

DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT

THIS DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT (“Agreement”), made as of the _____ day of _____, 2014, by and between 75-80 PROPERTIES, LLC, a Maryland limited liability company and PAYNE INVESTMENTS, LLC, a Maryland limited liability company (collectively, the “Developer”); and THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, a body politic and corporate of the State of Maryland (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.
2. The BOCC has adopted Ordinance No. 07-33-473, effective as of November 16, 2007, creating Chapter 1-25 of the Frederick County Code authorizing Development Rights and Responsibilities Agreements (“County Ordinance”).
3. This document is intended to constitute a Development Rights and Responsibilities Agreement as provided for in Land Use Article §7-301 through §7-306 of the Maryland Annotated Code, and the County Ordinance, and includes a determination of adequacy under the Adequate Public Facilities Ordinance as permitted by Section 1-20-20(C) of the County Code.
4. Developer owns and/or has legal or equitable interest in certain real property in Frederick County, Maryland, described in EXHIBIT 3, attached hereto and made part hereof (the “Property”).
5. The names of all parties having an equitable or legal interest in the Property, including lienholders, are set forth in EXHIBIT 1. Attached hereto and made a part hereof as EXHIBIT 2 is certification by counsel to the Developer that the Developer has either a legal or equitable interest in the Property.
6. On November 14, 2012, Developer petitioned the BOCC to enter into this Agreement.
7. During a public meeting held on December 13, 2012, the BOCC reviewed this petition and determined to accept this petition and initiate the process of considering a Development Rights and Responsibilities Agreement.
8. This Agreement was referred to the Frederick County Planning Commission for determination of whether this Agreement is consistent with the Countywide Comprehensive Plan for Frederick County. This determination was made by the Planning Commission at public meetings held on November 20, 2013 and on _____, 2014.

9. On April __, 2014, the BOCC held a duly advertised public hearing on this Agreement. The public had an opportunity to comment at this public hearing.

10. The Developer is pursuing the Development Approvals necessary to develop the Property in accordance with the Rezoning Ordinance approved by the BOCC concurrent with the review and approval of this DRRA. This DRRA is expressly intended to contractually bind the Developer and the County as to the development of the Property in accordance with the terms hereof. This DRRA is intended to protect, preserve and facilitate the full development of the Project and the Off-Site Commercial Properties pursuant to the Development Approvals, the APFO LOU, and this DRRA, including, but not limited to, residential and non-residential uses and densities as set forth herein and in the Rezoning Ordinance.

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” means the type of residential dwelling constituting “housing for older persons” as described in § 1-20-7(F) of the APFO.

C. “APFO LOU” means the Adequate Public Facilities Ordinance Letter of Understanding that is pending approval by the BOCC concurrent with the approval of this DRRA, attached hereto as EXHIBIT 5, and/or as the same may be amended from time to time in accordance with applicable law.

D. “BOCC” means the Board of County Commissioners of Frederick County, Maryland, a body corporate and politic, also sometimes referred to as “County Commissioners.”

E. “Comprehensive Plan” means the 2010 Frederick County Comprehensive Plan as amended on September 13, 2012.

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

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

H. “Developer” means 75-80 Properties, LLC and Payne Investments, LLC, and their successors and assigns in ownership of the Property.

I. “Development Approvals” means final governmental approval of Subdivision Plat(s), Adequate Public Facilities Ordinance (“APFO”) requirements, PUD Phase I and II plans (including all Preliminary Plans and Site Plans for the Project and the Off-Site Commercial Properties as applicable), County Water and Sewerage Plan amendments, the Rezoning Ordinance, and all conditions of said approvals that have been satisfied, or acceptable accommodations and/or guarantees have been put in place to satisfy such conditions, 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.

J. “Effective Date of this Agreement” means the date the last party executes this Agreement.

K. “Improvements” or “improvements” means those improvements referenced herein or in the APFO LOU to be constructed in connection with roads, sewer, water, stormwater, parks and other facilities necessary to service the Property.

L. “Landsdale PUD” means the Landsdale Planned Unit Development (Ordinance Nos. 04-10-354 & 12-26-621), adjacent to the Project.

M. “Monrovia Town Center” means the approved Planned Unit Development to be constructed on the Property, also referred to as the “Project.”

N. “Off-Site Commercial Properties” means the properties zoned General Commercial located in the northwest quadrant of the intersection of MD 75 and MD 80, as identified in the site plan SP #13-03 which are not part of the Monrovia Town Center PUD.

O. “Phase” means any portion or section of the Project which has received Development Approval.

P. “Planning Commission” means the Planning Commission for Frederick County Maryland.

Q. “Project” means the Monrovia Town Center PUD to be constructed on the Property.

R. “Property” means all of the real property described in EXHIBIT 3 attached hereto.

S. "Rezoning Ordinance" means Ordinance No. _____, approving the Phase I PUD Plan for the Property.

T. "Subdivision Plat" means a final plat(s) of subdivision for the Project, or any Phase or portion thereof, prepared in accordance with the County Code and approved by the Planning Commission.

