

## **DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT**

THIS DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT ("Agreement") is made this 13th day of July, 2010, by and between HALLE DEVELOPMENT, INC., a corporation organized under the laws of the State of Maryland (the "Petitioner"), and ANNE ARUNDEL COUNTY, MARYLAND, a body corporate and politic of the State of Maryland (the "County").

### **RECITALS**

This Agreement is entered into based upon the following Recitals:

A. The terms used in these Recitals have the meanings set forth in Section 1 of this Agreement.

B. Under Article 66B, §§ 1.03(b)(15) and 13.01, of the Annotated Code of Maryland, the County may, by ordinance, establish procedures and requirements for the consideration and execution of Development Rights and Responsibilities Agreements that conform to the requirements of Article 66B, § 13.01, of the Annotated Code of Maryland.

C. The Anne Arundel County Council has enacted § 17-7-805 of the Anne Arundel County Code, authorizing and governing Development Rights and Responsibilities Agreements for development under the Optional Method in an Odenton Growth Management Area zoning district, and § 17-7-805 of the Anne Arundel County Code is the source of authority for this Agreement.

D. Under § 18-2-103(a)(3) of the County Code, development within the Odenton Growth Management Area is guided by the "Odenton Town Center Master Plan" dated December 2009 and adopted by Bill No. 90-09. The completion of Town Center Boulevard is identified on the Priority Transportation Priority Project List of the Odenton Town Center Master Plan as a "near term" action and remains an unmet objective of the Plan. The impact of the Base Realignment and Closure (BRAC) process on Fort Meade and surrounding areas of the County, including the Odenton Town Center Growth Management Area, has made the completion of Town Center Boulevard an even more pressing transportation need for the County.

E. The Petitioner has the legal and equitable interest in the Property, which consists of approximately 130.17 acres located in the Odenton Town Center Growth Management Area. In addition to its interest in the expeditious completion of Town Center Boulevard, the County has an interest in the timely development of the Property, deemed essential to achieving the Vision and Goals set forth in the Odenton Town Center Master Plan.



F. The Petitioner will reserve land within the Property for use as Town Center Boulevard in accordance with § 17-3-403 of the County Code in the location approved by the County as shown on Sketch Plan S85-330, P09-0088 00, and also depicted on the "Amended Plat of Odenton Town Center at Seven Oaks" attached as Exhibit A to this Agreement, a location that is consistent with the Odenton Town Center Master Plan and the General Development Plan.

G. The purpose of this Agreement is to facilitate the implementation of the Odenton Town Center Master Plan through the development of the Property, and in particular through the completion and dedication to public use of Town Center Boulevard from its current terminus to the existing stem which is located approximately 400 feet north of the intersection of Maryland Route 175 and Morgan Road. The County is giving the Petitioner certain assurances and approvals in return for the agreement by the Petitioner to finance, construct and dedicate to public use Town Center Boulevard through the Property before such construction would be required under the normal process applicable to the development of land in the County.

H. The assurances and approvals given by the County consist of the County's agreement to compensate the Petitioner through transportation impact fee credits for the value of the land and for the construction of Town Center Boulevard that represents the 39% by which the capacity of Town Center Boulevard as constructed by the Petitioner under this Agreement will exceed the capacity otherwise required for development of the Property in accordance with the Sketch Plan approved by the Planning and Zoning Officer, and the County's approval of the adequacy of public facilities for development that is within the scope of the general plan for development of the Property approved by the Sketch Plan, subject to the contingencies set forth in this Agreement.

I. This Agreement is the instrument for memorializing the agreements, assurances and approvals described in these Recitals, and the Petitioner has petitioned the Planning and Zoning Officer to enter into a Development Rights and Responsibilities Agreement to develop the Property under the Optional Method, in accordance with § 17-7-805(a) of the County Code.

J. In satisfaction of the requirements of § 17-7-805(c) of the County Code, the Anne Arundel County Planning Advisory Board held a public hearing on this Agreement on July 13, 2010 and on that date issued a recommendation that the Agreement is consistent with the Odenton Town Center Master Plan and, as appropriate, each of the plans listed in § 18-2-103 of the County Code.

NOW THEREFORE, in consideration of the foregoing Recitals, which are not merely prefatory but are incorporated into and made a part of this Agreement; 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 County and Petitioner hereby agree as follows:

## AGREEMENT

### **Section 1. Definitions**

Terms and phrases used in this Agreement have the meanings set forth in this Section. If not defined in this Section, terms and phrases have the meanings set forth in §§ 1-1-101, 17-1-101 and 18-1-101 of the County Code and shall be construed in the manner set forth in § 1-1-102 of the County Code.

1.1 “Agreement” means this Development Rights and Responsibilities Agreement, including any amendments as provided in Section 23.3 of this Agreement.

1.2 “Award Date” means the date that the County certifies that all easements or rights-of-way have been acquired and all contracts for the construction of both public sewerage and water supply facilities under Capital Project No. S805900 (“Odenton Town Center Sewer”) and Capital Project No. W778400 (“TM Odenton to GB High P Zone”), necessary to satisfy the Contingency for Public Sewerage and Water Supply Facilities set forth in Section 4.3 of this Agreement, have been awarded.

1.3 “Construction” includes the design and engineering necessary for construction, unless otherwise indicated by the context of the Agreement.

1.4 “Construction Manager” has the meaning stated in Section 8.6 of this Agreement.

1.5 “County law” means the provisions of the Anne Arundel County Charter and Code, and any County Plans and regulations adopted thereunder, including the Anne Arundel County Design Manual, the Anne Arundel County Landscape Manual, the Anne Arundel County Standard Specifications and Details for Construction, and the Anne Arundel County Building Code. Unless otherwise expressly stated, “County law” refers to those provisions as they may be amended from time to time.

1.6 “County Plans” include the Odenton Town Center Master Plan and the other documents set forth in § 18-2-103 of the County Code.

1.7 “Effective Date” has the meaning stated in Section 4.2 of this Agreement.

1.8 “Excusable Delay” has the meaning stated in Section 9 of this Agreement.

1.9 “Final Decision” shall have the meaning set forth in Section 15.4 of this Agreement; provided, however, that any “Final Decision” shall be identified as such on the document on which it is memorialized.

1.10 “Minor Modification” has the meaning stated in Section 23.3 of this Agreement.

1.11 “Optional Method” has the meaning stated in Section 6.2 of this Agreement.

1.12 "Notice to Proceed" has the meaning stated in Section 8.5 of this Agreement.

1.13 "Odenton Town Center Master Plan" means the document dated December 2009 and adopted by Bill No. 90-09, and includes the Functional Planning Controls and Design Standards applicable to development in the Odenton Growth Management Area.

1.14 "Phase I" means the development consisting of two six story office buildings and one seven story parking structure that was approved by the County on May 14, 2008 under Site Development Plan No. 2007-0046 labeled "Odenton Town Center at Seven Oaks - An Odenton Town Center Commercial Subdivision," and located on what is now shown as Lot 1 of the "Amended Plat of Odenton Town Center at Seven Oaks" attached as Exhibit A.

1.15 "Property" has the meaning stated in Section 3.2 of this Agreement.

1.16 "Sketch Plan" includes the information described in § 17-3-201 of the County Code.

1.17 "Stop Work Order" has the meaning stated in Section 8.5 of this Agreement.

1.18 "Subsequent Development Approvals" means sketch and final subdivision plan approvals, site development plan approvals, building and grading permits, and other forms of zoning and construction approval from the County that the Petitioner will be required to obtain after the Effective Date of the Agreement in order to develop the Property.

1.19 "Transportation Impact Fee Credits" has the meaning stated in § 17-11-207 of the County Code and Section 10.1 of this Agreement.

## **Section 2. Exhibits**

**Exhibit A Amended Plat of Odenton Town Center at Seven Oaks**

**Exhibit B-1 Composite Plat of Property**

**Exhibit B-2 Legal Description of Property**

**Exhibit C Ordinance Ratifying the Agreement**

**Exhibit D Letter of Approval with Conditions, Sketch Plan No. S85-330, P09-0088 00 NS**

**Exhibit E Scope of Services of Construction Manager**

**Exhibit F Performance and Completion Security**

**Exhibit G Labor and Materials Security**



**Exhibit H Maintenance Security**

**Exhibit I Certificate of Title**

**Section 3. General Provisions**

3.1 Parties. The Parties to this Agreement are the County, a body corporate and politic of the State of Maryland, and the Petitioner, a corporation organized under the laws of the State of Maryland.

3.2 Property. The Property that is subject to this Agreement consists of approximately 130.17 acres and is represented on the Composite Plat of Property attached as Exhibit B-1, and the legal description of which is set forth as Exhibit B-2.

**Section 4. Approval and Effective Date; Contingency**

4.1 Approval. This Agreement is governed by § 17-7-805 of the County Code, and does not take effect unless and until ratified by ordinance of the County Council after review by the Odenton Growth Management Area Advisory Committee. Upon execution by the Parties, the County Executive formally will present the Agreement to the County Council for ratification by ordinance as provided in § 17-7-805(f) of the County Code, and the ordinance shall include a finding by the County Council that the Agreement is consistent with the Odenton Town Center Master Plan and the other County Plans that guide development in the County.

4.2 Effective Date. The Agreement shall take effect on the date that the ordinance approving the Agreement takes effect, and that date shall be the Effective Date as referred to in this Agreement. The ordinance ratifying the Agreement shall be added to this Agreement as Exhibit C. The rights and obligations of the Parties shall be established according to the terms of this Agreement as of the Effective Date. If the ordinance ratifying this Agreement is defeated, the Agreement shall not take effect, and the terms and conditions stated in the Agreement shall not be binding on the Parties nor have any further force and effect.

4.3 Contingency for Adequate Public Sewerage and Water Supply Facilities. Public sewerage and water supply facilities adequate to support the development of the Property as described in Section 5 of this Agreement do not exist as of the Effective Date of this Agreement. Therefore, the continuation of the Agreement is contingent upon the acquisition by the County of any off-site rights-of-way necessary for those facilities and the award, within five (5) years of the Effective Date of the Agreement, of contracts by the County for the construction of public sewerage and water supply facilities adequate to support the development of the Property, to be certified by the County as the Award Date. If, despite the best efforts of the County as set forth in Section 15.3 of this Agreement, the contracts have not been awarded within five (5) years of the Effective Date of this Agreement, this Agreement shall be deemed terminated as of that date, and of no further force and effect unless such period of time is extended by a writing executed by both Parties. Any such extension of that five (5) year period of time shall constitute a Minor Modification not requiring amendment of the Agreement as provided in Section 23.2 of this Agreement. The County will provide the Petitioner with periodic updates on at least a biannual

basis on its progress in designing the facilities, obtaining the necessary off-site rights-of-way, and awarding the contracts required to satisfy the contingency under this Section.

**4.4 Contingency for Stormwater Management.** The design of Town Center Boulevard, hereafter referred to as "TCB," has received the approval of State and federal agencies after extensive review, and that design is contingent upon the application of stormwater management regulations in effect at the time of that approval. COMAR 26.17.02.01-2 and the proposed County ordinance implementing the Maryland Stormwater Management Act of 2007 include a provision for "Administrative Waivers" that will allow certain construction to proceed under existing County law. The continuation of this Agreement therefore is contingent upon the issuance of an Administrative Waiver by the Planning and Zoning Officer in accordance with the provisions of the proposed ordinance and in conformance with the provisions of COMAR 26.17.02.01-2 that allows the construction of TCB as described in Sketch Plan S85-330, P09-0088 00 NS to proceed under the stormwater laws and regulations in effect at the time of State and federal approval of the design of TCB. To satisfy this contingency, such Administrative Waiver shall include an exemption for use of Lot 2 as shown on the "Amended Plat of Odenton Town Center at Seven Oaks" attached as Exhibit A as "borrow area" for construction of TCB as further described in Section 8.15 of this Agreement. If an Administrative Waiver as described in this Section is not issued, this Agreement may be deemed terminated and of no further force and effect upon the sole option of the Petitioner upon notice to the County, subject to the entitlement of the Petitioner to compensation for the Water Line Easement in accordance with Section 12.5 of this Agreement.

## **Section 5. Rights Vested in the Petitioner**

**5.1 Vested Rights.** The Petitioner shall have the right, subject to the terms and conditions of this Agreement, including the condition that there be adequate public facilities as described in Section 11 of this Agreement, to develop the Property in a manner consistent with Sketch Plan S85-330, P09-0088 00 NS for 3.5 million square feet of development approved by the Planning and Zoning Officer, the Letter of Approval for which is attached as Exhibit D. Notwithstanding the fact that only the Letter of Approval is attached as an Exhibit, Sketch Plan S85-330, P09-0088 00 NS in its entirety is incorporated by reference to this Agreement as fully as if set forth herein, and its contents as approved by the Office of Planning and Zoning shall govern the development of the Property as described in this Section. The permitted uses, density and intensity of uses, and the maximum height and size of structures of such development shall be governed by the Odenton Town Center Master Plan and zoning laws in effect as of June 1, 2010, regardless of any changes to County law that take place after June 1, 2010, other than changes made in accordance with Section 5.2. The right conferred by this subsection applies whether or not the Petitioner chooses to develop the Property in phases. Nothing in this Agreement shall preclude development of the Property in excess of the 3.5 million square feet of development to the extent that such development in excess of 3.5 million square feet is permitted under the Odenton Town Center Master Plan, County zoning laws, and standards for adequate public facilities in effect at such time as approval for that additional development is sought, as any development in excess of the 3.5 million square feet is beyond the scope of and not subject to this Agreement.

5.2 Divestment under Statutory Authority. As required by Article 66B, § 13.01(j)(2), of the Annotated Code of Maryland, and notwithstanding any other provisions of this Agreement to the contrary, the right of the Petitioner to develop the Property in a manner described in Section 5.1 of the Agreement is subject to changes in County law that take effect after June 1, 2010 if the County determines that compliance with those changes in law is essential to ensure the health, safety, or welfare of residents of all or part of the County. If the County determines that such compliance is essential as described in this subsection, the Petitioner shall have the right of appeal of such decision to the County Board of Appeals and such right of judicial review as the law shall allow, and the County shall have the burden to prove, on the basis of the record before the Board of Appeals, that compliance with the changes in law is essential to ensure the health, safety, or welfare of residents of all or part of the County.

5.3 Common Law Vesting. Notwithstanding the provisions of Section 5.2, no changes in County law that take effect after June 1, 2010 may be applied in a manner that divests the Petitioner of rights that have vested under Maryland law regarding the use of, construction on, or improvements to land.

5.4 Tolling of Certain Time Limits. The time limit established by § 17-3-304 of the County Code for completing action on the final subdivision plan approval for "Phase I" development as described in Section 8.2 of this Agreement is extended until the date that is ninety (90) days after the Petitioner is notified in the manner required by Section 20.1 of this Agreement that the construction of public water supply facilities under Capital Project No. W778400 has been completed and that Petitioner may make connections of the Phase I development to the County's water system. The time limit established by § 17-3-301(a) of the County Code for filing an application for final plan approval for development of the Property in accordance with the approved Sketch Plan described in Section 5.1 of this Agreement is extended so that the time for filing final plan approval expires coincident with the termination of this Agreement in accordance with Section 17.1 of this Agreement.

## **Section 6. Limitations on Rights Vested in Petitioner**

6.1 General Parameters of Development. The rights vested in the Petitioner under Section 5 of this Agreement extend only to the general plan for development of the Property, and no more specific form of development is promised or approved by this Agreement, and the Petitioner is not relieved from any requirements of County law except as expressly set forth in this Agreement. Petitioner shall comply with all requirements of County law applicable to the development of the Property to the extent that those requirements do not conflict irreconcilably with rights vested under Section 5.1 of the Agreement, and in the event of such conflict the requirements of County law in effect as of June 1, 2010 under Section 5.1 of this Agreement shall govern. The Petitioner shall obtain, pay fees for, and be subject to all necessary Subsequent Development Approvals and to all other requirements attendant to the development of property under County law, including the conveyance of deeds and easements, and the execution of public works agreements. Those Subsequent Development Approvals and other requirements shall be governed by County law then in effect, except for requirements governed by the law in effect as of June 1, 2010 under Section 5.1 of this Agreement.

6.2 Bonus Program. In accordance with the Odenton Town Center Master Plan and § 17-7-805(a) of the County Code, development of the Property under this Agreement shall be by the Optional Method of development. The Petitioner shall have the right to seek increased floor area ratio, height, reduced open space areas, and other modifications by participation in the Bonus Program established by § 17-7-811 of the County Code in accordance with the procedures and criteria set forth in § 17-7-812 of the County Code.

6.3 Rights under Administrative Appeal. In an administrative appeal of any denial of a Subsequent Development Approval, the Petitioner shall have the right to claim that the denial would deprive the Petitioner of its rights under Section 5 of this Agreement, and the Board of Appeals shall not affirm the denial in a manner that would deprive the Petitioner of those rights. Any failure by the Petitioner to exhaust this administrative remedy shall bar the Petitioner from obtaining relief in the courts based on such a claim.

## **Section 7. Term**

Except for those provisions of this Agreement that specifically provide for a longer duration, the "Term" of this Agreement shall commence on the Effective Date and shall continue until the date that is forty (40) years after the Award Date as defined in Section 1.2 of this Agreement, unless that Term is modified in accordance with Section 23.3 of this Agreement, or unless the Agreement is terminated under Section 4.3 of the Agreement.

