

# County Council Of Howard County, Maryland

2020 Legislative Session

Legislative Day No. 10

## Resolution No. 107-2020

Introduced by: The Chairperson at the request of the County Executive

A RESOLUTION authorizing the execution of a First Amendment to a Development Rights and Responsibilities Agreement by and between Camilla Carroll and Philip D. Carroll and Howard County, Maryland in accordance Title 16, Subtitle 17 of the Howard County Code.

Introduced and read first time July 6, 2020.

By order Signature on Unrolled Copy  
Diane Schwartz Jones, Administrator

Read for a second time at a public hearing on 7/20/20, 2020.

By order [Signature]  
Diane Schwartz Jones, Administrator

This Resolution was read the third time and was Adopted\_\_\_, Adopted with amendments , Failed\_\_\_, Withdrawn\_\_\_, by the County Council on September 8, 2020.

Certified By [Signature]  
Diane Schwartz Jones, Administrator

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

1           **WHEREAS**, Sections 7-301, et. seq., of the Land Use Article of the Maryland  
2 Annotated Code grants Howard County the authority to establish procedures and  
3 requirements for the consideration and execution of Development Rights and  
4 Responsibilities Agreements; and

5  
6           **WHEREAS**, by passage of Council Resolution No. 103-2010, the County  
7 Council approved a Development Rights and Responsibilities Agreement (the  
8 “Agreement”) between Camilla Carroll and Philip D. Carroll (collectively, the  
9 “Carrolls”) and Howard County; and

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11           **WHEREAS**, per Section 9.2A of the Agreement, the Agreement will terminate  
12 and be void on September 23, 2020, unless extended or terminated sooner; and

13  
14           **WHEREAS**, Sections 16.1700 *et seq.* of the Howard County Code sets forth  
15 procedures to amend previously executed Development Rights and Responsibilities  
16 Agreements; and

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18           **WHEREAS**, on or about March 23, 2020, the Carrolls petitioned the County  
19 Executive to negotiate a First Amendment to Development Rights and Responsibilities  
20 Agreement (the “First Amendment”), substantially in the form attached as Exhibit 1, and  
21 the petition included key elements of the First Amendment; and

22  
23           **WHEREAS**, the County Executive reviewed the Petition and initiated the  
24 negotiation process; and

25  
26           **WHEREAS**, the First Amendment extends the term of the Agreement for five  
27 years until September 23, 2025; and

28  
29           **WHEREAS**, in several instances, the First Amendment also updates language in  
30 sections 6.1, 6.2, 2.6, 2.7, 9.1, 9.6, 9.7, 9.10 and 9.14 of the Agreement to incorporate  
31 references to the First Amendment; and

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**WHEREAS**, new sections 1.6, 2.6, and 2.7 are added by the First Amendment;

and

**WHEREAS**, a presubmission community meeting as required by Section 19.701(b) of the County Code was held on May 23, 2019; and

**WHEREAS**, at a public meeting held on July 2, 2020, the Planning Board determined that the First Amendment was consistent with PlanHoward2030, the County’s General Plan, and a copy of the Planning Board report is attached to the First Amendment; and

**WHEREAS**, a public hearing has been held before the County Council on this Resolution; and

**WHEREAS**, the criteria set forth in Title 16, Subtitle 17 of the Howard County Code have been met and the County Executive may execute the First Amendment to the Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County, Maryland this 8<sup>th</sup> day of September, 2020 that the First Amendment to Development Rights and Responsibilities Agreement, substantially in the form attached as Exhibit 1, having met the criteria set forth in Title 16, Subtitle 17 of the Howard County Code is hereby approved.

**AND BE IT FURTHER RESOLVED**, that the County Executive is hereby authorized to execute the First Amendment to Development Rights and Responsibilities Agreement in the name of and on behalf of the County.

**FIRST AMENDMENT TO  
DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT**

THIS FIRST AMENDMENT TO DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT (this “**Amendment**”), is made as of the \_\_\_\_ day of \_\_\_\_\_, 2020 (the “**Effective Date**”), by and among CAMILLA CARROLL and PHILIP D. CARROLL, individuals (collectively, “**Petitioner**”), and HOWARD COUNTY, MARYLAND, a body corporate and politic of the State of Maryland (“**Howard County**”). Petitioner and Howard County are hereinafter referred to collectively as the “**Parties**”.