ARTICLE II
ZONING, DEVELOPMENT LIMITATIONS, PLAN APPROVALS
AND PLAN CONSISTENCY

2.1 *Zoning and Plan Designations.* The Property is zoned Planned Unit Development ("PUD"). The Property is: located within the Community Growth Limit of the Monrovia Community Growth Area as shown on the Comprehensive Plan; designated Low Density Residential on the Comprehensive Plan; and located within the Water and Sewer Service Areas on the current Frederick County Water and Sewerage Plan.

2.2 *Development Limitations.*

A. *Permissible Uses and Density.* The permissible uses on the Property are those permitted in the County Code. The Project shall be developed as a PUD pursuant to and in accordance with the provisions of Section 1-19-10.500 of the County Code so long as overall density and intensity of the Project is not increased. The Project will contain a mix of housing types, subject to the requirements that: 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; and, multi-family units/apartments are prohibited. For purposes of this Agreement, "2-over-2" units shall be deemed multi-family units and shall be prohibited. A maximum of 1,250 residential dwelling units are permitted in the PUD pursuant to the Rezoning Ordinance. A minimum of 50% of the Project's residential dwelling units shall be Age-Restricted dwelling units. The Off-Site Commercial Properties shall be developed in accordance with the zoning classification and all applicable provisions of the County Code.

B. *Development Requirements.* The Property shall be developed in accordance with, and subject to, the conditions and requirements of the Development Approvals that are required pursuant to County Code, which Development Approvals shall be based upon the terms and conditions of this Agreement. Setbacks, building size and other development standards shall be as approved by the Planning Commission in accordance with the Development Approvals and applicable sections of the County Code. The maximum height for residential structures in the Project shall be 60 feet; the maximum height for non-residential structures on the Property shall be 60 feet. The final height of all structures shall be determined by the Planning Commission at the time of preliminary plan or site plan review process in accordance with applicable County regulations. No individual building on the Property, with the exception of the School Site (as defined in Section 3.4.A), shall exceed 170,000 square feet of gross floor area. The parties acknowledge and agree that the County

Code contemplates flexibility for PUD projects, in order to facilitate excellence of design and responsiveness to market conditions.

C. *Revision of Use Mix.* Developer shall have the ability to revise the mix of residential unit types in the Project (subject to the cap of 1,250 residential dwelling units, and the other restrictions set forth above, as established in the Rezoning Ordinance) provided that revisions are consistent with the Phase I Concept Plan, and further provided that all applicable County laws and regulations, including, but not limited to, Section 1-20-9 of the APFO, are met. Developer agrees to pay any adjusted School Construction Fee amounts resulting from a change in unit types; subject to final site plan approval of all proposed uses, and if necessary an amendment to the APFO LOU shall be executed by the Developer and approved by the Frederick County Planning Commission. Developer shall be permitted to stage the timing of development of the various uses in the Project in response to market demand.

D. *Historic Structures.* There are no historic structures on the Property.

2.3 *Other Development Approvals and Permits.* The Project shall be required to comply with all other applicable requirements of the County Code for land development, including, but not limited to, site improvement plans (for water, sanitary sewer, and storm drainage and sediment, and erosion control improvements), water and sewer amendments, compliance with the County Forest Resource Ordinance, Subdivision Plats, building permits, and occupancy permits. The Project shall also be required to obtain all applicable State or federal approvals and permits.

2.4 *Moderately Priced Dwelling Units.* In accordance with the provisions of Section 1-6A-5.1(G) of the County Code regarding moderately priced dwelling units (“MPDUs”), Developer hereby elects to utilize, and the BOCC agrees to permit Developer to utilize, the Payment in Lieu of Building MPDUs as provided in Section 1-6A-5.1 aforesaid, as in existence as of the date hereof, in lieu of the prior MPDU requirements for a residential developer. A draft Moderately Priced Dwelling Unit Payment In Lieu Agreement is attached hereto and made part hereof as EXHIBIT 6.

ARTICLE III

COMMUNITY FACILITIES AND INFRASTRUCTURE IMPROVEMENTS

3.1 *Road Improvements.*

A. *Road Improvements.* In satisfaction of conditions of the Rezoning Ordinance or the APFO LOU, the Developer is required to either construct, cause to construct, form a road club to construct, or fully fund the construction of certain road improvements or contribute to escrow funds for road improvements, all as is comprehensively set forth in the approved APFO LOU. The Traffic Impact Analysis (TIA) submitted as part of the APFO LOU studied traffic conditions related not only to the Project, but also the Off-Site Commercial Properties. As such, the APFO LOU approved in conjunction with this Agreement shall constitute APFO approval for both the Project and the

Off-Site Commercial Properties for the full term of the APFO approval period as set forth in the APFO LOU.

