

JUL 11 2024

\$ NA RECORDATION TAX PAID
\$ NA TRANSFER TAX PAID

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT ("Agreement"), made this 10th day of July, 2024, by and between EUGENE B. CASEY FOUNDATION, a nonprofit foundation pursuant to 26 U.S.C. Section 501(c)(3) of the U.S. Code (interchangeably "Casey" or the "Foundation:") and the MAYOR AND COUNCIL OF THE CITY OF GAITHERSBURG, a municipal corporation of the State of Maryland (hereinafter referred to as the "City" and collectively with Casey the "Parties").

WITNESSETH:

WHEREAS, Casey is the fee simple owner of the property identified as Parcel 940 on Tax Map FS63, located to the south of the intersection of S. Frederick Avenue (MD 355) and O'Neill Drive and to the north of I-370/Sam Eig Highway in Gaithersburg, Montgomery County, Maryland, consisting of 5.2487 acres with a current property address of South Frederick Avenue, Gaithersburg, Maryland, and more particularly described on the boundary survey and metes and bounds description attached hereto and made a part hereof as Exhibit "A" (the "Property"). The tax account number of the Property is 09-00768787; and

WHEREAS, the Property is currently located within the jurisdictional boundaries of Montgomery County, Maryland; and

WHEREAS, the Property is contiguous to and immediately adjoins the existing corporate boundaries of the City and is identified as within the boundaries of the City's designated Maximum Expansion Limits ("MEL") as depicted in the Growth Element of the City's 2003 Master Plan, adopted April 6, 2009 (the "Master Plan"); and

WHEREAS, the annexation of the Property will not create any unincorporated area which is bounded on all sides by real property presently within the corporate limits of the City, real property proposed to be within the corporate limits of the City as a result of the proposed

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) KAB 68184, p. 0046, MSA_CE63_68141. Date available 07/15/2024. Printed 07/31/2024.

NO FEE

annexation, or any combination of the above; and

WHEREAS, pursuant to the provisions of Maryland Code Local Government Division II- Municipalities, Title 4, Subtitle 4 – Annexation (the “Maryland Code”), Casey petitioned the City to annex the Property, pursuant to annexation petition X-9683-2023 (the “Annexation Petition”); and

WHEREAS, as verified by the City, Casey owns more than 25% of the assessed valuation of the Property and there are no persons residing within the area of the Property who are registered voters in the precinct within which the Property is located, and as such, Casey has the legal authority pursuant to the Maryland Code to file with the City the Annexation Petition; and

WHEREAS, pursuant to Section 4-404 of the Maryland Code, the City has introduced a resolution to annex the Property pursuant to the Annexation Petition (the “Resolution”); and

WHEREAS, the annexation of the Property will promote the City’s goal of annexation within the City’s urban growth areas designated in the MEL as set forth in the Master Plan; and

WHEREAS, pursuant to Section 4-406 of the Maryland Code, all required public notice pertaining to the proposed annexation has been published in accordance with the Maryland Code and public hearings pertaining to the Resolution have been conducted by the City as required by the Maryland Code; and

WHEREAS, the City intends to enact the Resolution and thereby annex the Property as requested by the Annexation Petition; and

WHEREAS, the Property is currently classified in Montgomery County in the CRT-0.75 C-0.25 R-0.75 H-80 Zone pursuant to Chapter 59 of the Montgomery County Code) the “County Zoning Ordinance”); and

WHEREAS, the City desires that, concurrent with the City’s adoption of the Resolution and pursuant to Section 24-9 of the Code of the City of Gaithersburg (the “City Code”), by simultaneous resolution the City establish the zoning of the Property in the City CD (“Corridor

Development”); and

WHEREAS, the proposed CD zoning for the Property upon annexation does not permit development of the Property with uses that would be substantially different from or with densities that are substantially higher than what may be permitted on the Property by the County Zoning Ordinance under the existing CRT-0.75 C-0.25 R-0.75 H-80 Zone, and therefore, no affirmative action by the Montgomery County Council is required by the Maryland Code in order for the City to annex the Property and concurrently zone it CD; and

WHEREAS, this Annexation Agreement, permitted under the Maryland Code and further authorized by the City Code, is intended to govern the future development of the Property beyond the laws and regulations otherwise applicable; and