RECITALS

1. Subtitle 3 of Title 7 of the Land Use Article of the Annotated Code of Maryland (the “**DRRA Law**”) grants Howard County the authority to establish procedures and requirements for the consideration and execution of Development Rights and Responsibilities Agreements.

2. Subtitle 17 of Title 16 of the Howard County Code (the “**County Ordinance**”) authorizes Howard County to amend previously executed Development Rights and Responsibilities Agreements.

3. The Parties hereto are parties to that certain Development Rights and Responsibilities Agreement dated September 23, 2010 and recorded among the Land Records of Howard County, Maryland (the “**Land Records**”) in Liber 12722, folio 248 (the “**Existing DRRA**”) regarding certain real property more particularly described and identified in the Existing DRRA.

4. Section 16.1701 of the County Ordinance provides the procedure for amending previously executed Development Rights and Responsibilities Agreements such as the Existing DRRA.

5. Additionally, Section 9.4 of the Existing DRRA provides that the Parties may amend the Existing DRRA “by mutual consent after Howard County holds a public hearing and complies with all applicable laws of the County Ordinance concerning amendment of a Development Rights and Responsibilities Agreement.”

6. Section 9.2.A of the Existing DRRA provides that the Existing DRRA “shall terminate and be void on the tenth (10<sup>th</sup>) anniversary of the Effective Date of [the Existing DRRA], unless extended by an amendment to [the Existing DRRA] complying with all procedures required in [the Existing DRRA], the County Ordinance and Maryland Law . . . .”

7. Section 9.2 of the Existing DRRA shall be amended to include the following:

C. Notwithstanding anything in this Agreement to the contrary, the obligations of the

Carrolls under this Agreement shall survive the termination of this Agreement and the covenants of the Carrolls under this Agreement shall be set forth in a covenant to the County and to be recorded within sixty (60) days following execution of this Amendment and shall run with and be binding upon the Site and inure to the benefit of the Carrolls and the County and their respective heirs, successors and assigns, including but not limited to Sections 2.3, 3.1, 3.2, and 4.3.

8. The Parties desire to extend the term of the Existing DRRA for an additional period of five (5) years.

9. This Amendment is intended to constitute an amendment to a Development Rights and Responsibilities Agreement as provided for in the DRRA Law and the County Ordinance.

10. On or about \_\_\_\_\_, 2020, Petitioner petitioned Howard County to enter into this Amendment.

11. On or about \_\_\_\_\_, 2020, Howard County reviewed this Amendment and determined to accept this Amendment and to initiate the process of considering an amendment to the Existing DRRA.

12. This Amendment was negotiated between Petitioner and the Howard County Executive.

13. A pre-submission community meeting regarding this Amendment was conducted in accordance with the requirements of the County Ordinance and Howard County law on May 23, 2019.

14. This Amendment was referred to the Howard County Planning Board (the "**Planning Board**") for an advisory determination of whether this Amendment is consistent with Howard County's general plan, PlanHoward 2030 (the "**General Plan**"). At a public meeting held on \_\_\_\_\_, 2020, the Planning Board determined that this Amendment was consistent with the General Plan. The recommendation of the Planning Board is attached hereto and incorporated herein by reference as **Exhibit A**.

15. On \_\_\_\_\_, 2020, the Howard County Council held a duly advertised public hearing on this Amendment in accordance with Howard County law, and approved this Amendment on \_\_\_\_\_, 2020 by Council Resolution \_\_\_\_\_.

NOW, THEREFORE, in consideration of the foregoing recitals, which are not merely prefatory but are hereby incorporated into and made a part of this Amendment,

and the mutual covenants and agreements as set forth below, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, Petitioner and Howard County hereby agree as follows:

## ARTICLE I

### AMENDMENT

1.1 Term. Section 9.2.A of the Existing DRRA is hereby deleted in its entirety and is hereby replaced as follows:

“A. This Agreement shall constitute covenants running with the land and shall run with and bind the Property. This Agreement shall terminate and be void on September 23, 2025, unless extended by an amendment to this Agreement complying with all procedures required in this Agreement, the County Ordinance and Maryland Law or in accordance with Section 8.4 above or unless terminated by agreement of the Parties or as permitted by law.