B. *Building Excise Tax.* Currently, the building excise tax provided for in Section 1-8-73 of the County Code is established at zero dollars (\$0.00). In recognition of the overall package of road improvements being funded by the Developer, including substantial funding contributions for regional road improvements beyond the requirements of the APFO, the excise tax shall be zero dollars (\$0) for the term of this Agreement.

3.2 *Sewer Improvements.* Public sewer shall be extended to the Property as provided for in the APFO LOU. Gravity or pumped sewer service will be provided for portions of the Project, as will be specified at the time of improvement plans for the development of the Property east of Maryland Route 75. The Project will pay tap fees in accordance with the fee schedule in effect at the time of application and the County shall issue such tap approvals in the normal course as a ministerial function. The Developer may request sewer capacity fee credits pertaining to the provision of public sewer to the Property when the applicable requirements of the Frederick County, Maryland Water and Sewer Rules and Regulations are satisfied.

3.3 *Water Improvements.* Public water shall be extended to the Property as provided for in the APFO LOU. The Project will pay tap fees in accordance with the fee schedule in effect at the time of application and the County shall issue such tap approvals in the normal course as a ministerial function. The Developer may request water capacity fee credits pertaining to the provision of public water to the Property, if the applicable requirements of the Frederick County, Maryland Water and Sewer Rules and Regulations are satisfied. The Frederick County Division of Utilities and Solid Waste Management has confirmed that upon construction of certain improvements and a water tank, there is available capacity for 1,250 residential dwelling units and 280,000 square feet of commercial use/and public use high school site, a community park, and a fire and rescue station. The Developer may dedicate a +/- 2.0 acre public use site (as shown and described in the PUD Phase I Plan) (the "Water Tank Site", shown as area 1 on EXHIBIT 7) to the County, for use as a water tank site, should one be needed at the Property, if the County determines one is necessary after evaluating the regional needs while taking into account this Project and the Landsdale PUD and if the County further determines that such water tank shall not be sited on the Landsdale PUD property. The parties acknowledge and agree that irrespective of the final location of the water tank, the parties, along with the developer of the Landsdale PUD, will enter into a public-private memorandum of understanding regarding cost-sharing related to construction of the water tank ("Water Tank MOU"); such Water Tank MOU shall be negotiated and considered separately from this Agreement, and separately from the APFO LOU, and neither this Agreement nor the APFO LOU shall be required to be amended to finalize the Water Tank MOU. If the County acquires and begins construction on the Water Tank Site prior to the Project being developed to the point when public roads are available to serve the Water Tank Site, the Developer shall provide temporary private access to the Water Tank Site in a location to be approved by the Developer and the County. In the event the Project is not developed to the point at which adequate public road access serves the Water Tank Site, the Developer shall not be responsible for bonding related to improvements to serve the Water Tank Site, until such time as the Developer intends to develop such portion of the Project.

3.4 Schools.

A. *Public Use/Park Site/High School Site.* Prior to the recordation of the first residential lot, Developer shall dedicate and convey to the County, at the request of the County, a +/- 79 acre public use site located in Areas 3, 5 and 6 as shown on the Concept Plan of the PUD Phase I Plan (the “Public Use Site”, shown as areas 3, 4, 5 & 6 on EXHIBIT 7). Within the Public Use Site, a +/- 30 acre public use site, generally located as shown on the Concept Plan of the PUD Phase I Plan shall be designated for future discretionary use by the County as a park site (the “Park Site”, shown as area 3 on EXHIBIT 7). Also within the Public Use Site, a +/- 49.0 acre public use site, generally located as shown on the Concept Plan of the PUD Phase I Plan shall be designated for future discretionary use by the County as a school site (the “School Site”, shown as areas 5 & 6 on EXHIBIT 7). The Public Use Site is not part of the Property rezoned to PUD, however, it is under the control of the Developer. Provided the BOE approves the School Site, the Developer and the BOE shall enter into a Memorandum of Understanding prior to conditional approval of any Preliminary Plans or Site Plans for the Project. In the event the BOE refuses or fails to accept the School Site, the Developer shall then offer it to the County as a public use site, for public use purposes in the discretion of the County. The County acknowledges that should the County or the BOE acquire and begin construction on the Public Use Site prior to the Project being constructed, County public water or sewer likely would not be available to the Public Use Site, in which case the County shall be responsible for providing the water and/or waste disposal necessary to serve the Public Use Site. Furthermore, in the event that the County begins construction on the Public Use Site, and the Project is not developed to the point at which adequate public road access serves the Public Use Site, the Developer shall not be responsible for bonding or construction related to improvements to serve the Public Use Site, until such time as the Developer intends to develop such portion of the Project.

B. *School Construction Fee.* The School Construction Fee was established by Ordinance 11-18-584, enacted on July 20, 2011 and codified as Section 1-20-62 of the APFO, with a sunset provision of five (5) years from the effective date. Notwithstanding a sunset of the School Construction Fee Ordinance, the parties intend: (i) that the Developer shall be bound to pay the School Construction Fee as a condition of APFO approval for the Project, (ii) that this provision shall survive the sunset of the Ordinance, which shall be deemed to run with the full term of this Agreement and any duly approved extensions thereof and (iii) that payment of the School Construction Fee shall satisfy the Developer’s school adequacy obligations under the APFO (unless the density or intensity of the Project is increased) and any school adequacy obligations that may be enacted in the future. The School Construction Fee shall be paid as provided in Section 1-20-62 of the APFO and in accordance with the fee schedule in effect at the time of plat recordation or the issuance of building permit, as applicable. If after the five year sunset, or for any other reason, the Frederick County Code no longer provides for the calculation of the School Construction Fee, then the school construction fee for purposes of this Agreement shall thereafter be based on the previous year's fee schedule, adjusted annually per the State of Maryland School Construction Cost Index, for the duration of this Agreement.

C. *School Impact Fees.* Applicable School Impact Fees shall be paid at the time of the issuance of building permits in accordance with the fee schedule in effect at the time of the issuance of building permits.

3.5 *Other Facilities.*

A. *Public Use/Fire/Rescue Station Site.* Developer shall dedicate and convey to the County, a public use site which is not less than 4.0 acres, generally located as shown on the Concept Plan of the PUD Phase I Plan (the "Fire Station Site", shown as area 2 on EXHIBIT 7) for future discretionary use by the County, at or prior to the first residential plat recordation for the Project, or by November 30, 2014, whichever first occurs. Developer will provide access via the public road as provided for in the PUD Phase I Plan, and not via Maryland Route 80. If the County acquires and begins construction on the Fire Station Site prior to the Project being developed to the point when public roads are available to serve the Fire Station Site, the Developer shall provide temporary private access to the Fire Station Site in a location to be approved by the Developer and the County. The County acknowledges that should the County acquire and begin construction on the Fire Station Site prior to the Project being constructed, County public water or sewer likely would not be available to the Fire Station Site, in which case the County shall be responsible for providing the water and/or waste disposal necessary to serve the Fire Station Site. Furthermore, in the event the Project is not developed to the point at which adequate public road access serves the Fire Station Site, the Developer shall not be responsible for bonding or construction related to improvements to serve the Fire Station Site, until such time as the Developer intends to develop such portion of the Project.

3.6 *Property Acquisition for Public Infrastructure.*

A. In the event that some of the public infrastructure improvements, at the collector road or higher facility level, required by this DRRA or the attached APFO LOU to be made by Developer will require the acquisition of public right-of-way from third-party property owners, the Developer shall exercise commercially reasonable efforts to secure such right-of-way without the assistance of the County.

B. In the event that the 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, the Developer may request the County (or SHA) to assist in the acquisition of the needed right-of-way at the Developer's sole cost and expense. If the County approves the Developer's request, then the County (or SHA) shall have two years to acquire the needed right-of-way.

C. Should the County decide not to acquire the right-of-way, or the two years has elapsed, then the 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 the road improvements discussed in APFO LOU paragraph 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 the LOU, the Developer may be permitted to make a contribution to the County in the amount referenced above.

ARTICLE IV
TERM OF AGREEMENT

This Agreement shall constitute covenants running with the land and shall run with and bind the Property so long as the Project is under development. This Agreement shall terminate and be void eighteen (18) 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. The parties acknowledge and agree that the Term of this Agreement is justified by the: (1) substantial economic investment made by the Developer for the development of the Project; (2) substantial investment in, and construction of, extensive public and private infrastructure by the parties; (3) public purposes to be advanced by development of the Project in accordance with the Development Laws; (4) uncertainty of future market demands and political pressures; and (5) expectations of the parties.

ARTICLE V
DEVELOPMENT REVIEW

5.1 *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.

5.2 *Timely Submission of Documents.* The Developer agrees to use reasonable efforts to submit complete and succinct plans and documents for the remaining Development Approvals as required per County codes, ordinances, policies or procedures, in a timely manner.

ARTICLE VI
SURVIVAL AND TRANSFER OF OBLIGATION

6.1 *Nature, Survival, and Transfer of Obligations.* The Developer agrees that this Agreement shall run with the land and be binding upon and inure to the benefit of the Developer and its successors and assigns (except owners of an individual lot, unit or parcel improved pursuant to a validly issued building permit and/or dwelling purchased solely for use as a private residence), and upon any and all successor owners of record of all or any portion of the Property (except owners of an individual lot or unit improved pursuant to a validly issued building permit and/or dwelling purchased solely for use as a private residence). 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 twenty (20) days after the Effective Date of this Agreement; and

B. Use commercially reasonable efforts to 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 Property.

6.2 Binding Upon Successors and Assigns of The BOCC. The BOCC agrees that all obligations assumed by the BOCC under this Agreement shall be binding on the BOCC, its agencies, governmental units, the Planning Commission and its and their respective successors and assigns, including but not limited to the future County Council and County Executive, when Frederick County transitions to a charter form government.

ARTICLE VII

BREACH AND REMEDIES

7.1 *Breach by Developer.*

A. *Breach-General.* If the Developer shall fail or refuse to perform its obligations as required hereunder, then the BOCC shall provide written notice to the Developer indicating the nature of the default. Developer shall have thirty (30) days following the receipt of such written notice to cure the default described in such notice; provided, however, if the Developer shall proceed with due diligence to cure said default after said notice, then such thirty (30) day period shall be extended to such a period of time as may reasonably be required to cure such default while proceeding with due diligence. If the Developer has not cured the default within the said cure period, the BOCC may 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. Developer hereby waives trial by jury in connection with any proceedings brought to enforce the terms of this Agreement.

7.2 *Breach by BOCC.*

A. *Breach-General.* If the BOCC shall fail or refuse to perform its obligations as required hereunder, then the Developer shall provide written notice to the BOCC indicating the nature of the default. The BOCC shall have thirty (30) days following the receipt of such written notice to cure the default described in such notice; provided, however, if the BOCC shall proceed with due diligence to cure said default after said notice, then such thirty (30) day period shall be extended to such a period of time as may reasonably be required to cure such default while proceeding with due diligence. If the BOCC has not cured the default within the cure period, the Developer may 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 Developer because of actions of the BOCC, then the Developer shall be entitled to bring a legal action for damages.

B. The BOCC does hereby waive trial by jury in connection with any proceedings brought to enforce the terms of this Agreement.

ARTICLE VIII
EFFECT OF DEVELOPMENT REGULATIONS

8.1 *Effect of Agreement.*

A. Except as otherwise specifically provided herein, the local laws, rules, regulations and policies governing the use, density or intensity of the Property, including but not limited to, those governing development, subdivision, growth management, impact fee laws, water, sewer, stormwater management, environmental protection, land planning and design, and adequate public facilities (hereafter collectively the “Development Laws”), shall be the local laws, rules, regulations and policies, if any, in force on the Effective Date of the Agreement, and the Developer shall comply with all Development Laws.

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 Property.

8.2 *Approvals Required.* Developer shall obtain all approvals necessary under any provision of local, state or federal law before proceeding with development of the Project. 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. The 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 complete the Project.

8.3 *Fees.* Except as provided in Sections 3.1.B and 3.4 B above, Developer shall pay all fees (specifically including but not limited to impact fees, school mitigation fees and water and sewer connection fees) required by Frederick County at the rate in effect at the time the fee is due. In the event that any such impact fees, including the school construction fee referenced in Section 3.4B above, are eliminated by a change in the law and replaced with a procedure or requirement that would impose some other burden on the Developer, the Developer may elect to pay the impact fee in effect prior to the change in the law. All impact fees shall be paid at the time of building permit. Developer does not waive the right to claim credits for impact fees, excise taxes, surplus capacity reimbursements, water and sewer connection fees, school impact fees and any similar fee or tax credits which may be available in accordance with County policies and regulations. Nothing in this Agreement shall be construed as a waiver or reduction of any such fee.

8.4 *Developer's Reliance.* The BOCC acknowledges that the Developer would not make the long term financial commitments necessary to substantially build out the Project in accordance with the approved PUD Phase I Plan or to provide the proffered infrastructure improvements, without Frederick County's commitment to allow the Project to be governed by and subject to the development laws in effect as of the Effective Date of this Agreement, to the maximum extent permitted by law.

8.5 *Moratorium.* In the event that a "moratorium" (as hereinafter defined) is declared or imposed, then any lot recordation and the Developer's rights to construct residential units on the lots or on the Property pursuant to any 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 as a result of the moratorium. Further, in the event that a moratorium is declared or imposed, then any deadline concerning the Developer's obligation to construct, install, fund or post financial guarantees for the infrastructure improvements required pursuant to any Development Approval for the Project 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 as a result of the moratorium. 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, or a de facto moratorium imposed by any applicable governmental authority which has the effect of denying the Developer the ability to record lots or obtain permits for the Project pursuant to any Development Approval. 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 IX **MISCELLANEOUS**

9.1 *Comprehensive Plan and Regulation Consistency.* On November 20, 2013 and on _____, 2014, the Planning Commission made the necessary determination as to whether this Agreement is consistent with the Frederick County Comprehensive Plan. By execution of this Agreement, the BOCC has determined that this Agreement is consistent with the Frederick County Comprehensive Plan and with the development regulations of Frederick County, Maryland.

9.2 *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.

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

9.4 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; (3) upon transmission, if sent by electronic mail, to the e-mail addresses set forth below; or (4) on the day following deposit with Federal Express or other national overnight courier.

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

Roy E. Stanley
75-80 Properties, LLC
P.O. Box 577
Damascus, Maryland 20872-0577
Phone: 301-253-0575
Email: restanley@comcast.net

Howard F. Payne
Payne Investments, LLC
4937 Green Valley Road
Monrovia, Maryland 21770

with a copy to:

Law Offices of Rand D. Weinberg, LLC
15 North Court Street
Frederick, Maryland 21701
Attn: Rand D. Weinberg, Esquire
Telephone: (301) 698-2350
E-mail: rweinberg@rdweinberglaw.com

Notices and communications to the BOCC shall be addressed and delivered to the recipients shown below, or the current holder of the office noted:

The Board of County Commissioners of
Frederick County
12 East Church Street
Frederick, Maryland 21701
Attn: Lori L. Depies, County Manager
Telephone: (301) 600-1100
E-mail: ldepies@frederickcountymd.gov

With a copy to:

John S. Mathias, Esquire
County Attorney

Gary Hessong, Director
Director of the Dept. of Permits and

02-25-14

12 East Church Street
Frederick, Maryland 21701
Telephone: (301) 600-1030
E-mail: jmathias@frederickcountymd.gov

Inspections
30 North Market Street
Frederick, Maryland 21701
Telephone: (301) 600-2028
E-mail:
ghessong@frederickcountymd.gov

Gary Hessong, Acting Director
Community Development Division
30 North Market Street
Frederick, Maryland 21701
Telephone: (301) 600-2028
E-mail: ghessong@frederickcountymd.gov

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.

9.5 Amendments.

A. The parties to this Agreement may amend this Agreement by mutual consent after the BOCC holds a public hearing and complies with all applicable laws concerning amendment of a Development Rights and Responsibilities Agreement. All amendments to this Agreement shall be in writing and shall be executed by the BOCC and the Developer.

B. This Agreement may be amended in accordance with the applicable provisions of Chapter 1-25 of the Frederick County Code to incorporate subsequent Development Approvals and requirements for Phases of the Project.

9.6 Termination or Suspension. The parties to this Agreement may terminate or suspend this Agreement by mutual consent after the BOCC holds a public hearing and complies with all applicable laws concerning termination or suspension of a Development Rights and Responsibilities Agreement as set forth in the County Ordinance. If the BOCC determines that a suspension or termination is essential to ensure the public health, safety or welfare (exercising the same standards prescribed in Section 8.1.B above), the BOCC may suspend or terminate this Agreement following a public hearing. Any such unilateral termination of this Agreement by the BOCC shall not in any way affect the validity of any Development Approvals which have been obtained for the Project or the Off-Site Commercial Properties at the time of termination, including, but not limited to, APFO Approvals.

9.7 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 Developer agrees not to challenge this Agreement or any of the obligations created by this Agreement 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 person(s) executing this Agreement on its 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 Property, (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 Property as set forth herein, and (3) that all legal actions needed to authorize the execution, delivery and performance of this Agreement have been taken.

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

9.9 Consent to Jurisdiction and Venue. The parties irrevocably consent to the jurisdiction and venue of the Circuit Court for Frederick County, Maryland or any federal court sitting in the District of Maryland for any proceedings brought with respect to this Agreement.

9.10 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.

9.11 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.

9.12 Appeals. The County DRRA Ordinance allows any person aggrieved by this Agreement to file an appeal to the Circuit Court for Frederick County within 30 days of the date on which the parties execute the Agreement. If the effect of the decision of the Circuit Court revises this Agreement in any material way, then either party to this Agreement may terminate the Agreement by providing notice to all parties to this Agreement within 30 days of the date the Circuit Court decision becomes final and all appeals thereof have been finally determined, and, in this event, the other party so notified hereby agrees to mutually consent to the termination and to comply with all applicable laws concerning termination of a DRRA. Any such termination of this Agreement pursuant to this Section 9.12, shall not in any way affect the validity of any Development Approvals which have been obtained for the Project and/or the Off-Site Commercial Properties at the time of termination, including, but not limited to, APFO approvals.

9.13 Recordation. As set forth in Section 7.1.A, the Developer shall have this Agreement recorded among the Land Records of Frederick County, Maryland within twenty (20) days after the Effective Date of this Agreement. In the event this Agreement is terminated following an appeal as provided for in Section 9.12 above, the parties agree to execute and record a document in the aforesaid Land Records to terminate this Agreement.

9.14 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.

9.15 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.

9.16 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.

9.17 Lienholders. All persons with a lien interest in the Subject Properties have executed this Agreement, and those lienholders with a power of sale have subordinated such liens to the position of the BOCC under this Agreement.

9.18 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

[SIGNATURES ON FOLLOWING PAGES]

75-80 PROPERTIES, LLC

BY: STANLEY ENTERPRISES, LLC,
Managing Member

BY: _____
Roy E. Stanley, Managing Member

Date: _____

PAYNE INVESTMENTS, LLC

BY: _____
Howard F. Payne, Managing Member

Date: _____

STATE OF MARYLAND, COUNTY OF _____, TO WIT:

I HEREBY CERTIFY that on this ____ day of _____, 2014, before me, the undersigned officer, personally appeared Roy E. Stanley, Managing Member of Stanley Enterprises, LLC, Managing Member of 75-80 Properties, LLC, who acknowledged the foregoing instrument to be his act and deed in such capacity, and that he is authorized to make this acknowledgment.

WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires:

STATE OF MARYLAND, COUNTY OF _____, TO WIT:

I HEREBY CERTIFY that on this ____ day of _____, 2014, before me, the undersigned officer, personally appeared Howard F. Payne, Managing Member of Payne Investments, LLC, who acknowledged the foregoing instrument to be his act and deed in such capacity, and that he is authorized to make this acknowledgment.

WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires:

THE BOARD OF COUNTY COMMISSIONERS OF
FREDERICK COUNTY, MARYLAND

_____ BY: _____
Blaine R. Young, President

Date: _____

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this ____ day of _____, 2014, before me, the undersigned officer, personally appeared Blaine R. Young, President of the Board of County Commissioners of Frederick County, Maryland, who acknowledged the foregoing instrument to be his act and deed in such capacity, and that he is authorized to make this acknowledgment.

WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires:

AUTHORIZATION OF LIENHOLDER

_____ and _____, Trustees of the indebtedness secured by the [deed of trust] against the property described herein, namely an [Indemnity Deed of Trust, Assignment of Rents and Security Agreement] dated _____, 20__, and recorded among the Land Records of Frederick County, Maryland, in Liber ____, folio __, hereby assent to the terms and provisions of this Development Rights and Responsibilities Agreement, and do hereby further agree that the terms contained herein shall survive any sale under its [deed of trust], as evidenced by the signature of one or more of the undersigned trustee(s) under the above-described [deeds of trust].

NAME

BY: _____

BY: _____

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this ____ day of _____, 2014, before me, the undersigned officer, personally appeared _____, Trustee who acknowledged the foregoing instrument to be his act and deed in such capacity, and that he is authorized to make this acknowledgment.

WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires:

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this ____ day of _____, 2014, before me, the undersigned officer, personally appeared _____, Trustee who acknowledged the foregoing instrument to be his act and deed in such capacity, and that he is authorized to make this acknowledgment.

WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

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 instruments was prepared by him or under his supervision.

Rand D. Weinberg

EXHIBIT 1

NAMES OF ALL PERSONS HAVING AN EQUITABLE OR LEGAL INTEREST IN THE PROPERTY INCLUDING LIENHOLDERS

Property Owners

1. 75-80 Properties, LLC
2. Payne Investments, LLC
3. Seventy Five & Eighty Dragway, Inc.
4. Wilcom Family Partnership

Lienholders

75-80 Properties, LLC

1. Damascus Community Bank (Cynthia Cervenka and Robert Meier, Trustees)

Payne Investments, LLC

2. 75-80 Properties, LLC (Thomas K. George and Timothy J, Reynolds, Trustees), Assignee of Southern Financial Group, LLC, Assignee of First Horizon Home Loan Corporation
3. Roy Stanley and Kathy Stanley (James Clifford, Sr. and James Debelius, Trustees)
4. First Horizon Home Loan Corporation (Thomas K. George and Timothy J, Reynolds, Trustees) *Paid in full and to be released
5. Sugarloaf Financial Group (William D. Pleasants, Jr. and Douglas Van Hook, Trustees)
6. Blue Water Development, LLC (William D. Pleasants, Jr. and Douglas Van Hook, Trustees)
7. The Year 2003 Trust of Descendants of William D. Peasants, Jr., and Pleasants Associates Limited Partnership (William D. Pleasants, Jr. and Douglas Van Hook, Trustees)

EXHIBIT 2

**[LAWYER'S CERTIFICATION THAT APPLICANT HAS EITHER LEGAL OR
EQUITABLE INTEREST IN THE PROPERTY]**

EXHIBIT 3

**[LEGAL DESCRIPTION OF THE PROPERTY - METES AND BOUNDS
DESCRIPTION]**

EXHIBIT 4

[PROPERTY MAP (SHOWING PARCELS/PROPERTIES SUBJECT TO THE DRRA)]

EXHIBIT 5

[APFO LOU]

EXHIBIT 6

**MODERATELY PRICED DWELLING UNITS
PAYMENT IN LIEU AGREEMENT
ADMINISTERED BY
FREDERICK COUNTY, MARYALND
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
520 North Market Street, Frederick, Maryland 21701**

THIS AGREEMENT dated the ____ day of _____, 2014, by and between 75-80 PROPERTIES, LLC, a Maryland limited liability company and PAYNE INVESTMENTS, LLC (collectively, "Applicant") and the BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND ("County").

RECITALS

The Applicant has received Planning Commission approval to construct ____ or more dwelling units on 457.521 acres (more or less) of property owned or controlled by Applicant in the development known as Monrovia Town Center (hereinafter "the Development"), located in Frederick County, Maryland, subject to the provisions of Chapter 6A of the Frederick County Code, as amended from time to time and regulations promulgated thereunder.