WHEREAS, Casey also owns the ±9.37-acre property immediately adjoining the Property to the north, which site consists of two (2) subdivided parcels already located within the City, that are presently zoned R-18 (Medium Density Planned Residential) and R-20 (Medium Density Residential) and which are improved with the Rosedale Apartments (“Rosedale” and “Rosedale Property”), a multi-family rental apartment community comprised of 192 dwelling units, surface parking and amenities; and

WHEREAS, while Rosedale has provided extensive unregulated affordable housing for City residents for essentially the entire existence of this community since its construction in 1972, which has naturally occurred by the choice and will of Casey (and the predecessor owner, the Betty Brown Casey Trust) to provide affordable housing opportunities by charging and maintaining rent at levels of affordability below and often times far below market value, the units comprising Rosedale, notwithstanding excellent upkeep, are simply outdated and antiquated in terms of providing the quality of living that Casey desires for its residents; and

WHEREAS, in considering the annexation and future development of the Property consistent with the “Annexation Plan” that will be approved with the Resolution (and which is

attached hereto as Exhibit “B”), Casey has determined that it concurrently wants to include the Rosedale Property in entitling, developing, owning and operating a new residential community (the “New Community”) that will be committed to carrying out the affordable housing intentions, desires, and chartered mission of the Foundation, it having been determined by the Foundation that the Rosedale units cannot simply be renovated but instead need to be replaced; and

WHEREAS, while it is the present intent of the Casey Foundation that the New Community will be a multi-family, rental residential project, Casey will reserve the right to have some portion or portions of the Property be for-sale residential or nonresidential uses as permitted pursuant to the underlying zoning of the Combined Property; and

WHEREAS, After the effective date of the Annexation, Casey intends to pursue rezoning of the Rosedale Property consistent with the zoning classification that will be designated for the Property (CD Zone) concurrently with a comprehensive Schematic Development Plan application for the combined Property and Rosedale Property (the “Combined Property”) to allow for development of a single, cohesive new project; and

WHEREAS, as shown on the proposed phasing plan for the Combined Property attached hereto and made a part hereof as Exhibit “C” (the “Phasing Plan”), the New Community will be phased into existence through a carefully designed plan to build the portion of the New Project that will be on the vacant Property shown as Phase 1 on the Phasing Plan, so as to allow the existing residents of Rosedale who presently live in that area shown as Phase 2 on the Phasing Plan the opportunity to move to and occupy dwellings built in the New Community in Phase 1, allowing the demolition and replacement of Rosedale in Phase 2 without any forced tenant displacement. Similarly, Phase 2 will allow for existing residents of Phase 3 to be moved without forced displacement in constructing Phase 3; and

WHEREAS, Casey will commit that with initial construction and occupancy of the rental residential dwelling units within the New Community it will provide the minimum required

regulated affordable housing units that comply with the IRS requirements for the Foundation’s nonprofit standing (and taxation) as a provider of affordable housing (presently meaning that 75% of the total number of rental dwelling units must be regulated to have maximum rental rates that are established to serve families with total income at between 50-80% Area Median Income (“AMI”) as defined by IRS Rev. Proc. 96-320, with the balance of units comprised of market rate units priced at the discretion of Casey; and

WHEREAS, the Parties agree that they will enter into necessary agreements and all other approvals that establish that the affordable housing provided by the Property as outlined herein satisfy the affordable housing requirements of the City and any IRS and/or other agency requirements necessary to secure nonprofit tax status for the Foundation for the New Community; and

WHEREAS, on May 20, 2024, the City adopted the Resolution as Resolution No. R-27-24, thereby expanding the boundaries of the City to fully include and incorporate the Property and classifying the Property in the City’s CD Zone, which annexation and zoning shall take effect forty-five days following the approval of the Resolutions unless a timely petition for referendum is filed in accordance with Section 4-407 of the Maryland Code; and

WHEREAS, the Parties desire to execute this Annexation Agreement as a binding and enforceable contract to establish certain conditions under which the Property shall be developed.

NOW, THEREFORE, in consideration of the foregoing recitals, each of which (along with all Exhibits hereto) shall be incorporated herein and made a part of this Annexation Agreement as if repeated verbatim below, and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties covenant and agree as follows:

1. RECITALS. The recitals set forth above are incorporated herein and made a part hereof as if fully set forth herein.
2. ZONING. Upon annexation of the Property into the City, the Property shall be

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) KAB 68184, p. 0050, MSA_CE63_68141. Date available 07/15/2024. Printed 07/31/2024.

zoned Corridor Development (CD).

3. LAND USE.

a. The Parties agree that upon annexation, the Rosedale redevelopment project may under current City law be developed with the Property as a Combined Project, through a single schematic development plan that will also be intended as a rezoning plan for the Rosedale Property (for proposed CD zoning), all of which will be subject to applicable City law.

b. The Property shall be permitted to develop with a building height of up to five (5) stories, or as the zoning allows, whichever is greater. Within five (5) years of the effective date of the Annexation, the Parties agree that the Property shall not be developed with a higher density than what is shown on the Annexation Plan, unless Casey obtains express approval to exceed that density from the Montgomery County Council pursuant to Section 4-416(b) of the Maryland Code. The Parties agree that after five (5) years from the effective date of the Annexation, the Property can be developed at a higher density than what is shown on the Annexation Plan if the City's CD zoning allows for such density.

c. The City will permit the Property to develop and apply current law under Chapter 22 of the City Code (the "Trees and Forest Conservation Law") in effect as of the effective date of this Agreement. Development of the Property shall be exempt from any changes made to the Trees and Forest Conservation Law, necessitated by changes made to the Maryland Code or otherwise.

4. AFFORDABLE HOUSING.

APPLICATION OF CITY LAW. In accordance with Section 24-251 of the City Code, Casey's commitment to provide affordable housing consisting of rental units as set forth above and herein exempts the Property from the affordable housing ordinance as applied to rental units, now contained in Article XVI of the City Code and as amended. In the event that any portion or portions of the Property are converted to for-sale residential dwelling units, the for-sale units will be

subject to the City's regulations relating to providing affordable housing for new residential projects. In addition, if the provision of affordable rental housing changes on the Property, either by Casey or any successive property owner, such that the required proportion of the rental units restricted to occupancy pursuant to the IRS Guidelines is reduced to 15% or less (as described above, but currently requiring that 75% of the units be between 50 – 80% AMI) then the City's Affordable Housing requirements in effect at the time of such change, if they require a proportion of rental units so restricted to 15% or more, shall be applied to the Property.

5. EFFECT OF REZONING. To the extent any rezoning after the termination of the Effective Date results in any of the existing uses on the Property being deemed non-conforming, such uses shall be classified as legal non-conforming uses and shall be able to continue, provided said use does not increase or expand and is otherwise in conformance with the City Zoning Code.

6. NO PAYMENTS IN LIEU OF CITY TAXES. In the development of the Property, no Payments in Lieu of City Taxes for the Property shall be sought.

7. EFFECTIVE DATE. This Agreement shall not become effective until the Annexation Resolution becomes effective pursuant to Section 4-407 of the Maryland Code, (hereinafter "Effective Date of Annexation"). The terms of this Agreement shall be considered for application across the entire Combined Project to promote consistency and the Combined Project being developed, redeveloped, constructed, occupied and operated as a single project.

8. DURATION. This Agreement shall remain valid for twenty-five (25) years following the Effective Date (the "Effective Period"). At any time prior to the Effective Date of Annexation, Casey may withdraw the Petition for Annexation as it relates to the Property.

9. DURATION BINDING NATURE OF AGREEMENT. The provisions of this Agreement are and shall be deemed to be covenants running with the land and shall be binding upon the Properties and their respective successors and assigns with an interest in the Property. This

Agreement shall be amended only in writing, executed by (or on behalf of) the Parties or their respective heirs, successors, grantees or assigns, and shall be effective upon recordation among the Land Records of Montgomery County, Maryland.

10. DURATION REMEDIES. Any Party to this Agreement may seek relief and remedies in any court of competent jurisdiction for the breach or default of the provisions of this Agreement by any other party. The non-breaching Party or Parties shall be entitled to seek all available legal and equitable remedies and relief from the court, including (but not limited to) specific performance injunctive relief and damages. The prevailing party or parties in any such litigation shall be entitled to an award of reasonable attorneys' fees, expenses and court costs. Notwithstanding anything in this Agreement to the contrary, the rights and remedies provided herein are cumulative and not exclusive, and the failure of a Party to exercise any said right or remedy shall not be deemed a waiver or release of any other right or remedy of that party or of any breach or default by the other party.