Notwithstanding anything in this Agreement to the contrary, the obligations of the Carrolls under this Agreement shall survive the termination of this Agreement and the covenants of the Carrolls under this Agreement shall be set forth in a covenant to the County and to be recorded within sixty (60) days following execution of this Amendment and shall run with and be binding upon the Site and inure to the benefit of the Carrolls and the County and their respective heirs, successors and assigns, including but not limited to Sections 2.3, 3.1, 3.2, and 4.3.”

1.2 Nature, Survival, and Transfer of Obligations. The Parties agree that this Amendment shall run with the land and be binding upon and inure to the benefit of Petitioner and their respective heirs, successors and assigns, and upon any and all successor owners of record of all or any portion of the Property (except owners of an individual lot improved as part of the Project and pursuant to a validly issued building permit). To assure that all such successors, assigns, and successor owners have notice of this Amendment and the obligations created by it, Petitioner agrees that they shall:

A. Have this Amendment recorded among the Land Records within twenty (20) days after the Effective Date of this Amendment; and

B. Incorporate, by reference, this Amendment into any and all real estate sales contracts entered into after the Effective Date of this Amendment for the sale of all or any portion of the Property; and

C. Prior to the transfer of all or any portion of the Property (except the transfer of an individual lot solely for use as a private residence), or any equitable interest therein, require the transferee to execute an enforceable written agreement, in a form reasonably satisfactory to Howard County, binding transferee to this Amendment.

1.3 Binding Upon Successors and Assigns of Howard County. Howard County agrees that, to the extent permitted by law, all obligations assumed by it under this Amendment shall be binding on it, its agencies, employees, governmental units, the Planning Board and its and their respective successors and assigns.

1.4 Regulation and Master Plan Consistency. Howard County has determined that this Amendment is consistent with the General Plan. The Planning Board has determined that this Amendment is consistent with the General Plan.

1.5 Public Health, Safety and Welfare. Howard County has determined that the terms and provisions of this Amendment will ensure that the public health, safety and welfare of the residents of Howard County are protected.

1.6 Ratification. The Parties hereby ratify and confirm all of the terms and provisions of the Existing DRRA and acknowledge and agree that all of the terms and provisions of the Existing DRRA remain in full force and effect, except as otherwise expressly and specifically modified and amended by the terms and provisions of this Amendment. In the event of any conflict between the terms and provisions of the Existing DRRA, and the terms and provisions of this Amendment, the terms and provisions of this Amendment shall control.

## ARTICLE II MISCELLANEOUS

2.1 Time of Essence. Time is of the essence in the performance of all terms and provisions of this Amendment.

2.2 Authority to Execute. Howard County and Petitioner hereby acknowledge and agree that all required notices, meetings, and hearings have been properly given and held by Howard County with respect to the approval of this Amendment and agree not to challenge this Amendment or any of the obligations created by it on the grounds of any procedural infirmity or any denial of any procedural right. Howard County hereby warrants and represents to Petitioner that the persons executing this Amendment on its behalf have been properly authorized to do so.

2.3 Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Maryland.

2.4 Severability. In case any one or more of the provisions contained in this Amendment shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Amendment, and this Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Amendment.

2.5 No Third Party Beneficiary Status. The Parties specifically agree that this Amendment is not intended to create in the public or any member thereof, third party beneficiary status in connection with the performance of the obligations under this Amendment.

2.6 Recitals. The Parties acknowledge and agree that the recitals to this Amendment are true and correct, and such recitals are incorporated herein by reference.

2.7 Defined Terms. Capitalized terms used but not otherwise defined in this Amendment shall have the meanings given such terms in the Existing DRRA.

*[Signatures on Following Pages]*



IN WITNESS WHEREOF, the Parties have hereunto set their hands under seal on the date first above written.

