FREDERICK COUNTY PLANNING COMMISSION
June 11, 2014

TITLE: Woodbourne Manor DRRA

FILE NUMBER: DRRA 14-04

REQUEST: Finding of Consistency
Review of the Development Rights and Responsibilities Agreement (DRRA) for the Woodbourne Manor project to make a finding if the proposed agreement is consistent with the County Comprehensive Plan.

PROJECT INFORMATION:
LOCATION: West side of MD 180 at Broad Run Rd.
ZONING: Agricultural and R-3 Low Density Residential
REGION: Brunswick
COMP. PLAN/LAND USE: Low Density Residential and Agricultural/Rural

APPLICANT/REPRESENTATIVES:
APPLICANT: Jefferson Valley, LLC
OWNER:
ENGINEER:
ATTORNEY: Noel Manalo

STAFF: Jim Gugel, Planning Director

RECOMMENDATION: Staff recommends that the Frederick County Planning Commission find that the location, character, and extent of the proposed Development Rights and Responsibilities Agreement for the Woodbourne Manor are consistent with the County Comprehensive Plan.

ATTACHMENTS:
1. Draft Development Rights and Responsibilities Agreement
STAFF REPORT

ISSUE
The Planning Commission role in the review of the Development Rights and Responsibilities Agreement (DRRA) for the Woodbourne Manor project is to determine whether the proposed DRRA is consistent with the County Comprehensive Plan.

BACKGROUND
The petition was submitted on March 4, 2014 and includes the draft DRRA and exhibits. Staff has reviewed the material and has determined that all of the required submittal material has been received in accordance with § 1-25-03 and §1-25-04 of the Frederick County Code, including the required contents of the DRRA.

Figure 1 shows the Woodbourne Manor Property (137.9 acres) that would be subject to the DRRA.

The property is currently zoned R-3 Residential and Agricultural (A) and is designated Low Density Residential and Agricultural/Rural on the Comprehensive Plan. It is located in the Jefferson community growth area. This property received Preliminary Subdivision Plan approval on June 13, 2013 for 198 lots (all single-family detached). The development has also completed its Adequate Public Facilities Ordinance review and has an amended and restated Letter of Understanding (LOU) effective June 12, 2013. This APFO approval would expire on February 21, 2019.

SUMMARY OF DRAFT DRRA
The Development Rights and Responsibilities Agreement (DRRA) review and approval procedures are found in Chapter 1-25 of the County Code. The two primary components of any DRRA are the development rights and the development responsibilities that will be fixed for the project for a specified time period.

This DRRA is not being reviewed with a rezoning or an APFO component.

The Applicant is proposing that the DRRA be in effect for a period of 20 years. Described below is a summary of the rights and the responsibilities applicable to this development. The attached draft DRRA and accompanying exhibits include the specific development approvals and conditions of approval, including the timing of construction, payments, and/or dedication of certain public infrastructure with respect to the development timing.

Development Rights
- Maintain the R-3 Low Density Residential zoning with a maximum of 198 per the approved preliminary plan.
- Maintain or obtain other approvals based on current regulations or, if applicable, the regulations in effect when the approvals were granted.
- Freeze current County development regulations for the duration of the DRRA.
- Maintain the terms of the DRRA for a period of 20 years.

Development Responsibilities
Because this project already has preliminary subdivision approval and an approved Letter of Understanding (LOU) for its Adequate Public Facilities Ordinance review the DRRA does not include additional responsibilities of the developer. The LOU identifies improvements to the water system and to the existing road frontages that the developer will be required to make.
FINDING OF CONSISTENCY REVIEW

State Code and Guidelines
The Land Use Article of the Annotated Code of Maryland provides general requirements with regards to a finding of consistency with a comprehensive plan. Section 1-303 Consistency – General requirement of the Land Use Article further defines consistency with a comprehensive plan to mean "an action taken that will further, and not be contrary to the following items in the plan:
1) Policies;
2) Timing of the implementation of the plan;
3) Timing of development;
4) Timing of rezoning;
5) Development patterns;
6) Land uses; and
7) Densities or intensities

The Maryland Department of Planning in its Models and Guidelines document titled: 'Achieving Consistency under the Planning Act' also provides guidance on determining consistency with a comprehensive plan. It states:

"...land use regulations and decisions should agree with, and implement what the Plan recommends and advocates. A consistent regulation or decision may show clear support for the Plan. It may also be neutral—but it should never undermine the Plan."

Findings of Consistency with the Comprehensive Plan
- The Woodbourne Manor project is designated Low Density Residential on the County Comprehensive Plan and is located within the Jefferson community growth area.
- The project provides an appropriate level of infill development that is compatible with adjoining development in the Jefferson community.
- The existing R-3 zoning on the property is consistent with the Low Density Residential (3-6 dwellings/acre) land use plan designation.
- The timing of the development relative to providing necessary water/sewer infrastructure will be governed by the approved LOU.

STAFF RECOMMENDATION
Staff recommends that the Frederick County Planning Commission find:
That the location, character, and extent of the proposed Development Rights and Responsibilities Agreement for the Woodbourne Manor project is consistent with the Frederick County Comprehensive Plan.

PLANNING COMMISSION ACTION

MOTION TO FIND CONSISTENT
I move to find that the that the location, character, and extent of the proposed Development Rights and Responsibilities Agreement (DRRA 14-04) for the Woodbourne Manor project is consistent with the Frederick County Comprehensive Plan.

MOTION TO FIND INCONSISTENT
I move to find that the that the location, character, and extent of the proposed Development Rights and Responsibilities Agreement (DRRA 14-04) for the Woodbourne Manor project is not consistent with the Frederick County Comprehensive Plan.

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DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT

THIS DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT ("Agreement"), made as of the ___ day of __________, 2014, by and between JEFFERSON VALLEY, LLC, a Maryland limited liability company (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 March 4, 2014, Developer petitioned the BOCC to enter into this Agreement.

7. During a public meeting held on April 15, 2014, 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 a public meeting held on __________, 2014.

9. On __________, 2014, the BOCC held a duly advertised public hearing on this Agreement. The public had an opportunity to comment at this public hearing.
10. 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 Property pursuant to the Development Approvals, the APFO LOU, and this DRRA, including, but not limited to, residential densities as set forth herein and in the Development Approvals.

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. “APFO LOU” means the Adequate Public Facilities Ordinance Letter of Understanding dated June 12, 2013, attached hereto as EXHIBIT 5.

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


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

F. “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.

G. “Developer” means Jefferson Valley, LLC, and its successors and assigns in ownership of the Property.

H. “Development Approvals” means final governmental approval of Subdivision Plat(s), Adequate Public Facilities Ordinance (“APFO”) requirements, APFO LOU, Phase II plans (including all preliminary plans and site plans for the Project), County Water and Sewerage Plan amendments, all as may be amended from time to time, 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.

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

J. “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.

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

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

M. “Preliminary Plan” means the preliminary plan for the Project, approved by the Planning Commission on June 12, 2013, and/or as the same may be amended from time to time in accordance with applicable law.

N. “Project” means the Woodbourne Manor development to be constructed on the Property.

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

P. “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.

Q. “Woodbourne Manor” means the approved development to be constructed on the Property, also referred to as the “Project.”

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

2.1 Zoning and Plan Designations. The Property is zoned R-3 Residential and Agricultural. The Property is: located within the Community Growth Limit of the Jefferson Community Growth Area as shown on the Comprehensive Plan; designated Low Density Residential, Agricultural and Village Commercial on the Comprehensive Plan. The proposed development areas are located within the Water and Sewer Service Areas on the current Frederick County Water and Sewerage Plan.