11. DURATION LAND RECORDS. Within sixty (60) days of the Effective Date of Annexation, this Agreement shall be recorded by Casey in the Land Records of Montgomery County, Maryland, promptly subsequent to the approval of the Resolution.

12. DURATION MISCELLANEOUS. The Parties agree to reasonably negotiate and execute all documents and take such actions (including all entitlements) that are appropriate and necessary to carry out the intentions, terms, and conditions of this Agreement and in a manner that promotes "speed to market."

13. DURATION AUTHORITY. All Parties hereto represent and warrant that the individuals executing this Agreement on their behalves have the full and complete authority to execute this Agreement and that the signatures which appear below bind the respective Parties to the terms of this Agreement. The City further represents and warrants that it has the legal authority, right, and power to enter into this Agreement and is bound by its terms. This Agreement constitutes

the entire agreement and understanding of the Parties hereto with respect to the subject matter hereof and supersedes all prior communications, representations, agreements, and understandings, oral or written, by the Parties relating thereto.

14. DURATION APPLICABLE LAW. It is the intention of the Parties that all questions with respect to the construction of this Agreement and rights and liabilities of the Parties hereunder shall be determined in accordance with the laws of the State of Maryland.

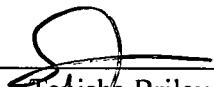
IN WITNESS WHEREOF, each of the Parties hereto has executed and delivered this Annexation Agreement as of the date first set forth above, as evidenced by their respective signatures and acknowledgements on the following pages.

[Signature Pages Follow]

ATTEST

MAYOR AND COUNCIL OF
GAITHERSBURG



By: 

Tanisha Briley
City Manager

STATE OF MARYLAND
COUNTY OF MONTGOMERY

I hereby certify that on this 10th day of July, 2024, before me, a Notary Public in and for the State and County aforesaid, personally appeared Tanisha Briley, who acknowledged herself to be the City Manager of the Mayor and Council of Gaithersburg, a municipal corporation, and that she, as City Manager, being authorized to do so, executed the foregoing instrument on behalf of the corporation for the purposes therein contained, and acknowledged the same to be the act and deed of the corporation, by signing the name of the Mayor and Council of Gaithersburg by herself as City Manager.

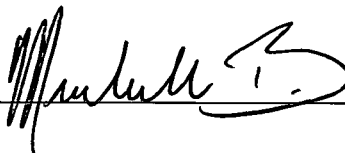
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)



Michelle Batancourt
NOTARY PUBLIC
Montgomery County
State of Maryland
My Commission Expires
January 23, 2028

Notary Public



My commission expires: 1/23/2028

Witness:

Benedicta Kurkovic

EUGENE B. CASEY FOUNDATION

By: Mirna L Lopez

Name: Mirna L Lopez

Title: Trustee

STATE OF MARYLAND *

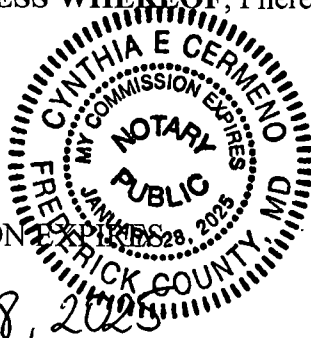
* To wit:

COUNTY OF MONTGOMERY *

I HEREBY CERTIFY THAT on this 27th day of June, 2024, before the undersigned, a Notary Public of the State and County aforesaid, personally appeared Mirna L Lopez who acknowledged herself to be the Trustee of the Eugene B. Casey Foundation and that she, as such officer, being authorized so to do, executed the foregoing Petition for Annexation for the purposes therein contained.

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

(SEAL)



Cynthia E. Cermeno
Notary Public

MY COMMISSION EXPIRES January 28, 2025

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) KAB 68184, p. 0056, MSA_CE63_68141. Date available 07/15/2024. Printed 07/31/2024.