WITNESS/ ATTEST:

\_\_\_\_\_ (SEAL)  
Camilla Carroll

STATE OF \_\_\_\_\_, CITY/COUNTY OF \_\_\_\_\_, TO WIT:

I HEREBY CERTIFY, that on this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the subscriber, a Notary Public of the State aforesaid, personally appeared CAMILLA CARROLL, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purposes therein contained.

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

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

[SEAL]

\_\_\_\_\_  
[Print Name of Notary]

My Commission expires: \_\_\_\_\_

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

WITNESS/ ATTEST:

\_\_\_\_\_  
Philip D. Carroll (SEAL)

STATE OF \_\_\_\_\_, CITY/COUNTY OF \_\_\_\_\_, TO WIT:

I HEREBY CERTIFY, that on this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the subscriber, a Notary Public of the State aforesaid, personally appeared PHILIP D. CARROLL, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

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

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

[SEAL]

\_\_\_\_\_  
[Print Name of Notary]

My Commission expires: \_\_\_\_\_

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

AGREED and APPROVED:

HOWARD COUNTY, MARYLAND

ATTEST:

\_\_\_\_\_  
Lonnie R. Robbins  
Chief Administrative Officer

BY: \_\_\_\_\_(SEAL)  
Calvin Ball  
Howard County Executive

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

this \_\_\_\_\_ day of \_\_\_\_\_ 2020.

\_\_\_\_\_  
Gary W. Kuc  
County Solicitor

STATE OF MARYLAND, \_\_\_\_\_ COUNTY, TO WIT:

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Calvin Ball, the County Executive for Howard County, Maryland, who acknowledged the within Amendment to be the act of the County and that he executed the foregoing Amendment for the purposes therein contained by signing in my presence the name of Howard County, Maryland as County Executive.

AS WITNESS my Hand and Notarial Seal.

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

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

ATTORNEYS' CERTIFICATION

THIS IS TO CERTIFY that the undersigned are members, in good standing, of the Bar of the Court of Appeals of Maryland, and that the within instrument was prepared by the undersigned or under their supervision.

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Upon Recordation Please Return To:

Sang W. Oh, Esq.  
Talkin & Oh, LLP  
5100 Dorsey Hall Drive  
Ellicott City, Maryland 21042

**EXHIBIT A**

**PLANNING BOARD RECOMMENDATION**

See attached.

1 CAMILLA CARROLL AND \* BEFORE THE  
 2 PHILIP D. CARROLL \* PLANNING BOARD OF  
 3 PETITIONER \* HOWARD COUNTY, MARYLAND  
 4 \*  
 5 FIRST AMENDMENT TO THE \*  
 6 DOUGHOREGAN DEVELOPMENT \*  
 7 RIGHTS AND RESPONSIBILITIES \*  
 8 AGREEMENT \*

9 \* \* \* \* \*

10 MOTION: *To recommend to the County Council that the First Amendment to the*  
 11 *Doughoregan Development Rights and Responsibilities Agreement for the Camilla*  
 12 *Carroll and Philip D. Carroll is consistent with the General Plan, PlanHoward*  
 13 *2030.*

14 ACTION: *Recommended approval; Vote 4-0.*

15 \* \* \* \* \*

16 On July 2, 2020, the Planning Board of Howard County, Maryland, considered the petition of Camilla  
 17 Carroll and Philip D. Carroll for a First Amendment to the Doughoregan Development Rights and  
 18 Responsibilities Agreement (DRRA) to extend the term by a period of five (5) years. The Planning Board  
 19 considered the petition, the Department of Planning and Zoning (DPZ) Technical Staff Report and  
 20 Recommendation and public testimony. DPZ recommended a finding of General Plan consistency between  
 21 the First Amendment to the DRRA and PlanHoward 2030.

22  
 23 The Petitioner was represented by Sang Oh, Esquire. Mr. Oh provided a brief overview of the original  
 24 DRRA, the provisions of the agreement that have been completed and the rationale for the First Amendment.  
 25 One Board member asked what the consequences would be if the extension is not granted. Mr. