

Tax ID Nos.: 09-00768787  
09-00818176  
09-00818187

**DECLARATION OF COVENANTS**  
**For Affordable Housing**

This DECLARATION OF COVENANTS (“Covenant”), made this \_\_\_\_ day of \_\_\_\_\_, 202\_\_ hereinafter set forth by EUGENE B. CASEY FOUNDATION, a nonprofit foundation pursuant to 26 U.S.C. Section 501(c)(3) of the U.S. Code, owner (hereinafter referred to as “Declarant”) which shall run to the benefit of the CITY OF GAITHERSBURG, MARYLAND (the “City”).

**RECITALS**

WHEREAS, Declarant is the owner of several parcels of property in Gaithersburg, Maryland identified as Parcel 940 on Tax Map FS63 (“Parcel 940”) and the adjacent two (2) parcels that are improved with the Rosedale Apartments that are addressed as 2 O’Neill Drive (“Parcel B”) and 3 Nancy Place (“Parcel C”) all totaling approximately 14.65 acres and more particularly described in Exhibit “A” (the “Property”).

WHEREAS, Parcel 940 was annexed into the City and concurrently zoned Corridor Development (“CD”) on May 20, 2024, pursuant to Resolution No. R-27-24 (the “Annexation”).

WHEREAS, in connection with the Annexation, the Declarant and City entered into an Annexation Agreement dated July 10, 2024, and recorded in the Land Records of Montgomery County, Maryland in Book 68184 at Page 46. Paragraph 4 of the Annexation Agreement exempts Parcel 940 from Article 13 of the City’s Zoning Ordinance (the “City’s Affordable Housing Ordinance”).

WHEREAS, the City approved a Zoning Map Amendment with Schematic Development Plan (Z-10030-2025) on \_\_\_\_\_, which rezoned Parcel B and Parcel C to the CD Zone and exempted both parcels from the City’s Affordable Housing Ordinance (the “SDP”). The SDP authorizes development of 434 multi-family rental dwelling units on the Property (the “Project”).

WHEREAS, as part of the SDP, the Declarant committed to restrict 75% of the units on the Property (326 income restricted units) to occupancy by qualified low- and moderate-income residents (50-80% Area Median Income as defined by IRS Rev. Proc. 96-32) (the “Income Restricted Units”).

NOW, THEREFORE, Declarant hereby declares that the Property shall be operated subject to the following covenants, conditions, and restrictions:

## **ARTICLE I**

In lieu of formally designating 15% of the units developed on the Property pursuant to the SDP in the City’s Moderately Priced Dwelling Unit (“MPDU”) program, the Declarant shall restrict a minimum of 75% of the total units developed on the Property to occupancy by qualified low- and moderate-income residents, 50-80% Area Median Income as defined by IRS Rev. Proc. 96-32. The Income Restricted Units shall be identified for illustrative purposes at the time of Final Site Plan Approval and shall be bound by this Covenant.

## **ARTICLE II**

Commencing on the date the Income Restricted Units are first available for rental, or such other period as established by IRS regulations, the Declarant shall offer the Income Restricted Units to residents that fall within 50 to 80% of Area Median Income as long as the Property remains residential in nature (the “Control Period”) and maintain records documenting compliance with this Covenant and IRS regulations.

## **ARTICLE III**

Within thirty (30) business days of receipt of a written request from the City, the Declarant shall produce an annual report identifying all Income Restricted Units offered at the Project during the most recently completed year in accordance with IRS reporting requirements. The Declarant shall certify the annual report to demonstrate that the Project exceeds the 15% MPDU requirement defined by the City’s Affordable Housing Ordinance.

## **ARTICLE IV**

In the event that any portion or portions of the Property are converted to for-sale residential dwelling units during the Control Period, the for-sale units will be subject to the City’s Affordable Housing Ordinance relative to new residential, for-sale projects. In addition, if the provision of Income Restricted Units changes on the Property during the Control Period, either by the Declarant 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, then the City’s Affordable Housing Ordinance 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.

## **ARTICLE V**

Declarant, its heirs, assigns, and successors, hereby irrevocably assigns, transfers, and conveys to the City of Gaithersburg all its right, title, interest, or obligation to enforce and maintain in full force and effect, the terms, conditions and requirements of this Covenant.