Witness:



EUGENE B. CASEY FOUNDATION

By: 

Name: Donna W Sheehan

Title: Trustee

STATE OF MARYLAND *

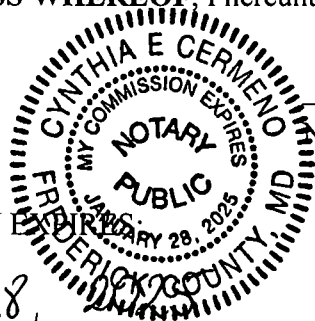
* To wit:

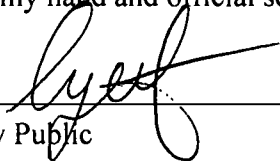
COUNTY OF MONTGOMERY *

I HEREBY CERTIFY THAT on this 27th day of June, 2024, before the undersigned, a Notary Public of the State and County aforesaid, personally appeared Donna W Sheehan who acknowledged herself to be the Trustee of the **Eugene B. Casey Foundation** and that she, as such officer, being authorized so to do, executed the foregoing Petition for Annexation for the purposes therein contained.

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

(SEAL)





Notary Public

MY COMMISSION EXPIRES

January 28, 2025

Vickie M Wilson

Witness:

Vickie M Wilson

EUGENE B. CASEY FOUNDATION

By: Brendan V Sullivan, Jr.

Name: Brendan V Sullivan, Jr.

Title: Trustee

District of Columbia S.B.
~~STATE OF MARYLAND~~ *
*
~~COUNTY OF MONTGOMERY~~ *

To wit:

I HEREBY CERTIFY THAT on this 20th day of June, 2024, before the undersigned, a Notary Public of the State and County aforesaid, personally appeared Brendan V Sullivan, Jr. who acknowledged himself to be the Trustee of the Eugene B. Casey Foundation and that he, as such officer, being authorized so to do, executed the foregoing Petition for Annexation for the purposes therein contained.

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

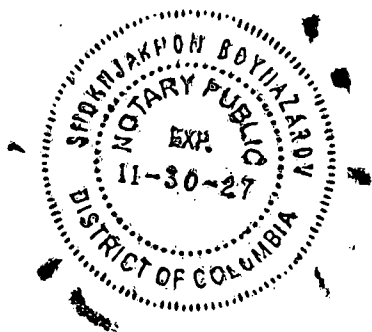
(SEAL)

[Signature]

Notary Public

MY COMMISSION EXPIRES:

11/30/2027



SHOKHJAKHON BOYNAZAROV
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires November 30, 2027

August 4, 2023

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Parcel ID: 09-00768787

**Description of Property to be Annexed into
the City of Gaithersburg, Maryland,
Gaithersburg 9th Election District
Montgomery County, Maryland**

Being the parcel of land acquired by Mirna Lizzette Lopez, Donna Wollin Sheehan and Brendan V. Sullivan, Jr, their successors and/or assigns, as trustees of the Eugene B. Casey Foundation U/T/D, from Mirna Lizzette Lopez, Trustee of the Betty Brown Casey Trust U/T/A, by a deed dated June 7, 2023, and recorded among the Land Records of Montgomery County, Maryland in Liber 67107 at folio 463, also being a part of the 191.17 acres of land acquired by Eugene B. Casey, from Mary E. Clements Offutt, by a deed dated May 15, 1937, and recorded among the aforesaid Land Records in Liber 668 at folio 209, and being more particularly described as follows:

Beginning for the same at a point on the southerly or South 53° 00' 00" West, 522.28 foot line of a plat of subdivision entitled "Parcels "B" & "C", Rosedale", and recorded among the aforesaid Land Records as Plat No. 9659, distant 305.08 feet from the easterly end thereof; thence running reversely with part of said southerly line and binding reversely on part of the 19th line of Annexation X-099, per Resolution No. R-8-69, as found among the City of Gaithersburg, Maryland, records, the following course and distance:

1. North 52° 56' 06" East, 305.08 feet to a point of non-tangent curvature at the southerly end of the easterly curved dedication line of O'Neill Drive (80' wide public R/W), as shown on the aforesaid plat recorded as Plat No. 9659; thence running reversely with said easterly curved dedication line, and binding reversely on the 18th line of the aforesaid Annexation X-099, the following course and distance:

August 4, 2023

Page 2 of 3

2. 380.48 feet along the arc of a curve deflecting to the right, having a radius of 280.00 feet (chord: North 01° 51' 42" East, 351.88 feet) to a point of tangency; thence running reversely with part of the southeasterly dedication line of O'Neill Dive (80' wide public R/W), as shown on the aforesaid plat recorded as Plat No. 9659, also being the southeasterly existing right of way line of O'Neill Drive, as shown on State Roads Commission Plat No.48473, and binding reversely on part of the 17th line of the aforesaid Annexation X-099, the following course and distance:

3. North 40° 47' 26" East, 424.99 feet to westerly end of the southerly line of South Frederick Avenue (MD355) (a variable width public right of way), labeled Station 158+83.15, Offset 524.46' left from the baseline of right of way for Sam Eig Highway (I370), as shown on the aforesaid State Roads Commission Plat No. 48473; thence running with the right of way line of South Frederick Avenue (MD355), the following three (3) courses and distances:

4. South 49° 11' 43" East, 153.34 feet to a point; thence

5. North 40° 48' 24" East, 120.99 feet to a point; thence

6. South 10° 47' 37" East, 186.61 feet to the northerly end of the westerly line of Sam Eig Highway (I370) (a variable width public right of way), labeled Station 158+70, Offset 225' left from the baseline of right of way for Sam Eig Highway (I370), as shown on the aforesaid State Roads Commission Plat No. 48473; thence running with said westerly line of Sam Eig Highway (I370), as shown on State Roads Commission Plats No. 48472 & 48773, the following course and distance:

7. South 35° 35' 50" West, 549.08 feet to the easterly end of the northerly line of Sam Eig Highway (I370) (a variable width public right of way), labeled C.S. Station 152+82.31, Offset 175' left from the baseline of right of way for Sam Eig Highway (I370), as shown on the aforesaid State Roads Commission Plat No. 48472; thence running with said northerly line, the following course and distance:

8. South 63° 42' 04" West, 494.14 feet to the Point of Beginning; containing 228,632 square feet or 5.2487 acres of land more or less.

August 4, 2023

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This description was prepared by Rodgers Consulting, Inc., and is in the Maryland Coordinate System [NAD83(2011), SPCS zone 1900(MD), U.S. Survey Feet], based on static GPS observations post-processed by the National Geodetic Survey's Online Positioning User Service (OPUS). Controlling points include RCI traverse station 9012. The average combined (scale x elevation) factor for the site is 0.99994001.

9012 North 530,633.168 East 1,261,609.655

The undersigned, being a licensed surveyor, personally prepared or was in responsible charge of the preparation and the survey work reflected in this metes and bounds description, in compliance with the requirements set forth in "COMAR" Title 09, Subtitle 13, Chapter 06, Regulation .12.



8/28/2023

License Expiration Date: 12-18-2024

n:\md-montgomery-city of gaithersburg\rosedale casey property\documents\surveying\descriptions\annexation area description.docx

State of Maryland Land Instrument Intake Sheet

Baltimore City County Montgomery
Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office Only.
(Type or Print in Black Ink Only—All Copies Must Be Legible)

Space Reserved for Circuit Court Clerk Recording Validation

1 Type(s) of Instruments
2 Conveyance Type Check Box
3 Tax Exemptions (if applicable)
4 Consideration and Tax Calculations
5 Fees
6 Description of Property
7 Transferred From
8 Transferred To
9 Other Names to Be Indexed
10 Contact/Mail Information
11 IMPORTANT: BOTH THE ORIGINAL DEED AND A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER
Assessment Information
Assessment Use Only - Do Not Write Below This Line

Space Reserved for County Validation

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) KAB 68184, p. 0064, MSA_CE63_68141, Date available 07/15/2024. Printed 07/31/2024.

LR - Government
Instrument 0.00
Agency Name: Mayor and
Council of the city of
Gaither
Instrument List:
Agreement / Easement
Describe Other:
Ref:

=====
Total: 0.00
07/11/2024 11:47
CC15-JhH
#18262123 CC0602 -
Montgomery
County/CC06.02.06 -
Register 06



**DOCUMENT VALIDATION PAGE
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KAREN A. BUSHELL
Clerk of the Circuit Court for Montgomery County
50 Maryland Avenue
Rockville, Maryland 20850
Recording and Licensing
(240) 777-9470