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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 pursuant to and in accordance with the Development Approvals. The Project will contain a mix of housing types. A maximum of 198 residential dwelling units are permitted pursuant to the Preliminary Plan.

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 that are part of the Project on the Property shall be 60 feet, exclusive of structures directly related to public utility facilities. 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 shall exceed 170,000 square feet of gross floor area.

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 198 residential dwelling units) provided that such revision complies with all applicable Development Laws. 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. The Property area or any structure thereon is not listed formally in the National Register of Historic Places or the Frederick County Register of Historic Properties as of the date of this Agreement.

2.3 Other Development Approvals and Permits. The Project has obtained certain Development Approvals, including, but not limited to, those noted in EXHIBIT 7, and/or as the same may be amended from time to time in accordance with applicable law, attached hereto and made a part hereof.

A. Stormwater Management Administrative Waiver. Stormwater management for a portion of the Project south of the stream valley shall be provided in accordance with the 2000 Maryland Department of the Environment ("MDE") stormwater management regulations in effect and made applicable to the Project by the SWM Administrative Waiver, County AP #10825, approved by the County and issued June 16, 2010 (the "Waiver"). Accordingly, the BOCC agrees to avoid undue delay and to use reasonable efforts in
cooperation with the Developer, to secure the satisfaction of all conditions of the Waiver and/or obtain further approvals from MDE as may be necessary and permissible to complete the portion of the Project under the stormwater management regulations as permitted by the Waiver.

2.4 **Moderately Priced Dwelling Units.** The applicable Moderately Priced Dwelling Unit Payment In Lieu Agreement, dated January 17, 2014 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 APFO LOU, the Developer is required to construct, or cause to construct, certain road improvements as set forth in the APFO LOU. The APFO LOU constitutes APFO approval for the Project 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, the excise tax shall be zero dollars ($0) for the term of this Agreement.

3.2 **Sewer Improvements.** In recognition of Developer’s providing significant improvements to the water system which will serve the communities surrounding the Project, and the relative scarcity of the wastewater (sewer) taps available in the Jefferson wastewater conveyance and treatment system, the parties acknowledge and agree that BOCC and Developer shall make good faith efforts to enter into a multi-year tap agreement, upon mutually agreeable terms, regarding the payment, schedule and other terms, concerning the reservation of wastewater taps for use on the Property (“Tap Agreement”). Such Tap Agreement 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 Tap Agreement. Public sewer shall be extended to the Property as provided for in the APFO LOU and as set forth herein. The Developer will pay tap fees in accordance with this Agreement and the Tap Agreement, and the County shall issue such tap approvals, in accordance with this Agreement and the Tap Agreement, 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. The parties agree, as evidenced by the APFO LOU and other related provisions of this Agreement and the Tap Agreement, that public sewer capacity is or will be adequate to serve the Project. As set forth in the Tap Agreement, sufficient sewer treatment and discharge capacity necessary to serve the Project is reserved. However, the parties agree that if at any time and for any reason sewer capacity sufficient to serve the Project becomes unavailable, the BOCC shall, in a timely manner, take all necessary actions to provide the reserved capacity, including, but not limited to, providing necessary funding in accordance with applicable law.
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. Upon completion of construction of the aforesaid public water improvements, the APFO water and sewer approvals for the Project shall be vested for the capacity required to serve the Project, and the Project shall not be subject to further APFO testing for public water and sewer facilities unless the density or intensity of the Project increases.

3.4 **Schools.**

A. **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, if applicable, (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.

B. **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 **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. 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 December 31, 2034, 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.

5.3 Maryland State Permits. The BOCC agrees to use reasonable efforts to cooperate in a timely manner in facilitating any and all coordination and permitting associated with Maryland State Highway Administration access and utility permits and/or MDE water appropriations and construction permits. In those instances where the County is the required applicant for such permits, the County shall apply for, and maintain, the associated permits.

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5.4 **Well Outlots: Cooperation.** As part of the Project, Developer is dedicating certain outlot(s) to the County for well(s) associated with the System (the “Outlots”). If the County acquires, and the Outlots are constructed, prior to the Project being developed to the point when public roads are available to serve the Outlots, the Developer shall provide temporary private access to the Outlots 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 Outlots, the Developer shall not be responsible for bonding related to improvements to serve the Outlots, until such time as the Developer intends to develop such portion of the Project. In any event, the County shall cooperate fully (and request others to cooperate fully, if necessary) with the Developer, in granting or obtaining any necessary easements, easement agreements, abandonments, releases or any other documents or instruments reasonably necessary for the Project.

**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.A 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 3.4.A 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 Preliminary 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 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. The term:

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“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 MDE 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 _________, 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:

Jefferson Valley, LLC  
7420 Hayward Road, Suite 203  
Frederick, Maryland 21702  
Attn: Jeremy Holder, Vice President  
Phone: 301-620-4444  
Email: jholder@auscherman.com

with a copy to:

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

Gary Hessong, Director
Director of the Dept. of Permits and Inspections
30 North Market Street
Frederick, Maryland 21701
Telephone: (301) 600-2028
E-mail: ghessong@frederickcountymd.gov

Gary Hessong, Acting Division Director
Community Development Division
30 North Market Street
Frederick, Maryland 21701
Telephone: (301) 600-1138
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 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 Consents 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 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.
JEFFERSON VALLEY, LLC

BY: __________________________________________
   Jeremy D. Holder, Vice-President

Date: __________

STATE OF MARYLAND, COUNTY OF ________________, TO WIT:

I HEREBY CERTIFY that on this ___ day of __________, 2014, before me, the
undersigned officer, personally appeared Jeremy D. Holder, Vice-President of Jefferson Valley,
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.

My Commission Expires:

______________________________
NOTARY PUBLIC

05-30-14
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.

My Commission Expires: ____________________________

NOTARY PUBLIC

05-30-14
AUTHORIZATION OF LIENHOLDER

Charles C. Smith and Jane L. Smith (Lender), 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 Purchase Money Deed of Trust dated March 5, 2013, and recorded among the Land Records for Frederick County, Maryland in Liber 3614, folio 102, as evidenced by the signature of one or more of the undersigned trustee(s) under the above-described deed of trust.

___________________________________________

BY: ________________________________

Kevin C. Smith, Trustee

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this ____ day of __________, 2014, before me, the undersigned officer, personally appeared Kevin C. Smith, 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:

05-30-14
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

05-30-14
EXHIBIT 1

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

Property Owners

Jefferson Valley, LLC

Lienholders

Charles C. Smith and Jane L. Smith (Kevin C. Smith, Trustee)
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]
EXHIBIT 7

MAJOR APPROVALS AND PERMITS

A. Preliminary Subdivision Plan, County AP #13374, conditionally approved June 13, 2013.

B. Adequate Public Facilities Ordinance approval by the Planning Commission, as evidenced by the APFO LOU, on June 12, 2013.

C. Mass Grading Sediment Erosion Control, County AP #6452, approved on November 3, 2010.

D. Section 1 Improvement Plans, County AP #7089, approved on April 27, 2010.

E. Section 2/3 Improvement Plans, County AP #9217, approved on April 27, 2010.

F. Maryland Route 180 Improvement Plans, County AP #6359, approved on April 27, 2010.

G. Lander Road Improvement Plans, County AP #6358, pending SHA Access Permit.

H. Off-Site Raw Waterline, County AP #7847, approved on May 3, 2010.

I. Copperfield WTP Expansion, County AP #7422, approved on July 14, 2009.

J. Maryland Route 180 Off-Site Waterline Extension, County AP #7510, approved on May 3, 2010.


L. SWM Administrative Waiver, County AP #10825, issued June 16, 2010.

M. Final Forest Conservation Plan, County AP #13375, approved on September 18, 2013.