## **ARTICLE VI**

The City of Gaithersburg, Maryland, may enforce the covenants contained herein by a proceeding, at law or in equity, against any person or persons violating or attempting to violate intentionally or otherwise, any covenant or restriction contained herein, either to restrain any violation thereof or to recover damages or monies, or to proceed against the land or the Income Restricted Units to enforce any lien or obligation created by or resulting from this Covenant.

## **ARTICLE VII**

If any default occurs, and is continuing, the City may apply to any state or federal court having jurisdiction for specific performance of this Covenant, for an injunction against any violation of this Covenant, or for such other relief at law or equity as may be appropriate and consistent with applicable requirements of the Covenant. No remedy conferred upon or reserved to the City by this Covenant is intended to be exclusive or any other available remedy or remedies, but each and every such remedy is cumulative and is in addition to every other remedy given under this Covenant, existing at law or in equity. No delay or omission to exercise any right or power accruing upon any failure to perform under this Article will impair any such right or power or will be construed to be a waiver thereof. If, upon or after the occurrence of any default hereunder, the City incurs expenses for the enforcement or performance or observance of any obligation or agreement on the part of others contained herein, the City must be reimbursed upon demand by the party or parties for reasonable expenses paid to third parties.

## **ARTICLE VII**

In the event any provision of this Covenant shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.

## **ARTICLE IX**

This Covenant during its Control Period cannot be amended without the prior written consent of the City of Gaithersburg, Maryland.

IN WITNESS WHEREOF, Declarant, Eugene B. Casey Foundation, has caused these covenants to be executed and delivered by Mirna L. Lopez, its Trustee, its corporate seal to be affixed hereto.

**DECLARANT:**

**EUGENE B. CASEY FOUNDATION**

Witness:

\_\_\_\_\_

By: \_\_\_\_\_

Name: Mirna L. Lopez

Title: Trustee

STATE OF MARYLAND \*

\* To wit:

COUNTY OF MONTGOMERY \*

I HEREBY CERTIFY THAT on this \_\_\_\_\_ day of \_\_\_\_\_, 2025, 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 Covenant for the purposes therein contained.

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

(SEAL)

\_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_

**CITY OF GAITHERSBURG:**

**MAYOR AND COUNCIL OF  
CITY OF GAITHERSBURG**

ATTEST

\_\_\_\_\_

By: \_\_\_\_\_

Tanisha Briley  
City Manager

STATE OF \_\_\_\_\_ ) ss:  
COUNTY OF \_\_\_\_\_ )

I hereby certify that on this \_\_\_\_ day of\_\_\_\_, 2026, 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 Covenant 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.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Expires: \_\_\_\_\_

**Exhibit "A"**  
**Legal Description for the Property**

Parcel 940 (09-00768787)

All that real property located in Montgomery County, Maryland, described in Liber 1125 at folio 61 and described in Liber 6038 at folio 73 as 13.20 acres in the Mt. Pleasant Subdivision, and now assessed as containing approximately 5.28 acres in Mt. Pleasant subdivision, with improvements thereon.

NOTE: Prior references to the above property listed the property as being approximately 13.20 acres. However, said listings were prior to that Deed dated October 23, 1987 and recorded December 28, 1987 in Liber 8087 at folio 405 from the Betty Brown Casey Trust to the State of Maryland, to the use of the State Highway Administration of the Department of Transportation, resulting in the current amount of acreage for this property as established with the Maryland State Department of Assessments and Taxation.

Parcel B (09-00818176)

All that real property located in Montgomery County, Maryland, described as per Plat 9659, Parcel B, ROSEDALE subdivision, containing approximately 4.75 acres, with improvements thereon.

Parcel C (09-00818187)

All that real property located in Montgomery County, Maryland, described as per Plat 9659, Parcel C, ROSEDALE subdivision, and now assessed as containing approximately 4.62 acres, with improvements thereon.

NOTE: Prior references to the above property listed the property as being approximately 4.68 acres. However, said listings were prior to that Deed dated October 23, 1987 and recorded December 28, 1987 in Liber 8087 at folio 405 from the Betty Brown Casey Trust to the State of Maryland, to the use of the State Highway Administration of the Department of Transportation, resulting in the current amount of acreage for this property as established with the Maryland State Department of Assessments and Taxation.