future right turn lanes) as recommended by SHA and approved by the County. Median left turn lanes will be required at intersections with no outside right turn lanes constructed, unless mutually agreed to by the Developer and SHA. This improvement shall be guaranteed (SHA permitted) and constructed at such time that access would be required of it by adjacent residential lots. The eastern leg of the Southern Site Access, opposite the shopping center access would jointly serve the Project and adjacent property to the south

8. MD 75/I-70 Interchange area: Old National Pike to Baldwin Road. The Developer will provide a \$100,000 payment (\$70,000 Residential and \$30,000 Commercial) to Frederick County, and this money would be used to mitigate operational issues as deemed necessary by Frederick County and the SHA. This contribution shall be made prior to the first recorded plat.

B. Right-Of-Way Acquisition

1. In the event that some of the public infrastructure improvements, including items A.1, A.2, A.3, A.4 and off-site portions of A.8. above, required by this LOU to be made by Developer will require the acquisition of public right-of-way from third-party property owners, Developer shall exercise commercially reasonable efforts to secure such right-of-way without the assistance of the County.

2. In the event that Developer has demonstrated to the County that it is unable to secure any such public right-of-way despite its commercially reasonable efforts to do so in a

timely manner consistent with the construction of public infrastructure improvements, Developer may request the County (or SHA) to assist in the acquisition of the needed right-of-way at Developer's sole cost and expense. If the County approves Developer's request, then the County (or SHA) shall have two years to acquire the needed right-of-way.

3. Should the County (or SHA) decide not to acquire the right-of-way, or the two years has elapsed, then Developer may be permitted to make a contribution to the County, equal to the entire anticipated project development costs, which shall include but not be limited to costs for: design, engineering, right-of-way acquisition, management, inspection, etc. in lieu of constructing the public infrastructure improvements, except in the case of A.1 where only a fee-in-lieu of construction would be required. Also, should SHA unreasonably refuse or fail to grant the permits necessary for the construction of improvements referenced in section A. above, the Developer may be permitted to make a contribution to the County in the amount referenced above. Upon payment of a contribution in the appropriate amount referenced in this paragraph B.3., the Developer shall have satisfied its APFO obligation concerning the particular improvement and may proceed with development of the Property.

C. Escrow Accounts:

Pursuant to Section 1-20-12 of the APFO and in satisfaction of APFO requirements to fully mitigate site-generated trips (and in addition to the road improvements in section (A) above), prior to the recordation of the first record lot for the Monrovia Town Center PUD, or prior to the recordation of the first record lot for the Off-Site Commercial Properties, the Developer shall pay into County-held escrow accounts the following pro rata contributions:

1. MD 75 @ I-70 Westbound Ramps. The Developer shall contribute the appropriate pro-rata share to Frederick County for Escrow Account #3252. As determined by the County Traffic Engineer, the Developer's pro-rata contribution to this road improvement is 3.88% of \$120,000 or \$4,652 for Residential and 3.65% of \$120,000 or \$4,379 for Commercial.

2. MD 75 @ I-70 Eastbound Ramps. The Developer shall contribute the appropriate pro-rata share to Frederick County for Escrow Account #3251. As determined by County Traffic Engineer, the Developer's pro-rata contribution to this road improvement is 4.61% of \$120,000 or \$5,536 for Residential and 3.49% of \$120,000 or \$4,190 for Commercial.

3. Old National Pike @ Morning Gate Lane. The Developer shall contribute the appropriate pro-rata share to Frederick County for Escrow Account #3299. As determined by County Traffic Engineer, the Developer's pro-rata contribution to this road improvement is 0.61% of \$184,369 or \$1,133 for Residential and 0.61% of \$184,369 or \$1,133 for Commercial.

4. Old National Pike @ Boyers Mill Road signal. The Developer shall contribute the appropriate pro-rata share to Frederick County for Escrow Account #3322. As determined by County Traffic Engineer, the Developer's pro-rata contribution to this road improvement is 0.46% of \$160,000 or \$731 for

Residential and 0.28% of \$160,000 or \$441 for Commercial.

5. MD 80/Campus Drive -- The Developer shall contribute the appropriate pro-rata share to Frederick County for Escrow Account #3249. As determined by County Traffic Engineer, the Developer's pro-rata contribution to this road improvement is 9.17% of \$106,565 or \$9,770 for Residential and 10.58% of \$106,565 or \$11,273 for Commercial.

6. MD 80/Carriage Hill Drive -- The Developer shall contribute the appropriate pro-rata share to Frederick County for Escrow Account #3924. As determined by County Traffic Engineer, the Developer's pro-rata contribution to this road improvement is 5.76% of \$565,875 or \$32,574 for Residential and 10.04% of \$565,875 or \$56,815 for Commercial.

7. MD 80/Carriage Hill Drive -- The Developer shall contribute the appropriate pro-rata share to Frederick County for Escrow Account #3925. As determined by County Traffic Engineer, the Developer's pro-rata contribution to this road improvement is 13.54% of \$175,000 or \$23,698 for Residential and 5.83% of \$175,000 or \$10,208 for Commercial.

8. MD 80/Ijamsville Intersection -- The Developer shall contribute the appropriate pro-rata share to Frederick County for Escrow Account #3383. As determined by County Traffic Engineer, the Developer's pro-rata contribution to this road improvement is 10.32% of \$50,000 or \$5,159 for Residential and 11.90% of \$50,000 or \$5,952 for Commercial.

9. MD 355 Relocated South of MD 80 -- The Developer shall contribute the appropriate pro-rata share to Frederick County for Escrow Account #3232. As determined by County Traffic Engineer, the Developer's pro-rata contribution to this road improvement is 2.57% of \$3,025,791 or \$77,667 for Residential and 2.67% of \$3,025,791 or \$80,904 for Commercial.

10. MD 355/Firetower Road -- The Developer shall contribute the appropriate pro-rata share to Frederick County for Escrow Account #3288. As determined by County Traffic Engineer, the Developer's pro-rata contribution to this road improvement is 7.37% of \$401,969 or \$29,638 for Residential and 7.68% of \$401,969 or \$30,873 for Commercial.

11. MD 80 @ Carriage Hill. The Developer shall contribute the appropriate pro-rata share to Frederick County for Escrow Account #3892. As determined by County Traffic Engineer, the Developer's pro-rata contribution to this road improvement is 5.76% of \$200,000 or \$11,513 for Residential and 10.04% of \$200,000 or \$20,080 for Commercial.

12. MD 80 @ Pontius Court. The Developer shall contribute the appropriate pro-rata share to Frederick County for Escrow Account #3923. As determined by County Traffic Engineer, the Developer's pro-rata contribution to this road improvement is 7.81% of \$300,000 or \$23,438 for Residential and 9.01% of \$300,000 or \$27,043 for Commercial.

13. MD 80 @ Royal Crest. The Developer shall contribute the appropriate pro-rata share to Frederick County for Escrow Account #3926. As determined by County Traffic Engineer, the Developer's pro-rata contribution to this road improvement is 5.94% of \$200,000 or \$11,878 for Residential and 10.36% of \$200,000 or \$20,718 for Commercial.

14. MD 80 @ Royal Crest signal. The Developer shall contribute the appropriate pro-rata share to Frederick County for Escrow Account #3927. As determined by County Traffic Engineer, the Developer's pro-rata contribution to this road improvement is 6.48% of \$175,000 or \$11,333 for Residential and 11.30% of \$175,000 or \$19,775 for Commercial.

Therefore, prior to the recordation of any residential plats, the Developer shall contribute \$248,720 toward the above escrow accounts and prior to the recordation of any commercial lots (or prior to any building permit if no subdivision occurs), the Developer shall contribute \$293,776 toward the above escrow accounts. Should any escrow account payments not be made within one year of the execution of this LOU, the County reserves the right to adjust the payment amount, based on an engineering cost index.

D. Other Road Improvements and Contributions:

In addition to the road improvements and escrow payments required of the Developer in satisfaction of the APFO requirements to fully mitigate site-generated trips as set forth in sections A. and C. above, the Developer agrees to the following additional road improvements and/or road infrastructure contributions to facilitate safe and adequate vehicular circulation in the area. The scope as described below may be amended by joint agreement of the parties hereto, in writing, but outside and independent of this LOU:

1. MD 75 Corridor. The Developer shall contribute the appropriate pro-rata share to Frederick County for Escrow Account #3891. This contribution is payable on a per-lot basis at \$2,940 per lot, upon recordation of residential lots. This calculation is based on a unit type breakdown of 50% Age-Restricted (625 dwelling units) and 50% non-Age-Restricted (625 dwelling units). If the Developer revises the Project, resulting in an increase of Age-Restricted units, then in Developer's sole discretion Developer may request the Frederick County Planning Commission amend this LOU for the purpose of revising the per-lot residential contribution set forth in this paragraph. The total commercial contribution will be \$2,077,691. Such contributions are payable on a pro-rated per-lot basis, upon recordation of Off-Site Commercial lots (or prior to the issuance of any building permit if no subdivision) as determined by the County.
2. East-west Connector Road intersecting with MD 75 north of the intersection of MD 75 and MD 80 (traversing through the Project). This improvement is a joint requirement of the Landsdale PUD (APFO) and the Developer (site access). Prior to the recordation of any plats, this right of way shall be dedicated to public use. This road shall be constructed in whole or part by the Developer as needed for access to adjacent residential lot sections, if not already constructed by the Landsdale PUD, as conditioned in the Developer's Phase I approval.

E. Surplus Capacity Reimbursement Improvements

The parties agree that the requirements in Section A.1 through A.4 above have been determined to be “Surplus Capacity Reimbursement Improvements” (“SRC Improvements”) as that term is defined in the TIA Guidelines. In the event that other approved development projects add "trips" to any offsite road improvements listed above and thus are required to pay their pro rata share of the construction cost of said roads into escrow, the Developer shall be entitled to reimbursement of the cost of the SRC Improvements from available non-exempt developers of projects identified by the County Traffic Engineer, up to but not beyond their own fair share of the improvement, whether or not the SRC Improvements are located inside or outside of the contributing project’s study area. Reimbursement may be accomplished either through reimbursement of actual construction costs incurred by the Developer if the Developer constructs said roads or through the reimbursement of the full fee-in-lieu escrow funds paid by the Developer as provided above, in accordance with the requirements of Chapter 12 of the TIA Guidelines.

If any of the off-site road improvements listed above as a construction obligation of the Developer, per Sections A and C above, are constructed or funded by others, then the Developer shall pay its fair share of the construction costs for each such road improvement constructed or funded by others into an escrow account based on the impact of trips generated by the Project on such road improvement. Prior to approvals being issued by the County to other developer(s) to contribute toward any or all of the above-described improvements in Section A.1 through A.4 above, the Developer would be given the opportunity to review and comment on the County Traffic Engineer’s calculation of the “fair share” of the cost of such improvements attributable to the Project relative to other developers upon request by the developer or as offered by the County.

SCHOOLS

Since the Age-Restricted portions of the Project will be restricted to persons of 55 years of age or older, such portions will not have a direct impact on school enrollments. Section 1-20-7(E) of the County’s APFO exempts projects for “housing for older persons” from the school APFO test if certain described criteria are met. The Age-Restricted portions of the Project meet or will meet all of these prescribed criteria and, provided the Age-Restricted portions of the Project continue to meet these criteria, the schools APFO test is inapplicable to such portions.

The non-Age-Restricted portion of the Project is projected to generate 152 elementary school students, 100 middle school students, and 125 high school students at the time of full build-out. Based on these numbers and considering enrollment projections from pipeline development, the Project will not pass the school adequacy test at the elementary and high school levels. Accordingly, the Developer has elected the option to mitigate the inadequacy of the public school capacity by paying the School Construction Fees for the elementary and high school levels in accordance with the criteria set forth in Section 1-20-62 of the APFO (and in accordance with the DRRRA).

The Developer shall pay the School Construction Fee, based upon the fee schedule in effect at the time of subdivision plat recordation and payment, as set forth in Section 1-20-62(E) of the APFO, per unit type for the elementary, middle and high school levels.

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

CONCLUSION

The effective date of this LOU for the commencement of all APFO approvals referenced herein shall be _____, 2014, and it shall remain valid through _____, 2032.

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

[SIGNATURES ON FOLLOWING PAGES]

WITNESS:

75-80 PROPERTIES, LLC

By: STANLEY ENTERPRISES, LLC,
Managing Member

By: _____
Roy E. Stanley, Managing
Member

WITNESS:

PAYNE INVESTMENTS, LLC

By: _____
Howard F. Payne, Managing Member

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND

Lori Depies, CPA, County Manager

By: _____
Blaine R. Young, President