## **Section 8. Construction of Town Center Boulevard**

8.1. Scope of Construction Subject to Agreement. Petitioner shall design, engineer, and construct TCB from its terminus under "Phase I" Construction to the existing stem of TCB at the intersection of Maryland Route 175 and Morgan Road. TCB shall be constructed by the Petitioner through the Property within the right-of-way approved by the County on Sketch Plan S85-330, P09-0088 00 NS , and through a parcel owned by the County described in Section 8.14 of this Agreement, subject to such revisions as approved by the County. The construction of TCB required by this Agreement includes the roadway and all related improvements, including sidewalks, stream crossings, multipurpose trail, and storm drainage facilities. The location, design and construction of TCB shall conform to this Agreement, the Anne Arundel County Design Manual, the Odenton Town Center Master Plan, the Anne Arundel County Standard Specifications and Details for Construction, all applicable permits, State and federal regulatory approvals, approved Sketch Plan S85-330, P09-0088 00 NS, and to the specific design of TCB as approved by the County. Nothing in this Agreement shall apply to or affect the existing stem of TCB at the intersection of Maryland Route 175 and Morgan Road that is already under the ownership and control of the County.

8.2. "Phase I" Construction. The construction of TCB by Petitioner from the current terminus of TCB at the Seven Oaks subdivision in the vicinity of the Route 32 overpass to and including a roundabout with Odenton Avenue (referred to as the "Phase I" construction of TCB) is required under Site Development Plan No. 2007-0046 approved by the County on May 14, 2008, and located on what is now shown as Lot 1 of the "Amended Plat of Odenton Town Center at Seven Oaks" attached as Exhibit A. Except as provided in Section 5.4 of this Agreement and

except for purposes of the payment of transportation impact fees against which the transportation impact fee credits may be applied as described in Section 10 of this Agreement, development by the Petitioner of "Phase I" and the Phase I construction of TCB in accordance with Site Development Plan No. 2007-0046 labeled "Odenton Town Center at Seven Oaks - An Odenton Town Center Commercial Subdivision" is beyond the scope of and not subject to this Agreement. Phase I construction of TCB shall be completed no later than the time for completion of the remainder of TCB as required by Section 8.4 of this Agreement.

8.3. Estimated Costs of Construction. For purposes of determining the amounts of the Performance and Completion, Labor and Materials, and Maintenance security under Section 8.9, the total estimated costs of the construction of TCB as required by this Agreement shall be prepared by Halle in a manner approved by the County prior to the Notice to Proceed. However, the actual costs of the construction, whether or not they exceed this estimate or any revised estimate, shall be borne by the Petitioner.

8.4 Time for Completion of Construction. The Petitioner shall have the construction of TCB as required by this Agreement completed and ready for acceptance by the County no later than two (2) years after the date that the Petitioner is notified of the Award Date for the construction of both public sewerage and water supply facilities in the manner required by Section 20.1 of this Agreement or the date that the Petitioner is notified the construction of the water line on the Property of the Petitioner described in Section 12.5 of this Agreement has been completed and is operational, whichever occurs later, subject to extension for any period of Excusable Delay as determined in accordance with Section 9 of this Agreement. The Petitioner specifically acknowledges that time is of the essence in completing construction of TCB by the deadline established in this subsection. Prior to the Award Date, the Petitioner will provide the County with periodic updates on its progress in designing TCB, obtaining the necessary permits and other approvals, and awarding the contracts required to construct TCB as required by this Section.

8.5 Notice to Proceed; Inspections; Stop Work Orders. The Petitioner may but is not required to commence construction of TCB at any time after the Effective Date of this Agreement, subject to the requirement that construction shall not be commenced until all required permits are obtained, a pre-construction meeting is held that includes a representative of the County, and the County gives written Notice to Proceed. The Petitioner shall employ only those contractors and subcontractors who have all required registrations and licenses to perform the work, and all of whom shall be identified to the County before work proceeds. The County has the right to inspect all phases of construction, and the Petitioner hereby grants to the County an irrevocable right to enter upon the Property for the purposes of inspecting construction of TCB. The County may issue Stop Work Orders for cause, and upon issuance the Petitioner and the Petitioner's contractors and subcontractors shall stop and not resume work until authorized to do so by the County. A Stop Work Order shall be delivered in the manner for giving notice to the Petitioner under this Agreement, or may be hand-delivered to the Petitioner's contractor

8.6 Third Party Construction Manager. There shall be a full-time Construction Manager paid for by the Petitioner and under contract with and reporting to the County. The Construction Manager shall be selected by the County from a list of at least five (5) firms or individuals

selected by the Petitioner from the full list of firms and individuals "pre-qualified" under the County's procurement regulations to perform such service. The scope of services of the Construction Manager and requirements for reports and coordination between the Petitioner and the Construction Manager are set forth in Exhibit E, and the Petitioner shall cooperate with the Construction Manager in the performance of those services. The County shall pay the fees of the Construction Manager based on monthly invoices submitted to and approved by the County, and the Petitioner shall reimburse the County for such payments within fifteen (15) days of receiving copies of such invoices as marked paid by the County. Reimbursement of the costs of the Third Party Construction Manager by the Petitioner as provided in this Section is in lieu of the 7% "Inspection Fee" customarily imposed by the County, which shall be deemed to be waived.

8.7 Warranties. For a period of two (2) years after acceptance of TCB by the County, the Petitioner warrants and guarantees the quality of the work performed, and is responsible for maintaining the improvements within the scope of this Agreement free from any defects resulting from the quality of the work and, in the event of such defects, for repairing or restoring the improvements to a condition that complies with this Agreement, the Anne Arundel County Design Manual, the Anne Arundel County Standard Specifications and Details for Construction, any final infrastructure construction plans for the Project, and all applicable law and regulations. Any repair or restoration during the warranty period shall cause the warranty to run for one additional year beyond the original two year period. The issuance of a permit or any inspection, repair, suggestion, approval, or acquiescence of any person affiliated with the County does not relieve the Petitioner from the warranty or any other term or condition of this Agreement. The Petitioner shall repair or restore all defects covered by the warranty within the time provided in a written demand from the County. If the Petitioner does not initiate corrective action as required, the County may take any action necessary to correct the defects and any associated damage at the risk and expense of the Petitioner. The Parties acknowledge that the warranty given under this Section does not extend to repairs or restoration of damage caused by traffic accidents and does not require the Petitioner to remove snow or ice from the roadway.

8.8 Indemnification and Insurance. Petitioner agrees to indemnify, defend, and hold harmless to the County (including its officers, agents, and employees) from any and all claims, actions, demands, and judgments (including reasonable attorneys' fees) that arise out of or that relate in any way to construction, maintenance, or lack of maintenance of the improvements. Petitioner shall maintain comprehensive general liability insurance coverage with minimum limits of \$1,000,000 per occurrence. A certificate of the required insurance coverage that identifies the County as an additional insured must be provided to the County in a form and with contents acceptable to the County before the County issues the Notice to Proceed described in Section 8.5 of this Agreement. Petitioner shall maintain the required insurance coverage until released as provided in Section 8.12.

8.9 Other Security and Reimbursement. The Petitioner must provide Performance and Completion security for TCB in the form attached as Exhibit F and in an amount equal to the Estimated Costs of Construction of TCB as set forth in Section 8.3, before the County issues the Notice to Proceed described in Section 8.5 of this Agreement. The Petitioner also must provide Labor and Materials security for TCB in the form attached as Exhibit G, and in an amount equal to 50% of the Estimated Costs of Construction of TCB, before the County issues the Notice to



Proceed. After acceptance of TCB by the County, the Petitioner shall provide Maintenance security for TCB in the form attached as Exhibit H and in an amount equal to 10% of the Estimated Costs of Completion of TCB. Upon acceptance of the Maintenance security by the County, the Performance and Completion and the Labor and Material security shall be released by the County and returned to the Petitioner. All security required by this Agreement shall be in the form of an irrevocable letter of credit or bond from a surety acceptable to the County. In addition to the security posted with this Agreement, the Petitioner agrees to reimburse the County for any and all additional costs incurred to complete, restore, or repair TCB, including all County administrative costs and fees for independent contractors, consulting engineers, or other experts, and with such costs and fees to accrue pre-judgment interest at the rate of 6% per year until paid. The Petitioner further authorizes the County to recover these additional costs by placing a lien on any properties of record owned by the Petitioner.

