DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT

THIS DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT ("Agreement" or "DRRA"), made as of the ______ day of ________, 2014, by and between THE EUGENE B. CASEY FOUNDATION (the "Charitable Foundation"), by and through its trustee Betty Brown Casey, and THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, a body politic and corporate (the "BOCC").

RECITALS

1. Maryland law, as set forth in 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 ("DRRAs").

2. The BOCC has adopted Ordinance No. 07-33-473, creating Chapter 1-25 of the Frederick County Code, authorizing DRRAs.

3. This document is intended to constitute a DRRA as provided for in Land Use Article §7-301 through §7-306 and the County Ordinance, and evidences the BOCC’s determination of adequacy under the Adequate Public Facilities Ordinance, which was rendered pursuant to Section 1-20-20 (C) of the County Code and is evidenced in the Adequate Public Facilities Ordinance Letter of Understanding attached hereto as Exhibit “5”.

4. The Charitable Foundation is the owner of certain real property in Frederick County, Maryland, described in Exhibit “3”, attached hereto and made part hereof, (collectively referred to as the “Property”).

5. The names of all parties having an equitable or legal interest in the Property, including lien holders, are set forth in Exhibit “1”, attached hereto and made a part hereof and certified to by counsel to the Charitable Foundation (Exhibit “2”).

6. On June 28, 2013, Charitable Foundation petitioned the BOCC to enter into this Agreement (the “Petition”).

7. During a public meeting held on July 25, 2013, the BOCC reviewed the Petition and determined to accept the Petition and initiate the process of considering a DRRA. Charitable Foundation has paid to the County the Petition fee established by a separate Resolution adopted by the BOCC.
8. This Agreement was referred to the Frederick County Planning Commission (the "Planning Commission") for a determination of whether this Agreement is consistent with the Countywide Comprehensive Plan for Frederick County (the "Comprehensive Plan"). This determination was made by the Planning Commission at a public meeting held on __________, 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 Charitable Foundation and the County as to the development of the Property as a Planned Unit Development ("PUD") in accordance with the terms hereof. This DRRA is intended to protect, preserve and facilitate the full development of the PUD pursuant to the terms of the PUD Development Approvals (defined hereinbelow), the APFO LOU, and this DRRA.

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 Charitable Foundation hereby agree as follows:

ARTICLE I
DEFINITIONS

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

   A. "Adequate Public Facilities Ordinance" means Chapter 1-20 of the Frederick County Code.

   B. "Agreement" and/or "DRRA" means this Development Rights and Responsibilities Agreement.

   C. "APFO LOU" means the Adequate Public Facilities Ordinance Letter of Understanding approved by the BOCC concurrently with Phase I approval and approval of this DRRA for the PUD Project, attached hereto as Exhibit "S", and/or as the same may be amended from time to time in accordance with applicable law (the APFO LOU is a document which is separate and apart from this DRRA and the LOU may be amended by the parties, by written amendment to be approved by the Frederick County Planning Commission, with no requirement to amend this DRRA).
D. “Blentlinger Property” means that certain parcel or parcels of real property consisting of approximately 279 acres of land, as more particularly described in two deeds recorded among the Land Records in Liber 4118, folios 115-128, which property is adjacent to the Property (hereinafter defined).

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

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

G. “County Development Laws” means the laws, rules, regulations and policies governing the use, density, and intensity of the Property, including but not limited to those governing development, subdivision, zoning, comprehensive planning, moderately priced dwelling units, growth management, impact fees, water, sewer, stormwater management, environmental protection, land planning and design, adequate public facilities laws and architecture.

H. “County DRRA Ordinance” means County Ordinance No. 07-33-473, which created Chapter 1-25 of the Frederick County Code and authorizes Development Rights and Responsibilities Agreements.

I. “Department” means the Frederick County Community Development Division.

J. “Development Approval” means that final governmental approval, on a Phase by Phase basis, of Subdivision Plat(s), Adequate Public Facilities Ordinance (“APFO”) requirements, Phase I and II PUD Approval (including all Preliminary Plans and Site Plans as applicable) has been obtained for each respective Phase of the applicable PUD Project, all conditions of said approvals 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.

K. “DRRA Enabling Act” means §7-301 through §7-306 of the Land Use Article of the Maryland Annotated Code.

L. “Effective Date of this Agreement” means the date the last party executes this Agreement.
M. "Improvements" means those improvements to be made to road, sanitary sewer (sewerage), water, stormwater, parks, and other facilities necessary to service the Property.

N. "MPDU Ordinance" means Chapter 1-6A of the Frederick County Code.

O. "Charitable Foundation" means the Eugene B. Casey Foundation, its successors and assigns in ownership of the Property.

P. "Phase" means any portion of the PUD Project, which has received Development Approval.

Q. "Phase I approval" means the Justification Phase involving the approval of a concept plan by the BOCC.

R. "Phase II approval" means the Execution Phase, in which the Planning Commission approves the Charitable Foundation's preliminary plan and site plan for the PUD Project.

S. "Planning Commission" means the Planning Commission for Frederick County Maryland.

T. "Property" means all of the real property described in Exhibit 3 attached hereto.

U. "PUD Project" means the Planned Unit Development for 1,017 dwelling units, for which the BOCC granted Phase I approval concurrently with approval of this DRRA in Ordinance No. approved on . , 2014.

V. "Public Improvement Agreement" or "PIA", or "Public Works Agreement" or "PWA" means an agreement between the County and Charitable Foundation providing for the construction of public infrastructure by Charitable Foundation.

W. "Public School Site" means the parcel of land shown on the Phase I Plan for the PUD Project attached hereto as Exhibit "7" as, "School to be dedicated to Frederick County for Public Use," and which the Charitable Foundation has proposed to convey to the Frederick County Board of Education to serve the PUD Project and the surrounding community.
X. “Rezoning Ordinance” means Ordinance No. _______, approved on __________, 2014, which sets forth terms and conditions upon which the Charitable Foundation may construct 1,017 residential dwelling units on the Property.

Y. “School Construction Fee Ordinance” means Ordinance 11-18-584, enacted on July 20, 2011 and codified as Section 1-20-62 of the APFO.

Z. “Subdivision Ordinance” means Chapter 1-16 of the Frederick County Code.

AA. “Subdivision Plat” means a final plat(s) of subdivision for the PUD Project, or any respective Phase thereof, prepared in accordance with the County Code and approved by the Planning Commission.

BB. “Zoning Ordinance” means Chapter 1-19 of the Frederick County Code.

**ARTICLE II**

**ZONING, DEVELOPMENT IMITATIONS, AND PERMITS**

2.1. **Zoning and Plan Designations.** The Property is zoned Planned Unit Development (“PUD”). The Property is located within the Linganore Community Growth Area, designated for low density residential development on the Frederick County Comprehensive Plan (as amended in 2012), and is located within the Water and Sewer Service Areas on the current Frederick County Water and Sewerage Plan Atlas with a current designation of Planned Service.

2.2. **Development Limitations.**

A. **Background.** The PUD Project has received Phase I approval (concurrent with the approval of this DRRA) for 1,017 dwelling units, in accordance with the APFO LOU also approved by the BOCC concurrently with this DRRA (and Phase I approval). The Charitable Foundation shall seek all remaining Development Approvals required to allow the PUD Project to be developed as a planned unit development pursuant to Division 5 of Chapter 1-19 [Section 1-19-10.500, et seq.] of the County Code in effect on the date of this DRRA (attached hereto and made a part hereof as Exhibit “G”).

B. The permissible uses on the Property for the PUD Project are those permitted in the County Code in effect as of the date of this DRRA. The Property shall be developed in accordance with, and subject to the conditions and requirements of Development Approvals that are required pursuant to the County Code, which Development Approvals shall be based upon the terms and conditions of this Agreement. Total density of residential development on the Property shall not exceed, collectively, 1,017 dwelling units, and including ten (10) ± acres of the Property which shall be approved for commercial uses. The mix of units shall be at Charitable Foundation’s discretion, up to a maximum of 1,017 single-family (attached
and detached units), and subject to Planning Commission approval as part of the Phase II review. Setbacks, building height and other development standards on the Property shall be as established by the Development Approvals; provided, however:

1. Charitable Foundation shall not be required to provide greater than twenty-five percent (25%) of all dwelling units with rear alley access; and,

2. 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 PUD shall be sixty (60) feet; the maximum height for non-residential structures in the PUD Project 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 Public School Site) shall exceed 170,000 square feet of gross floor area, and no individual dwelling within the PUD shall exceed twenty thousand (20,000) square feet of floor area. Nothing contained herein shall be interpreted to constrain BOE’s authority to improve the Public School Site with structures of sizes and heights deemed appropriate by BOE and that fully comply with all applicable State and County school construction standards in effect at the time of the commencement of construction on the Public School Site. 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.

3. The Charitable Foundation shall have the ability to revise the mix of residential unit types in the PUD (subject to the cap of 1,017 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 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. The Charitable Foundation agrees to pay any adjusted School Construction Fee amounts resulting from a change in unit types; subject to final site plan approval, and if necessary, an amendment to the APFO LOU shall be executed by the Charitable Foundation and may be approved by the Planning Commission.

C. Any provision of this Agreement or the APFO LOU to the contrary notwithstanding, the Charitable Foundation acknowledges and agrees that neither Frederick County nor any agency, department, division and/or branch thereof shall issue any building permits, other than models, for residential lots in the Project prior to January 1, 2020.

2.3. Other Development Approvals and Permits - The BOCC and the Charitable Foundation agree that the permits, approvals and agreements required by the County, and those already approved for the PUD Project are:

1. Phase I Planned Unit Development approval for 1,017 residential dwelling units, in accordance with all associated requirements and conditions set forth in the Rezoning Ordinance;
2. Adequate Public Facilities Ordinance conditional approval by the BOCC, as evidenced by the APFO LOU dated __________, 2014 (Exhibit "5");

3. Water and Sewer Plan Amendment, reclassifying the Property to Planned Service, approved by the BOCC on September 13, 2012.

The PUD Project shall be required to comply with all other applicable requirements of the County Code for land development not set forth herein, subject to the provisions of this Section 2.3 above, 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, subdivision plats, building permits, and occupancy permits. The PUD Project shall also be required to obtain all applicable State or federal approvals and permits.

2.4 INTENTIONALLY DELETED.

2.5 Moderately Priced Dwelling Units In lieu of providing 12.5% of the total dwelling units constructed on the Property as MPDU's, as required by County law, the Charitable Foundation shall have the discretion of paying a fee in lieu of providing MPDU's pursuant to Section 1-6A-5.1 of the MPDU Ordinance, and the BOCC agrees to permit the Charitable Foundation to utilize the payment in lieu of building MPDUs in lieu of the prior MPDU requirements for a residential developer. A draft MPDU Agreement is attached hereto and made a part hereof as Exhibit "6".

ARTICLE III
COMMUNITY FACILITY AND INFRASTRUCTURE IMPROVEMENTS

3.1 Road Improvements. In satisfaction of the conditions of the Rezoning Ordinance and/or APFO requirements for the PUD Project, the Charitable Foundation is required to either construct, cause to be constructed, or fully fund the construction of certain road improvements (provided that the Charitable Foundation may form a road club or enter into a public-private partnership to construct certain road improvements) or contribute to escrow funds for road improvements, all as is comprehensively set forth in the APFO LOU approved separately but concurrently with the Phase I PUD approval and separately but concurrently with this DRRA, and as such is made (in executed form) an exhibit hereto as Exhibit "5".

3.2. Sewer Improvements. Public Sewer shall be extended to the Property as provided for in the APFO LOU. With the exception of the sewer pump described in Section 1(B) of the APFO LOU (which the County requires to be constructed pursuant to the terms of a public works agreement), all other sewer improvements required of the Charitable Foundation may be constructed by Charitable Foundation through a PIA between Charitable Foundation and the County. The BOCC shall process any applications filed by the Charitable Foundation to amend the County Water and Sewerage Plan in a timely manner. The Charitable Foundation will pay tap (capacity) fees in accordance with the current fee schedule in effect at the time of building permit application, and the County shall issue such tap (capacity) 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 if 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 in
accordance with the APFO LOU. With the exception of the water tower described in Section
I(A) of the APFO LOU (which the County requires to be constructed pursuant to the terms of a
public works agreement), all other water infrastructure improvements required to be made by
Charitable Foundation may be constructed by the Charitable Foundation through a PIA between
Charitable Foundation and the County. The BOCC shall process any applications filed by the
Charitable Foundation to amend the County Water and Sewerage Plan in a timely manner. The
Charitable Foundation will pay tap (capacity) fees in accordance with the current fee schedule in
effect at the time of building permit application, and the County shall issue such tap (capacity)
approvals in the normal course as a ministerial function. The Charitable Foundation 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.

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 Charitable Foundation shall
be bound to pay the School Construction Fee as a condition of APFO approval of the PUD
Project, (ii) that this provision shall survive the sunset of the School Construction Fee Ordinance,
and shall 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 Charitable Foundation’s schoo.
adequacy obligations under the APFO 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 the APFO LOU attached hereto as Exhibit “S”, and in accordance with the fee
schedule in effect at the time of plat recordation. If, after the five year sunset, or for any other
reason, the Frederick County Code no longer provides for the calculation of the Schoo.
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 Schoo.
Construction Cost index, for the duration of this Agreement.

B. School Impact Fees. The Charitable Foundation shall pay applicable
school impact fees per dwelling unit at the time of the issuance of building permits in accordance
with the fee schedule in effect at the time of the issuance of the building permits.

C. School Site Dedication. The Charitable Foundation shall convey in fee
simple to the Frederick County Board of Education (“BOE”), with no monetary consideration
paid, a school site shown on Exhibit “T”, totaling a minimum of twenty (20) ± acres, to serve the
PUD Project and the surrounding region. The Public School Site will be conveyed to the BOE
upon: i) the recordation of the first subdivision plat for lots in the PUD Project; and ii) BOE’s
acceptance of the conveyance of land for the Public School Site. Requirements for satisfaction
of the Forest Resource Ordinance ("FRO") and stormwater management quantity control for the Public School Site shall be addressed within the overall PUD, allowing the School Site to be conveyed net of such requirements. BOE shall remain obligated for any environmental site design ("ESD") requirements for the Public School Site as required by applicable laws, rules, and regulations. A separate Memorandum of Understanding ("MOU") between the BOE and Charitable Foundation shall be executed prior to conditional Phase II (Execution) approval of a combined preliminary/site plan for residential dwelling units in the PUD Project (assuming commercially reasonable efforts by both parties), which MOU shall establish and control other aspects of the Public School Site and the rights and responsibilities of the parties relative to the Public School Site and the construction of an elementary school. In the event, that the BOE MOU conflicts with any provision of this Agreement, the BOE MOU shall be the prevailing document with regard to the Public School Site, and the BOE MOU may be amended by the parties thereto without amending this Agreement. The County and BOE acknowledge that should the BOE acquire and begin construction on the Public School Site prior to the PUD Project being constructed, County public water or sewer likely would not be available to the Public School Site, in which case the BOE and/or the County shall be responsible for providing the water and/or waste disposal necessary to serve the Public School Site. Furthermore, in the event that the BOE begins construction on the Public School Site and the PUD Project is not developed to the point at which adequate public road access serves the Public School Site, the Charitable Foundation shall not be responsible for bonding or construction related to improvements to serve the Public School Site, until such time as the Charitable Foundation intends to develop such portion of the PUD Project. In the event that the BOE does not approve the Public School Site or determines not to accept conveyance of the Public School Site, then Charitable Foundation shall retain fee simple ownership of the Public School Site, and may use the Public School Site in a manner consistent with other uses with the PUD Project.

3.5 Other Facilities.

A. Public/Private Site Improvement.

1. Charitable Foundation shall provide all public use improvements for the PUD Project to be shown on the approved Phase II plan.

2. Charitable Foundation shall provide all improvements intended for the benefit of the residents of the PUD Project to be shown on the approved Phase II plan.

B. Park Land. The Charitable Foundation shall, if desired by County, dedicate twenty (20) ± acres of parkland to the County for a public park in accordance with, and as shown on, Exhibit "7". The public park shall be dedicated upon recordation of the first Subdivision Plat for the PUD Project. If the County does not desire the dedication of the public park, the Charitable Foundation shall deed an easement or easements to the County for a path or trail system in the same vicinity of the proposed public park as shown on Exhibit "7", and shall transfer the fee simple ownership of the proposed park land to the homeowners association for the PUD Project.

C. Off-Site Regional Infrastructure Improvements.
1. As per the County Comprehensive Plan (as amended in 2012), an east/west collector road (the “Collector Road”) is proposed to traverse the Property and Blentlinger Property (as the Phase I Plan reflects). This planned Collector Roadway will provide a connection of Boyers Mill Road north of the Blentlinger Property to MD 75 east of the Property, and additionally a spur will connect the Collector Road to the planned New Market Parkway (through a link to be located on the Delaplaine Property). Should the Collector Road need to be constructed to serve the Blentlinger Property before the right-of-way necessary for the Collector Road through the Property is dedicated as part of the development of the PUD Project, the Charitable Foundation agrees to dedicate to Frederick County a eight (80) foot wide of right-of-way, located in the general vicinity shown on Exhibit “7,” to facilitate the construction of this public road through the Property, when deemed necessary by the County. The Charitable Foundation, at no cost to the Charitable Foundation, shall cooperate in the engineering and design of the Collector Road and shall execute whatever reasonable documents may be required for the construction of the Collector Road through the Property, including right-of-way deeds and/or plats and any related temporary or permanent easements that may be required utilizing sound engineering practices, within sixty (60) days of receipt.

3.6 Property Acquisition for Public Infrastructure.

A. Public Improvement Guarantees. Charitable Foundation guarantee of any public improvements required pursuant to this DRRA or otherwise required for the PUD Project may, at Charitable Foundation’s discretion, be by surety bond in accordance with Resolution No. 14-01, approved by the BOCC on February 6, 2014 (attached hereto as Exhibit “9”). In the event the provisions of Resolution No. 14-01 do not allow the Charitable Foundation to guarantee the public improvements with a surety bond, then the Charitable Foundation shall post a letter of credit or cash escrow in accordance with County policies in effect on the effective date of this Agreement.

B. Right of Way Acquisition.

1. In the event that some of the public infrastructure improvements required by this DRRA to be made by the Charitable Foundation, require the acquisition of public right-of-way from third-party property owners, the Charitable Foundation shall exercise commercially reasonable efforts to secure such right-of-way without the assistance of SHA or the County.

2. In the event that the Charitable Foundation has demonstrated to SHA and the County that it is unable to secure any or all of 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 Charitable Foundation may request SHA or the County to assist in the acquisition of the needed right-of-way at the Charitable Foundation’s sole cost and expense. If SHA or the County approves the Charitable Foundation’s request, then SHA or the County shall have two years to acquire the needed right-of-way.
3. Should SHA or the County decide not to acquire the right-of-way, or if the two years has elapsed, then the Charitable Foundation may be permitted to make a contribution to the County, equal to the entire anticipated improvement construction cost, which shall include but not be limited to costs for: design, engineering, right-of-way acquisition, management, construction, inspection, etc. in lieu of constructing the public infrastructure improvement(s). Also, should SHA unreasonably (in the County’s discretion) refuse or fail to grant the permits necessary for the construction of the improvements, the Charitable Foundation may be permitted to make a contribution to the County (and/or other governmental agencies as applicable), equal to the entire anticipated improvement construction cost described above. Upon payment of the entire anticipated improvement construction cost (as described in hereinabove), the Charitable Foundation shall have satisfied its obligation concerning the particular improvement and may proceed with development of the Property.

ARTICLE IV
TERM OF THE AGREEMENT

The Charitable Foundation is not a developer; it is a foundation that has used real estate as a primary manner in which to further its charitable missions. In order to provide the Charitable Foundation with sufficient time to secure a reputable developer/builder to develop the Casey Charitable Foundation Property in accordance with this Agreement and the APFO LOU, and to provide that developer/builder with the regulatory certainty necessary to secure financing for a development project of this size that includes large-scale investment in public infrastructure, the parties have agreed that this Agreement shall constitute covenants running with the land and shall run with and bind the Property so long as the PUD is under construction and/or development, but in any event this Agreement shall be void twenty (20) 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 Charitable Foundation for the development of the PUD 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 Charitable Foundation agrees to use its best efforts to submit complete and succinct plans and documents for the remaining development
approvals as required per County codes, ordinances or other policies and procedures in a timely manner.

ARTICLE VI
SURVIVAL AND TRANSFER OF OBLIGATION

6.1. Nature, Survival, and Transfer of Obligations. The Charitable Foundation agrees that this Agreement shall be binding upon it, its successors and assigns, and upon any and all successor owners of record of all or any portion of the Property. To assure that all such successors, assigns, and successor owners have notice of this Agreement and the obligations created by it, the Charitable Foundation 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;

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, to the extent allowed by applicable law, all obligations assumed by it under this Agreement shall be binding on it, its agencies, governmental units, the Planning Commission and its and their respective successors and assigns, including but not limited to the future County Council and County Executive when Frederick County transitions to a charter form of government.

ARTICLE VII
BREACH AND REMEDIES

7.1 Breach by Charitable Foundation.

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

B. Jurisdiction and venue for any proceedings brought with respect to this Agreement shall be in the Circuit Court for Frederick County, Maryland. Charitable Foundation does hereby waive 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, then, after sixty (60) days from receipt of written notice provided to the BOCC by the Charitable Foundation indicating the nature of the default and if the BOCC has not cured the default, the Charitable Foundation may, within 120 days following a notice to cure, seek and obtain equitable relief to enforce the terms and conditions of this Agreement either through a decree for specific performance or an injunction. Should the remedies of specific performance or injunction not be available to Charitable Foundation because of actions of the BOCC, then the Charitable Foundation shall be entitled to bring a legal action for damages.

B. Jurisdiction and venue for any proceedings brought with respect to this Agreement shall be in the Circuit Court for Frederick County, Maryland. Charitable Foundation 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. Subject to the provisions of Section 8.1B below, the Charitable Foundation must comply with all federal, State and local laws including, but not limited to, the County Adequate Public Facilities Ordinance, the MPDU Ordinance, the Development Impact Fee Ordinance, the Subdivision Ordinance, the Forest Conservation Ordinance and the Water and Sewerage Plan.

B. Except as otherwise provided in Sections 2.5, 3.4 and 8.3 of this Agreement, the County Development Laws, regulations and policies governing the use, density or intensity of the Property, including but not limited to those governing development, subdivision, zoning, comprehensive planning, moderately priced dwelling units, growth management, impact fees, water, sewer, stormwater management, environmental protection, land planning and design, adequate public facilities laws and architecture shall be the laws, rules, regulations and policies, if any, in force on the Effective Date of the Agreement.

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

8.3 Fees.

A. Building Excise tax. Currently, the building excise tax provided for in Section 2-7-131 of the Public Local Laws of Frederick County and in Section 1-8-73 of the County Code is established at $0 by Ordinance No. 11-23-589. In recognition of the overall package of road improvements being funded by the Charitable Foundation, 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.

B. Except as provided in Sections 2.5, 3.4.A and 8.3.A of this Agreement, the Charitable Foundation shall pay all fees (specifically including but not limited to impact fees, school mitigation fees, MPDU fees lieu of construction, and water and sewer capacity fees) required by the County at the rate in effect at the time the fee is due. In the event that any such fee is included in the school construction fee referenced in Section 3.4.A or the MPDU fee in lieu referenced in Section 2.5 above are eliminated by a change in the law and replaced with a procedure or requirement that would impose a similar burden on the Charitable Foundation, the Charitable Foundation may elect to pay the impact fee in effect prior to the change in the law. Charitable Foundation 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 Charitable Foundation’s Reliance: The BOCC acknowledges that the Charitable Foundation would not make the long term financial commitments necessary to substantially build out the PUD Project in accordance with the approved 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 imposed, then any lot recordation or development phasing schedule and the Charitable Foundation’s rights to record a certain number of lots per calendar year and/or construct residential units and institutional structures on the lots pursuant to a Development Approval for any section of either the PUD Project shall be extended for one (1) additional day for each day during which such moratorium exists, and the PUD Project shall not be subject to any additional regulation, legislation, limitation, phasing, contributions, penalties or delay in construction, or issuance of zoning certificates/building permits solely as a result of the moratorium. Further, in the event that a moratorium is declared or imposed, then any deadline concerning (1) the Charitable Foundation’s obligation to construct, install, fund or post financial guarantees for (a) the infrastructure improvements required pursuant to any Development Approval for the PUD Project in accordance with the phasing requirements set forth therein, and/or (b) the road improvements described in this Agreement; and, (2) the Charitable Foundation’s obligation to
dedicate parkland to the County and to grant perpetual forest conservation easements to the County, shall be extended for one (1) additional day for each day during which such moratorium exists, and the PUD Project shall not be subjected to any additional regulation, legislation, limitation, phasing, contributions, penalties or delay in construction, or issuance of zoning certificates/building permits solely as a result of the moratorium. In addition, should a moratorium prevent recordation in any calendar year of the number of lots (or equivalent dwelling units) provided for in any Development Approval for the PUD Project, the “shortfall” in the number of such lots shall be added to the number of lots in the calendar year following the year during which the moratorium was in effect. The term “moratorium” shall mean the implementation or declaration by the United States Government, State of Maryland, Frederick County, and/or any agency, department, division and/or branch thereof for purposes of a limitation, prohibition, restriction and/or phasing upon the review, recording, development and construction upon lots in the PUD Project as intended by Charitable Foundation or a de facto moratorium imposed by any applicable governmental authority which has the effect of denying the Charitable Foundation the ability to record lots or obtain permits for the PUD Project pursuant to any Development Approval, which is deemed to be essential to ensure the public health, safety, and welfare of County residents as determined above. Nothing in this Agreement shall be interpreted as exempting Charitable Foundation 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
GENERAL PROVISIONS

9.1 Comprehensive Plan Consistency. On __________, 2014 the Planning Commission determined that this Agreement is consistent with the Frederick County Comprehensive Plan (as amended in 2012). The BOCC affirms this determination through the execution of this Agreement.

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, or (3) upon receipt if sent by telecopier to the telecopier numbers set forth below.

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

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Eugene B. Casey Foundation
Attn: Ms. Betty Brown Casey
16803 Cabbs Branch Way
Rockville, Maryland 20855

With a copy to:
C. Robert Dalrymple, Esquire and
Lisa Lawler Graditor
Littowes and Blucher LLP
8 West Third Street
Frederick, Maryland 21701
Telephone: (301) 620-1175

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

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

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

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

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

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

9.5 Amendments. The parties to this Agreement may amend the Agreement by mutual consent after the BOCC holds a public hearing and complies with all applicable laws concerning amendment of a DRRA. All amendments to this Agreement shall be in writing and shall be executed by the BOCC and the Charitable Foundation.
9.6 Termination or Suspension. The parties to this Agreement may terminate or suspend the Agreement by mutual consent after the BOCC complies with all applicable laws concerning termination or suspension of a DRRA. If the BOCC determines that a suspension or termination is essential to ensure the public health, safety or welfare (exercising the same standards as prescribed in Paragraph 8.1(c) 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 PUD 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 BOCC and the Charitable Foundation agree not to challenge this Agreement or any of the obligations created by it on the grounds of any procedural infirmity or any denial of any procedural right. The BOCC hereby warrants and represents to the Charitable Foundation that the persons executing this Agreement on its behalf have been properly authorized to do so. The Charitable Foundation 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. Any provision of this Agreement to the contrary notwithstanding, any amendments to the DRRA Enabling Act or the County DRRA Ordinance that are enacted subsequent to the Effective Date and which add to, delete, or modify, the procedures concerning the termination, appeal, amendment, or suspension of a DRRA shall be applied in their entirety to the enforcement of this Agreement.

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

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 PUD Project at the time of termination, including, but not limited to, APFO approvals.

9.13 Recordation. Any party may record this Agreement. Unless this Agreement is recorded in the Land Records of Frederick County within 20 days after the date on which the BOCC and the Charitable Foundation executed the Agreement, the Agreement shall be void. In the event the Agreement is terminated or modified in conjunction with 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 the Agreement or modify it in accordance with the final decision of the Board of Appeals.

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 INTENTIONALLY DELETED.

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

WITNESS:                                Eugene B. Casey Foundation

By:                                        
Betty Brown Casey, Trustee

STATE OF MARYLAND
COUNTY OF MONTGOMERY

I HEREBY CERTIFY that on this ___ day of ____________, 2014, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared Betty Brown Casey, known to me (or satisfactorily proven) to be the Trustee of the Eugene B. Casey Foundation, and that such person, in such capacity and being authorized so to do, executed the foregoing and annexed Development Rights and Responsibilities Agreement for the purposes therein contained.

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

________________________
Notary Public
My Commission Expires: __________________________

[NOTARIAL SEAL]
STATED OF MARYLAND, COUNTY OF FREDERICK, to wit:

I HEREBY CERTIFY that on the ______ day of __________, 2014, before me, the subscriber, a Notary Public in and for the jurisdiction aforesaid, personally appeared Blaine R. Young, who acknowledged himself to be the President of the Board of the Board of County Commissioners of Frederick County, Maryland, a body corporate and politic, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained to be his act on behalf of said entity.

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

My Commission Expires:
EXHIBIT “1”
(NAMES OF ALL PERSONS HAVING AN EQUITABLE OR LEGAL INTEREST IN THE PROPERTY, INCLUDING LIEN HOLDERS)

Property Owner: Eugene B. Casey Foundation

Lienholders: NONE
EXHIBIT “2”
(CERTIFICATION OF COUNSEL)

THIS IS TO CERTIFY that the undersigned is a Member, in good standing, of the Bar of the Court of Appeals of Maryland, and that the within instrument was prepared by him or under his supervision, and to further certify that the Charitable Foundation listed in the foregoing instrument has both a legal and equitable interest in the Property.

______________________________
C. Robert Dalrymple

Upon Recordation Please Return To:
EXHIBIT “3”
(LEGAL DESCRIPTION OF PROPERTY)
EXHIBIT "4"
(BOUNDARY MAP OF PROPERTY)
EXHIBIT "5"
(ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING)
EXHIBIT “6”
(Payment in Lieu of Provision of the MPDU Agreement)
EXHIBIT “7”
(PHASE I CONCEPT PLAN)
EXHIBIT "8"
(DIVISION 5 OF CHAPTER 1-19 OF THE COUNTY CODE)
EXHIBIT "9"
(Resolution 11-22, approved by the BOCC on September 1, 2011)