Ordinance No. 11-20-586 amended the provisions of Chapter 6A of the Frederick County Code to provide for a payment in lieu option (§1-6A-5.1) to satisfy the requirement to provide moderately priced dwelling units (MPDUs) as part of certain residential developments; and

This Agreement is intended to document the understanding of the parties with respect to the payment in lieu obligations of the Applicant consistent with the provisions of Chapter 6A of the Frederick County Code.

NOW, THEREFORE, in consideration of the mutual promises and benefits provided for herein, the parties hereto agree as follows:

1. Applicant has received Planning Commission approval to construct a total of ____ dwelling units in the Development, which, if the Applicant did not choose the payment in lieu option under §1-6A-5.1, would require the construction of ____ MPDUs.

2. In accordance with §1-6A-5.1, the Applicant shall pay to the County a Per Dwelling Unit Payment in Lieu of constructing MPDUs in the Development.

3. The Total Payment in Lieu for all dwelling units approved in the Development shall be _____ Dollars (\$____.____), which is the 12.5% of the total number of dwelling units approved in the Development multiplied by \$17,500.

4. The Per Dwelling Unit Payment in Lieu is _____ Dollars (\$____.____), which is the Total Payment in Lieu divided by the total number of dwelling units approved for the Development. The Per Dwelling Unit Fee shall be paid at submission of each building permit application for the dwelling units in the Development.

5. No failure on the part of the County to exercise, and no delay in exercising, any right or remedy permitted by law or pursuant to this Agreement will operate as a waiver thereof. The County may suspend or revoke any or all residential building or residential occupancy permits issued to Applicant for the Development and/or to suspend or deny the issuance of all subsequent residential permit requests by Applicant for this Development, and/or invoke any other of the enforcement measures authorized by Chapter 6A of the Frederick County Code and Regulations adopted pursuant thereto, for failure to comply with the terms of this Agreement or any requirement of Chapter 6A of the Frederick County Code.

6. A waiver by the County of a specific failure to comply with the terms of this Agreement must be in writing signed by the County, and shall not be deemed a waiver of any other subsequent failure to comply of similar or different nature.

7. Any notices or documents sent pursuant to this Agreement must be in writing and delivered to:

Frederick County:

Director
Department of Housing and Community Development
520 North Market Street
Frederick, MD 21701

Applicant:

Roy E. Stanley
75-80 Properties, LLC
P.O. Box 577
Damascus, MD 20872

8. This Agreement is binding upon the agents, successors, heirs and assigns of the Applicant and shall inure to the benefit of and be enforceable by the County, its successors and assigns.

9. Applicant agrees to abide by and comply with all applicable laws and regulations regarding the subject matter of this Agreement, whether or not such laws or regulations are herein

specifically enumerated or referred to, and Applicant agrees to sign such documents as may be required to effectuate the intent and purpose of this Agreement.

IN WITNESS WHEREOF, Applicant has caused these presents to be executed by authorized representatives of its sole member.

WITNESS:

STATE OF MARYLAND, COUNTY OF _____, TO WIT:

I HEREBY CERTIFY that on this _____ day of _____, 2014, before me, the undersigned officer, personally appeared _____, _____ of _____, who acknowledged the foregoing instrument to be his act and deed in such capacity, and that he is authorized to make this acknowledgment.

WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires:

(SIGNATURES CONTINUED ON THE NEXT PAGE)

WITNESS:

BOARD OF COUNTY COMMISSIONERS OF
FREDERICK COUNTY, MARYLAND

By: _____

Jennifer Short, Director
Department of Housing and Community
Development

REVIEWED BY: _____

Office of the County Attorney

STAE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this ____ day of _____, 2014, before me, the subscriber, a Notary Public for the State and County aforesaid, personally appeared Jennifer Short, Director, Housing and Community Development, Frederick County, Maryland, and did certify that as such officer, she did execute this instrument for the purposes stated herein, and did certify, under penalties of perjury, that she is authorized to execute this instrument on behalf of the Board of County Commissioners of Frederick County, Maryland.

WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires:

CONSENT OF LENDER

[If not applicable, write N/A or No Lien] _____ (Lender), holder of the indebtedness secured by the deed of trust [or mortgage] against the property herein described, recorded in Liber _____ at folio _____, hereby consents to the terms and conditions of the foregoing Payment in Lieu Agreement, and does hereby further agree that the terms contained herein shall survive any sale under its deed of trust [mortgage], as evidenced by the signature of the undersigned trustee [or officer of corporation] under the above described deed of trust.

By: [Lender's name], Trustee

STATE OF MARYLAND, CITY/COUNTY OF _____, TO WIT:

I HEREBY CERTIFY that on this _____ day of _____, 2014, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared _____, Trustee, who acknowledged her/himself to be the Trustee, and that she/he being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing his/her name.

IN WITNESS WHEREOF, I set my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires:

EXHIBIT 7

[PUBLIC USE SITES]