8.10 Deed. The Petitioner must execute or cause to be executed, and deliver to the County, a deed for conveyance to the County of all interests in TCB required by this Agreement that contains covenants of special warranty and further assurances before the County issues the Notice to Proceed described in Section 8.5 of this Agreement. The conveyance shall be free of any liens, easements, encumbrances, restrictions, or covenants, except as otherwise agreed to by the County in writing. Recordation of the deed by the County shall not constitute acceptance by the County of TCB. The Petitioner has provided to the County a Certificate of Title for the land that includes the roadway for TCB and all related improvements as described in Section 8.1 of this Agreement, attached as Exhibit I.

8.11 Maintenance of Town Center Boulevard. The Petitioner shall maintain to the reasonable satisfaction of the County public access on TCB as constructed by the Petitioner if certificates of use and occupancy have been issued for the Project and if TCB has not been accepted by the County. The County may take any necessary action to maintain public access on TCB if the Petitioner fails to do so, and the Petitioner shall reimburse the County for all reasonable associated costs. Once the road is accepted by the County, the County shall maintain that storm water infrastructure that serves only the right-of-way for TCB; storm water infrastructure that serves both the right-of-way and any part of the Property outside of the right-of-way shall be maintained by the Petitioner. If the County does not maintain the storm water infrastructure under its responsibility, the Petitioner shall have the option to maintain the storm water infrastructure at the County's expense.

8.12 Release. The Petitioner shall be released from the insurance and other obligations imposed by this Section, except for the duty to indemnify described in Section 8.8, when all of the following have occurred:

- (a) Acceptance by the County of the completed construction of TCB;
- (b) Conveyance to the County of good and marketable title to all portions of the Property to be conveyed to the County in order to satisfy the obligations of this Agreement, whether or not dedicated to public use;

(c) Satisfaction of all timely and properly filed claims for labor or materials as secured under this Section; and

(d) Expiration of the warranty period described in Section 8.7.

8.13 Public Works Agreement. As authorized by § 17-7-805(e) of the County Code, this Section constitutes the public works agreement for that part of the construction of TCB within the scope of this Agreement that is required for any development of the Property, regardless of whether this Agreement remains in effect. The Indemnification provisions described in Section 8.8 shall survive a release of the obligations of this Section, a termination of this Agreement, and the execution of deeds or any other documents conveying an interest in all or part of the Property. Upon the written consent of the Parties, a separate, substitute public works agreement may be executed for TCB in the event of a termination of this Agreement; unless such substitution is made, this Section 8 shall remain in effect during development of the Property. The Warranty required by Section 8.7 shall survive a termination of this Agreement and the execution of deeds or any other documents conveying an interest in all or part of the Property.

8.14 Right of Entry on County Property. The scope of construction of TCB required by Section 8.1, eligible for transportation impact fee credits under Section 10, and subject to all of the other requirements of this section, includes construction on property owned by the County and described in the following deeds recorded in the land records of Anne Arundel County, Maryland: Deed from Halle Development, Inc. to Anne Arundel County, Maryland, dated September 10, 2007 and recorded in book 19559, page 0023; Deed of Exchange between Odenton Investments, LLC and Anne Arundel County, Maryland, dated September 10, 2007 and recorded in book 19559 page 29, saving and excepting therefrom the property described in Exhibit A and shown on Exhibit A-1 attached to said deed; Deed of Easement and Agreement from Clarence N. Ouellette, et ux. to Anne Arundel County, Maryland dated February 3, 1997 and recorded in book 7808 page 32; and Deed from Claude W. Stripling, Trustee to Anne Arundel County, Maryland dated November 26, 1997 and recorded in book 8243 page 789. At any time after the Effective Date of this Agreement, the Petitioner shall have the right to enter upon this property owned by the County for purposes of survey, design, and engineering necessary for construction of TCB. The Petitioner also shall have the right of entry on this property owned by the County for purposes of site development and construction of TCB, but only after complying with the other requirements of this Section, including the requirements for Performance and Completion, Labor and Materials, and Maintenance security.

8.15 Grading Permit for TCB. The scope of work permitted under the grading permit issued for construction of TCB may include clearing on one or more of the lots shown on the approved Sketch Plan for purposes of stockpiling, excavation, or storage of construction equipment. The areas proposed for such purposes shall be shown on the plans submitted with the permit application, and the amount of clearing and disturbance shall be kept to an absolute minimum and is subject to the approval of the Office of Planning Zoning, with such approval and issuance of the grading permit predicated on compliance with all requirements for forest conservation, protection of environmental features, stormwater management, and sediment and erosion control. The scope of the Administrative Waiver described in Section 4.4 of this Agreement shall include the work described in this Section.

## **Section 9. Excusable Delay**

9.1. Definition of Excusable Delay. Subject to the requirement in Section 9.2, Excusable Delay during the construction of TCB includes delay that arises from unforeseeable causes above or beyond the control and without the fault or negligence of the Petitioner, the Petitioner's subcontractors and suppliers, and includes acts of God, strikes, lockouts or industrial disputes or disturbances, civil disturbances, interruptions by government or court orders, necessity for compliance with any present and future valid court orders, acts of the public enemy, wars, riots, blockades, insurrections, epidemics, landslides, lightning, earthquakes, fires, floods, explosions, or any other cause not reasonably within the control of the Petitioner. Failure by the Petitioner to provide the documents and security required by Sections 8.8, 8.9, and 8.10 of this Agreement in a timely manner shall not constitute Excusable Delay. Excusable Delay shall also include unforeseeable delay in the issuance of permits and other approvals by the County and other governmental agencies where such delay is without the fault of the Petitioner and is in excess of the normal time required for the review of the application for such permits and approvals, and unreasonable delay by the County in issuing the Notice to Proceed described in Section 8.5 of this Agreement

9.2 Notice to County. In order for delay to constitute Excusable Delay, the Petitioner must give prompt written notice to the County of the cause giving rise to the delay, stating the nature of the cause for delay, its anticipated duration, and any action being taken to avoid or minimize its effect.

## **Section 10. Reimbursement for Costs of Construction of Town Center Boulevard and Value of Land**

10.1 Transportation Impact Fee Credits. The County acknowledges that approximately 39% of the capacity created by the construction of Town Center Boulevard by the Petitioner in accordance with Section 8 of this Agreement will be in excess of the capacity otherwise required to support development of the Property in accordance with the Sketch Plan approved by the Planning and Zoning Officer. The Petitioner shall be reimbursed for the value of the land and construction attributable to this expanded capacity by development impact fee credits for transportation as authorized by § 17-11-207 of the County Code and in the amount provided in Section 10.2 of this Agreement. This Agreement shall constitute the fee agreement described in § 17-11-207(a) of the County Code.

10.2 Amount of Credits. The amount of transportation impact fee credits to which the Petitioner shall be entitled is \$6,025,750.

10.3 Application of Credits; Fee Schedule. Except as otherwise provided in this Section 10.3 or in Section 10.5 of this Agreement, the Petitioner shall be entitled to the development impact fee credits for transportation in accordance with the provisions set forth in Section 10 of this Agreement when the construction of TCB is completed and accepted by the County and the Petitioner provides maintenance security as required by Section 8.9 and if the Petitioner is not otherwise in default of any of the material terms and conditions of this Agreement, and that

entitlement shall survive termination of this Agreement, including a termination under Section 4.3 of this Agreement, as provided by Section 17.4 of this Agreement. The development impact fee credits for transportation to which the Petitioner is entitled shall be applied against development impact fees for transportation to be paid before issuance of building permits in accordance with § 17-11-206(a) of the County Code, but the amount of the fees owed against which the credits are applied shall be based on the fee schedules in effect on the Effective Date of this Agreement or in effect as of dates of applications for building permits, whichever is less, as those applications are filed from time to time. The impact fee credits to which the Petitioner is entitled shall be applied against the amounts owed until the credits are exhausted, and when such credits are exhausted the Petitioner shall make any further payment for development impact fees for transportation at the rates in effect on the dates of application for building permits. For Phase I development and for development on Lot 2 as shown on the "Amended Plat of Odenton Town Center at Seven Oaks" attached as Exhibit A, the development impact fee credits for transportation may be applied against the amounts owed by the Petitioner as soon as the Performance and Completion and Labor and Materials security as required by Section 8.9 of this Agreement are provided and the Notice to Proceed described in Section 8.5 of this Agreement is issued by the County.

10.4 No Cash Value for Transportation Impact Fee Credits. There shall be no reimbursement to the Petitioner by the County of the costs of construction of TCB or value on land on which it is constructed other than through development impact fee credits for transportation calculated in accordance with this Section, no accrual or payment to the Petitioner of any interest on impact fee credits, and the impact fee credits shall have no cash or other value for which the County may be held liable to the Petitioner, even if the amount of impact fee credits exceeds the amount of impact fees for transportation owed by the Petitioner to the County.

10.5 Application of Advance Credits for Phase I. The Petitioner may apply the development impact fee credits for transportation to which the Petitioner is entitled against development impact fees for transportation to be paid before the issuance of building permits for Phase I before TCB is completed and accepted as otherwise required under Section 10.3 of this Agreement, and before providing Performance and Completion and Labor and Materials security and the issuance of the Notice to Proceed as described in Section 10.3 of this Agreement, provided as follows: In the event that this Agreement is terminated before TCB is completed and accepted by the County and the Petitioner provides maintenance security as required by Section 8.9, the Petitioner shall upon such termination repay to the County the cash value of the transportation impact fee credits applied to Phase I, with interest from the date of application to the date of termination calculated at 3% per annum. If not repaid when due as set forth in this subsection, the unpaid transportation impact fee credits shall be constitute a lien upon that part of the Property that is shown as Lot 1 of the "Amended Plat of Odenton Town Center at Seven Oaks" attached as Exhibit A and be collected in the manner set forth in § 1-9-101 of the County Code.

10.6 Assignment of Rights. The Petitioner shall have the right to assign the entitlement to development impact fee credits for transportation only in connection with an assignment of development rights under Section 13.2 of this Agreement. Regardless of any such assignment,



the County shall have no obligation to grant impact fee credits to the Petitioner or any third party if the credits to which the Petitioner is entitled under this Section have been exhausted.

## **Section 11. Adequacy of Public Facilities**

11.1 Road and Storm Drain Facilities. Development of the Property in a manner consistent with Sketch Plan S85-330, P09-0088 00 NS approved by the Planning and Zoning Officer is approved for adequacy of public road and storm drain facilities under Subtitle 4 of Title 5 of Article 17 of the County Code, regardless of any changes to County law that take place after the Effective Date of this Agreement other than changes made in accordance with Section 5.2 of this Agreement.

11.2 Water Supply and Fire Suppression Facilities. Approval for adequacy of public water supply and fire suppression facilities is contingent on the award of a contract by the County for the construction of Capital Project No. W778400 ("TM Odenton to GB High P Zone").

11.3 Sewerage Facilities. Approval for adequacy of public sewerage facilities for purposes of this Agreement is contingent on the acquisition of the easements for and award of a contract by the County for the construction of Capital Project No. S805900 ("Odenton Town Center Sewer"). This shall not be construed to prohibit the Petitioner from obtaining adequate public sewerage facilities for development on Lot 2 as shown on the "Amended Plat of Odenton Town Center at Seven Oaks" attached as Exhibit A in a manner other than as described in this Section, although capacity for Lot 2 is included in the 1,449 equivalent dwelling units of wastewater capacity reserved in accordance with Section 11.5 of this Agreement.

11.4 School Facilities. Under the provisions of County law in effect on the Effective Date of this Agreement, approval for adequacy of public school facilities is not required within the Core of the Odenton Growth Management Area, and that exemption under § 17-5-201(b) of the County Code is a right vested in the Petitioner under Section 5 of this Agreement.

11.5 Water Supply and Sewerage Reservations and Allocations; Fees and Charges. Upon satisfaction of the contingencies described in Sections 11.2 and 11.3 of this Agreement, the County shall reserve for the term of this Agreement for use by the Petitioner the 1,449 equivalent dwelling units of water capacity and the 1,449 equivalent dwelling units of wastewater capacity necessary to accommodate the development described in Section 5.1 of this Agreement. However, for purposes of determining when the fees and charges imposed under Title 5 of Article 13 of the County Code become due and payable as a consequence of "allocation" of such capacity, the date of approval of the site development plan for each phase of development of the Property shall be deemed the date of allocation. The charges and fees that become due and payable as a consequence of approval of each site development plan shall be based only on the number of equivalent dwelling units of capacity necessary to accommodate that development approved by the site development plan.

11.6 Release of Water Supply and Sewerage Reservations. The Petitioner shall release to the County any equivalent dwelling units of water capacity or wastewater capacity reserved

under Section 11.5 of this Agreement that are in excess of the capacity required for development of the Property once development as described in Section 5.1 of this Agreement has been substantially completed and there are no active plans submitted by the Petitioner for any further development of the Property. As an alternative to such release, the Petitioner may retain the reservation by making payment of the then-current fees and charges imposed as a consequence of "allocation" of the capacity. If the County makes demand for a release of capacity under this Section and the Petitioner fails to provide reasonable evidence of its intent to further develop the Property, the County may consider the reservation of that capacity lapsed and allocate the capacity to other users after notice to the Petitioner.

## **Section 12. Reservation of Town Center Boulevard Right-of-Way; Water Line Easement**

12.1 Extension of Reservation of Right-of-Way. As required by the County under § 17-3-403(a) of the County Code, land within the Property has been reserved for acquisition by the County for use for Odenton Town Center Boulevard as shown on Sketch Plan S85-330, P09-0088 00 NS. In accordance with § 17-3-403(b) of the County Code, the period of time of the reservation hereby is extended to three (3) years from the Effective Date of this Agreement, subject to further extension by a writing executed by both Parties, which shall constitute a Minor Modification to this Agreement.

12.2 Acquisition by the County. By operation of County law, the County retains the right at any time to acquire unimproved land under reservation for TCB as provided by § 17-3-403(c) of the County Code regardless of whether the Petitioner is in default of this Agreement, including a default because of a violation by the Petitioner of the deadline for construction of TCB under Section 8.4 of the Agreement. This right to acquire the land under reservation shall not apply if any part of construction of TCB has been completed by the Petitioner prior to the acquisition by the County. The Petitioner acknowledges that the rights of the County under § 17-3-403 of the County Code to acquire unimproved land under reservation are not dependent upon this Agreement and the County acknowledges that the exercise of its right of acquisition under this Section is subject to an appropriation sufficient to pay the compensation described in Section 12.3 of this Agreement.

12.3 Right to Compensation for Acquisition. If the County exercises the rights described in Section 12.2 of this Agreement, the Petitioner shall be entitled to compensation in the amount of the unimproved value of the land determined in accordance with § 17-3-403(c)(2) of the County Code and Section 12.7 of this Agreement. If the land under reservation for TCB is acquired by the County and compensation is paid to the Petitioner as provided in this section such compensation shall be in lieu of impact fee credits and, the Petitioner shall not be entitled to impact fee credits under Section 10 of this Agreement.

12.4 Acquisition in the Absence of a Default. If the County exercises its right under Section 12.2 in the absence of a default of this Agreement by the Petitioner, this Agreement shall remain in full force and effect, provided that upon payment by the County of the compensation required by Section 12.3 of this Agreement the Petitioner shall not be entitled to impact fee credits under Section 10 of this Agreement.

12.5 Water Line Easement; Right to Compensation. The parties have signed an easement for construction by the County or its contractors of a public water line as shown on Sketch Plan S85-330, P09-0088 00 NS. That easement is titled "Deed to Easement to Anne Arundel County, Maryland" and is dated July 12, 2010, and is fully executed and ready for recordation. However, the Deed of Easement shall not be recorded unless and until this Agreement is approved and takes effect as provided in Section 4.2 of this Agreement; if this Agreement is not approved, the Deed of Easement shall be returned by the County to the Petitioner. Upon the Effective Date of this Agreement as described in Section 4.2 of this Agreement, the County shall record the easement in the land records of Anne Arundel County, and thereafter may begin construction of the public water line. In the event that this Agreement thereafter is terminated in accordance with Section 4.3 of this Agreement because the Award Date for the construction of public sewerage and water supply facilities has not occurred within five (5) years of the Effective Date or within any extension of said period of time executed by the Parties as set forth in Section 4.3 of this Agreement, the Petitioner shall be entitled to compensation for the value of the water line easement. If the Parties are unable to agree on the amount of the compensation, the compensation shall be determined in the manner described in Section 12.7 of this Agreement.

12.6 Water Line Easement; Third Party Inspection. The County shall engage the services of a third party construction inspector to inspect the construction of the water line, and the construction inspector shall provide the services set forth in Exhibit E. Those services shall include inspections to determine if the work is proceeding in accordance with those provisions of the construction contract documents intended to make sure that the work is done in a manner adequate to support the subsequent construction of TCB.

12.7 Determination of Compensation. In the event that the Parties are unable to agree on the amount of the compensation for the land under reservation for TCB or for the water line easement, each Party shall select an appraiser at its own expense. If the two appraisals are within 10% of each other, the appraisals shall be averaged and that average shall constitute the amount of compensation to be paid by the County to the petitioner. If the two appraisals are more than 10% apart, the two appraisers shall select a third appraiser with the costs shared equally by the Parties, and the middle of the three appraisals shall constitute the amount of compensation to be paid by the County to the Petitioner. This Subsection 12.7 shall survive a termination of this Agreement as provided under Section 17.4 of this Agreement as to compensation for the water line easement in the event that such termination takes place after the water line easement has been approved and recorded as provided in Section 12.5.

### **13. Transfer and Assignment of Rights and Interests**

13.1 Construction of TCB. The Petitioner shall not assign the obligation to construct TCB and other obligations described in Section 8 of this Agreement without the approval of the County, and any assignment that takes place without the approval of the County rendering divests the Petitioner of any rights under Sections 5 and 11 of this Agreement, and is a material breach of this Agreement that renders the obligations of the County under this Agreement voidable at the sole discretion of the County. The Petitioner may seek the approval of the County to a transfer of the Petitioner's obligations under Section 8 of this Agreement, and the

consent of the County shall not be unreasonably withheld, subject to the right of the County to demand proof to its satisfaction that the proposed transferee has the financial and technical ability to perform and complete the obligations of the Petitioner under Section 8 of this Agreement. Approval of the transfer shall be in writing and constitute a Minor Modification to this Agreement under Section 23.3 of this Agreement, and the transferee shall become a signatory and party to this Agreement.

13.2 Development Rights. The Petitioner shall have the right to make one or more assignments of the rights to develop the Property as described in Section 5 of this Agreement subject to notice to the County that identifies with reasonable specificity the scope of the rights assigned to the parcel of land that is the subject of the assignment and any entitlement to transportation impact fee credits accompanying the assignment. Each assignment under this Section shall apply to and correspond with one or more legal lots, and there shall be no assignment of less than all of the development rights applicable to an individual lot. The Petitioner and any assignee shall remain solely responsible for ensuring that no assignment would cause development on the property to exceed the total development allowed under Section 5.1 of this Agreement, and the County shall not be bound to approve any development that would cause development on the property to exceed the total development allowed under Section 5.1 of this Agreement. Nothing in this Section prohibits the Petitioner from conveying or assigning the rights, title or interest in single lots after final subdivision approval to one or more persons, subject to the requirements of Section 13.2 and 13.3 of this Agreement. The right to assign development rights shall include the right to assign credits against development impact fees for transportation as provided in Section 10.5.

13.3 Constructive Notice and Acceptance. Every person who, during the term of this Agreement, owns or acquires any right, title or interest in or to the Property, or any part thereof, shall conclusively be deemed to have consented and agreed to be bound by every provision contained in this Agreement, whether or not any reference to this Agreement is contained in the instrument by which such person acquired such right, title or interest.

## **Section 14. Dispute Resolution**

14.1 Mandatory Arbitration. A dispute over whether the Petitioner violated the deadline for construction of TCB under Section 8.4 of the Agreement shall be subject to binding arbitration governed by the Maryland Uniform Arbitration Act.

14.2 Voluntary Arbitration. The Parties may by mutual written consent submit other disputes and controversies relating to or arising under this Agreement to binding arbitration.

14.3 Arbitration Procedures. If the Parties consent in writing, a matter may be arbitrated by a single arbitrator, with the manner of selecting that arbitrator set forth in the written consent. Otherwise, there shall be three arbitrators, one of whom shall be named by the Petitioner, one of whom shall be named by the County, and the third of whom shall be named by the other two arbitrators. As used in this Agreement, the term "arbitrator" refers both to a single arbitrator or collectively to a panel consisting of three arbitrators. Unless another location is designated by consent of the Parties, the arbitration shall be held at the Heritage Office Complex of the County.



Except as provided in Section 14.4 of this Agreement, the Parties shall bear their own costs of arbitration and share equally the expenses, fees, and costs of the arbitrator.

14.4 Award of Costs of the Arbitrators. If the arbitrator finds that either party acted in bad faith and that such bad faith resulted in a matter unnecessarily being submitted to arbitration, the Arbitrator may order the party that acted in bad faith to pay all of the arbitrator's fees and expenses and the fees and expenses incurred by the other party in the conduct of the arbitration. As used in this Section, an action taken "bad faith" has the meaning set forth in Rule 1-341 of the Maryland Rules.

## **Section 15. Remedies for Default**

15.1 Duty to Meet and Confer. Because of the substantial reliance by both the Petitioner and the County on the provisions of this Agreement, the Parties desire to avoid a termination of this Agreement based on a default by either party, if other means or procedures to resolve disputes or problems exist. Therefore, prior to taking any action to terminate this Agreement based on an alleged fault, the County and the Petitioner will meet and confer in an attempt to arrive at a mutually acceptable alternative to termination that substantially advances the interests of the Parties as set forth in the Recitals.

15.2 General Remedies for Failure of Petitioner to Perform. Subject to the provisions of Section 15.4 and 15.5, if the Petitioner fails or refuses to perform its obligations under this Agreement, the County shall give written notice to the Petitioner describing the nature of the default. If after thirty (30) days the Petitioner has not cured the default, the County may (1) seek and obtain equitable relief to enforce the terms and conditions of this Agreement either through a decree for specific performance or an injunction, (2) bring a legal action for damages or other redress, or (3) declare this Agreement null and void and of no further effect by written notice to the Petitioner, and cease issuing Subsequent Development Approvals in accordance with the Agreement. The remedies described in this Section are cumulative rather than alternative, and the election of one of the remedies described in this Section shall not preclude the exercise by the County of another. If the County declares this Agreement null and void and of no further effect, the Petitioner shall have the right to challenge that action in the manner described in Section 15.3.

15.3 General Remedies for Failure of the County to Perform. Subject to the provisions of Section 15.5, if the County fails or refuses to perform its obligations under this Agreement, the Petitioner shall give written notice to the County describing the nature of the default. If after thirty (30) days the County has not cured the default, the Petitioner may (1) seek and obtain equitable relief to enforce the terms and conditions of this Agreement either through a decree for specific performance or an injunction, or (2) bring a legal action for damages or other redress. The County shall make its best efforts to acquire land and award the contracts for construction for the public sewerage and water supply facilities within the time specified in Section 4.3 of this Agreement, but Petitioner acknowledges that the existence of variables beyond the control of the County, including the need to acquire easements from the owners of multiple parcels of land with uncertain costs, and the need for future appropriations, means that the satisfaction of the Contingency for Adequate Public Sewerage and Water Supply Facilities is not warranted or

guaranteed by the County, and failure for any reason to satisfy the Contingency for Adequate Public Sewerage and Water Supply Facilities shall not constitute a breach of this Agreement. Nothing in this Section relieves the County from the obligation to pay compensation to the Petitioner for the water line easement under the conditions set forth in Section 12.5 of this Agreement.

15.4 Violation of Section 8.4. Before taking action based on a violation by the Petitioner of the deadline for construction of TCB under Section 8.4 of the Agreement, the County shall determine whether the deadline must be extended because of Excusable Delay. The County will meet and confer with the Petitioner before issuing a Final Decision on whether the deadline for construction of TCB was violated, and the County and the Petitioner may consent in writing to refer a dispute to a mediator before the County issues a Final Decision on whether the deadline was violated, or must be extended because of Excusable Delay. The Final Decision of the County shall be subject to Mandatory Arbitration as described in Section 14.1 of this Agreement.

15.5 Results of Arbitration. Unless vacated in accordance with the Maryland Uniform Arbitration Act, the award of an arbitrator shall be binding upon the Parties. The award of an arbitrator under Section 14.1(a) shall be conclusive as to the issue of whether or not the Petitioner violated the deadline for construction of TCB under Section 8.4 of the Agreement and therefore is in default of this Agreement, and is admissible as proof thereof in any subsequent judicial or administrative proceeding. Once the award of the arbitrator is final, the County shall not be required to give the thirty (30) days written notice of default provided by Section 15.2 before taking action based on the default.

15.6 Administrative Appeals. Nothing in this Section affects the right or requirement for any administrative appeal of a denial of any Subsequent Development Approval, and any appeal of a Subsequent Development Approval will be governed by the administrative process set forth in the Anne Arundel County Charter and Code, including the right of appeal to the Anne Arundel County Board of Appeals.

15.7 Breaches of Certain Material Provisions by Petitioner. The Petitioner specifically acknowledges that the obligation to construct TCB by the deadline established in Section 8.4 of this Agreement is a material provision of this Agreement, and a breach shall cause the Petitioner to lose the right to develop the Property in a manner consistent with Sketch Plan S85-330, P09-0088 00 NS approved by the Planning and Zoning Officer for development of the property as described in Section 5 of this Agreement, and to lose approval for adequacy of public facilities for such purpose as described in Section 11 of this Agreement. Upon such breach, the Sketch Plan will be void and without further force and effect, and the County laws then in effect will be applied to all Subsequent Development Approvals.

## **Section 16. Conflicts of Law**

In the event that any State or federal law or regulation enacted after the Effective Date, or any action by any governmental agency other than the County taken after the Effective Date, prevents compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended by the County as may be necessary to comply

with such State or federal law, regulation, or governmental action. Provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such law, regulation, or governmental action, and to the extent that such law, regulation, or governmental action does not render remaining provisions of this Agreement impractical to enforce. Neither Party, at the time of signing this Agreement, is aware of any State or federal law or regulation that prevents compliance with one or more of the provisions of this Agreement.

## **Section 17. Termination**

17.1 Manner and Causes for Termination. Because of the substantial reliance by both the Petitioner and the County on the provisions of this Agreement, the Parties desire to avoid termination of this Agreement if other appropriate remedies or procedures to resolve disputes or problems exist. Prior to termination, the County and the Petitioner will meet and confer with the objective of attempting to arrive at a mutually acceptable alternative to termination that substantially advances the interests of the Parties as set forth in the Recitals. Accordingly, this Agreement may be terminated by a party only under one or more of the following circumstances:

- (a) By operation of Section 4.3 (Failure to Satisfy Contingency for Adequate Public Sewerage and Water Supply Facilities);
- (b) By operation of Section 7 (Expiration of Term);
- (c) By operation of Section 17.2 (Completion of Development); or
- (d) By operation of Section 17.3 (By Governing Body).

17.2 Termination Upon Completion of Development. This Agreement shall terminate when the Property has been fully developed and the Project has been built and the Petitioner's obligation to construct TCB as provided in Section 8 of this Agreement has been satisfied to the mutual satisfaction of the County and the Petitioner, as set forth in writing and the Petitioner has received the transportation impact fee credits to which it is entitled under Section 10 of this Agreement or the compensation to which it is entitled under Section 12.3 of this Agreement.

17.3 Termination by the Governing Body. In accordance with Article 66B, §13.01(i)(2), of the Annotated Code of Maryland, this Agreement may be suspended or terminated by the County Council, by resolution introduced at the request of the County Executive, based on a determination that suspension or termination "is essential to ensure the public health, safety, or welfare." Any such resolution suspending or terminating the Agreement shall constitute an administrative decision that may be appealed to the Anne Arundel County Board of Appeals. The County acknowledges that termination under this Section may require the payment of compensation to the Petitioner as required by Section 17.4 of this Agreement, and shall not take action to terminate the Agreement under this Section in the absence of an appropriation sufficient for such compensation.

17.4 Effect of Termination on Petitioner Rights and Obligations. Termination of this Agreement shall not affect the obligation of the Petitioner to comply with the terms and

conditions of County law or Subsequent Development Approvals, nor shall it affect any other provisions of this Agreement that, by express language, survive termination of this Agreement. Termination of this Agreement shall not affect or terminate any Subsequent Development Approvals for the Property that are final as of the date of final termination, nor shall it affect or terminate rights in which the Petitioner has vested under the common law of the State of Maryland. If, in the event of a termination under Section 17.3, the Petitioner has completed any part of the construction of TCB as required by this Agreement, the Petitioner shall be entitled to compensation for the value of the right-of-way and the improvements to the right-of-way to the extent compensation has not been paid to the Petitioner in the form of transportation impact fee credits as provided in Section 10 of this Agreement.

### **Section 18. Rights of Mortgagees**

18.1 Mortgages Not Prohibited. Except as provided in Sections 18.8 and 18.9, this Agreement shall not prevent the Petitioner from encumbering the Property or any part thereof, or any improvement on the Property, by any mortgage, deed of trust or other security device used to obtain financing with respect to the Property or its development. Subject to the condition set forth below, such mortgages shall be subordinate to the County's interest with respect to TCB, and the County shall not be limited as to its rights with respect to any mortgage or deed of trust to which the County is not a signatory. The County acknowledges that the lenders providing such financing may require certain interpretations and modifications of this Agreement, and agrees to meet and confer with the Petitioner and representatives of such lenders to discuss a request for an interpretation or modification. The County will not unreasonably withhold its consent to a requested interpretation or modification, provided such interpretation or modification is consistent with the intent and purposes of this Agreement, and is consistent with the public health, safety, and welfare. This consent shall be a Minor Modification. Any Mortgagee, including without limitation the purchaser at a judicial or non-judicial foreclosure sale, or a person or entity who obtains title by a deed in lieu of foreclosure, shall be entitled to the rights and privileges set forth in this Section. The obligation of Petitioner to subordinate any mortgages on the property shall terminate upon the acceptance by the County of TCB as described in Section 8 of this Agreement.

18.2 Request for Notice to Mortgagee. The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, shall be entitled to receive from the County a copy of any Notice of Default delivered to the Petitioner, provided that the Mortgagee has submitted a request in writing to the County in the manner specified in this Agreement for giving notices, and that the notice makes specific reference to this Section. If the County receives such a request from a Mortgagee, the County shall provide such Mortgagee with a copy of any Notice of Default that is sent to Petitioner concurrently with sending the notice to the Petitioner.

18.3 Mortgagee's Time to Cure. The Mortgagee shall have the right, but not the obligation, to cure a default for a period of ninety (90) days after receipt of the Notice of Default. However, if the default is a default that only can be cured by the Mortgagee obtaining possession of the Property, or any part thereof, and the Mortgagee seeks to obtain possession, the Mortgagee shall have ninety (90) days after the date that the Mortgagee obtains possession to cure the default.

18.4 Mortgage or Successor Rights. Any Mortgagee or transferee who takes title to all of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or a deed in lieu of foreclosure, shall succeed to the rights and obligations of Petitioner under this Agreement as to the Property or part thereof so acquired, provided, however in no event shall such Mortgagee be liable for any defaults or monetary obligations of Petitioner arising prior to acquisition of title to the Property by such Mortgagee, except as to public liens of record. A Mortgagee or its successors shall not be entitled to any Subsequent Development Approval until all delinquent and current fees and other monetary or non-monetary obligations due under this Agreement for the Property, or part thereof acquired by or through such Mortgagee, have been satisfied.

18.5 Mortgagee's Right to Interpretation. Prior to coming into possession of the Property, or any part thereof, any Mortgagee who has submitted a request in writing to the County in accordance with Section 18.2 may request a written interpretation of this Agreement. The request shall be submitted to the County in writing and in the manner specified in this Agreement for giving notices, shall identify the specific sections of the Agreement for which an interpretation is requested, and shall specify the reasons why an interpretation is requested. The County shall give its interpretation to the Mortgagee within forty-five (45) days after receipt of the request.

18.6 Bankruptcy. If any Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature of foreclosure by any process or injunction issued by any court, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Petitioner, the times specified in Section 18.3 shall be extended for the period of the prohibition, except that any such extension shall not extend the Term of this Agreement.

18.7 Public Expenses and Liens for Taxes, Fees, Utilities, etc. Nothing contained in this Agreement shall insulate the Property, or any part thereof, from public or judicial sale for failure to pay any taxes, fees, expenses, utility charges, or related public liens, expenses, or judgments, including repayment of advance credits for development impact fees for transportation as set forth in Section 10.5 of this Agreement.

18.8 Exception for Reservation of Odenton Town Center Boulevard Right-of-Way. The Petitioner shall not in any manner encumber the land within the Property that has been reserved for acquisition by the County for use as the water line easement or for construction of TCB as provided by this Agreement, including easements for storm water infrastructure for TCB, and a Mortgagee or transferee who takes title to all of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or a deed in lieu of foreclosure, takes such property subordinate to the rights of the County under Sections 12.2 and 12.5 of this Agreement. In the event that the County exercises its right to acquire the land under reservation for TCB and any improvements thereto, it shall acquire such land and improvements free of any putative liens or encumbrances made in violation of the prohibition stated in this subsection.

18.9 Release of Conditions. Except as provided in Sections 18.7 and 18.8, the conditions imposed by this Section on encumbrances of the Property shall terminate upon the satisfaction by the Petitioner of its obligations to construct TCB and the release of the Petitioner as set forth in Section 8.12 of this Agreement.

## **Section 19. Representations and Certifications**

19.1 Procedural Sufficiency and Litigation. Subject to the requirements of Section 4 of this Agreement, the County and the Petitioner acknowledge 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 agree not to challenge this Agreement or any of the obligations or rights created by this Agreement on the grounds of any procedural infirmity or any denial of any procedural right. To the knowledge of the Parties, there are no legal actions or proceedings pending or threatened against either the County or the Petitioner that, if adversely determined, would materially and adversely affect the ability of the County or the Petitioner to fulfill their obligations under this Agreement.

19.2 Authorization of the County. The County is a body corporate and politic of the State of Maryland, and the undersigned Planning and Zoning Officer certifies that he has the authority to bind the County to this Agreement as the "public principal" of the County to which authority has been delegated by the County Council under § 17-7-805(b) of the County Code.

19.3 Authorization of the Petitioner. The Petitioner hereby certifies that it has the legal and equitable interest in the Property set forth in Section 3.2 of this Agreement, and is duly and legally authorized to enter into this Agreement, and has complied with all laws, rules, regulations, and all of the provisions of its charter and bylaws relating to its existence and its authority to take action as a Maryland corporation. The undersigned Stephen N. Fleischman, in his capacity as Vice President of the Petitioner, certifies that he is authorized to act on behalf of and bind the Petitioner to the terms of this Agreement.

## **Section 20. Notices and Exercise of Powers**

20.1 Notices. All notices required under this Agreement shall be in writing, and shall not be effective until delivery. Upon notice to the other Party, a Party may change the address or addressee for all future notices to the Party, but notice of a change of address or addressee shall not be effective until delivery. Unless otherwise provided in this Agreement, notices shall be sent as follows:

(a) To the County:

Planning and Zoning Officer  
Anne Arundel County Office of  
Planning and Zoning  
2446 Riva Road  
Annapolis, Maryland 21401

With a copy to:  
County Attorney  
Anne Arundel Office of Law  
2660 Riva Road, 4<sup>th</sup> Floor  
Annapolis, Maryland 21401

(b) To the Petitioner:

Halle Development, Inc.  
2900 Linden Lane, Suite 300  
Silver Spring, Maryland 20910  
Attn: Stephen N. Fleischman and  
Jonathan B. Halle, Vice Presidents

With a copy to:  
Charles F. Delavan, Esquire  
Blumenthal, Delavan & Williams, P.A.  
170 Jennifer Road, Suite 240  
Annapolis, Maryland 21401

(c) Notice shall be given either by personal delivery (hand delivered), by certified mail (return receipt requested), or by delivery by a nationally recognized delivery service with written proof of delivery. Notice shall be effective upon delivery to the address sent forth in this section.

20.1 Exercise of Powers. Unless otherwise provided in this Agreement, the Anne Arundel County Planning and Zoning Officer shall exercise all of the powers conferred on the County by this Agreement. The County Executive, upon notice to the Petitioner, may transfer the exercise of powers under this Agreement from time to time to other County officials. The power to approve or disapprove Subsequent Development Approvals shall be exercised by the County official to whom such authority is delegated by the Anne Arundel County Code. Stephen N. Fleischman, Vice President of the Petitioner, shall exercise all of the powers conferred on the Petitioner by this Agreement. The President of the Petitioner, upon notice to the County, may transfer the exercise of powers under this Agreement from time to time to other officers of the Petitioner.

## **Section 21. Timely Development Review**

The County acknowledges that this Agreement requires the Petitioner to construct TCB before such construction would be required under the normal process applicable to the development of land in the County, and that it is in the mutual interests of the Parties for the Petitioner to be able to develop the Property as quickly as possible in order for the Petitioner to recoup a part of the construction costs of TCB by transportation impact fee credits. Therefore, the County shall use its best efforts to ensure that all Subsequent Development Approvals are acted upon in as expeditious manner as possible, and shall give good faith consideration to such requests for extensions of time and modifications as are necessary to implement this Agreement.

## **Section 22. Customary County Fees, Taxes and Charges**

The Petitioner and the Property shall be subject to all customary County fees, taxes and charges, including those that take effect after the Effective Date of this Agreement, and such customary fees, taxes and charges include fees for all necessary Subsequent Development Approvals, utility and other service charges, and development impact fees, which shall be paid in the time, manner and amount specified by Subtitle 2 of Title 11 of Article 17 of the County Code, except to the extent that the payment of transportation impact fees is modified by Section 10 of this Agreement.

## **Section 23. Miscellaneous Provisions**

23.1 Duplicate Originals. Duplicate originals of this Agreement shall be executed by the Parties, with the County's original retained by and available for public inspection in the Office of Planning and Zoning.

23.2 Recordation of Agreement. This Agreement shall be recorded in the land records of Anne Arundel County within twenty (20) days after the Effective Date at the expense of the Petitioner. The Agreement may be recorded without the physical attachment of the Exhibits; in such case, the Exhibits shall remain incorporated by reference to this Agreement as fully as if set forth in the body of the Agreement. Where required by the form of an Exhibit, execution of this Agreement by a Party constitutes execution of that Exhibit by the Party, and separate execution of the Exhibit is not required.

23.3 Amendments. This Agreement may be amended in a writing executed by both parties, subject to review by the Odenton Town Center Oversight Committee and ratification by resolution of the amendment by the County Council as required by § 17-7-805(f) of the County Code. Any amendment shall be recorded in the land records of the County within twenty (20) days after the adoption of the ratifying resolution at the expense of the Petitioner. The Parties may agree in writing to such Minor Modifications not amounting to material changes to the terms and conditions of this Agreement, and such Minor Modifications shall not constitute amendments subject to the requirement of this Section, provided that after execution of both parties copies of the Minor Modifications shall be provided to the Odenton Town Center Oversight Committee and the County Council.

23.4 Entire Agreement. This Agreement constitutes the entire understanding between the Parties with respect to the transactions contemplated by this Agreement, and all prior oral or written understandings, representations and statements are merged into this Agreement. All Exhibits attached to or referred to in this Agreement are incorporated by reference to this Agreement for the purposes set forth in those Exhibits.

23.5 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or

unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect and, if possible, the Parties shall amend this Agreement in order to effect the original intention of the Parties.

23.6 No Party Deemed Drafter. Each Party has thoroughly reviewed this Agreement and has had the advice of legal counsel prior to execution, and neither Party shall be deemed to be the drafter of the Agreement for purposes of judicial construction.

23.7 Governing Law. This Agreement and the actions of the Parties under this Agreement shall in all respects be governed by and construed in accordance with the laws of the State of Maryland, and any disputes and controversies resulting in judicial action shall be tried in a court of competent jurisdiction in the State of Maryland, with venue in Anne Arundel County.

23.8 Presumptions of Validity. By their signatures to this Agreement, the Parties certify that they believe that this Agreement complies with all applicable provisions of State and County law, and constitutes a lawful exercise of the powers conferred upon the Parties under law. In any case or controversy arising out of this Agreement before a court or administrative tribunal, it shall be presumed that this Agreement constitutes a lawful exercise of the rights of the County and the Petitioner to enter into a Development Rights and Responsibilities Agreement as such instrument is governed by State and County law.

23.9 Waivers. Any failure by a Party to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver of that provision or of any other provision of this Agreement, and the Party will have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. A waiver of any provision of this Agreement must be in writing and signed by the County and the Petitioner. Any written waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement. Nothing in this Section 23.9 shall affect the right of the Planning and Zoning Officer to approve applications for modifications pertaining to Subsequent Development Approvals under § 17-2-108 of the County Code.

23.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors in interest. No other person shall have any right of action based upon any provision of this Agreement. Nothing in this Agreement, nor any act of either Party arising under this Agreement, shall be deemed or construed by either of them, or by Third Parties, to create any third party rights, except as provided by any written assignment of rights or interests consistent with this Agreement.

23.11 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated by this Agreement in the performance of all obligations and the satisfaction of all conditions of this Agreement, including obtaining the legislative and regulatory approvals necessary to implement and carry out the obligations of this Agreement. Upon the request of either Party at any time, the other Party promptly shall execute such instruments and other writings, and take such other actions as reasonably necessary to carry out the intent or fulfill the provisions of this Agreement. Without

in any manner limiting the specific rights and obligations set forth in this Agreement, the Parties hereby declare their intention to cooperate with each other in carrying out the terms of this Agreement.

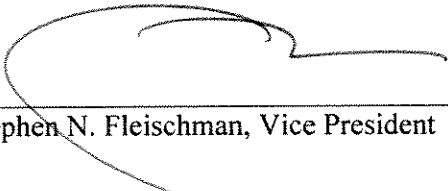
23.12 Covenant of Good Faith and Fair Dealing. Neither Party shall do anything that shall have the effect of harming or injuring the right of the other Party to receive the benefits of this Agreement. Each Party shall refrain from doing anything that would render its performance under the Agreement impossible or impracticable.

**Section 24. Signatures**

In witness whereof, Petitioner and the County have executed this Agreement on the dates set forth below.

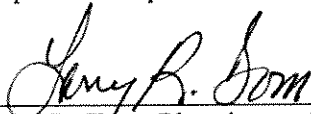
PETITIONER:

HALLE DEVELOPMENT, INC., a Maryland corporation

By:   
Stephen N. Fleischman, Vice President

COUNTY:

ANNE ARUNDEL COUNTY, MARYLAND  
a body corporate and politic

By:   
Larry R. Tom, Planning and Zoning Officer

Approved for form and legal sufficiency:   
David A. Plymyer, Deputy County Attorney

STATE OF MARYLAND )  
 )  
COUNTY OF ANNE ARUNDEL )

to wit:

I HEREBY CERTIFY, that on this 13<sup>th</sup> day of July, 2010, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Stephen N. Fleischman, Vice President of Halle Development, Inc., a Maryland corporation, who



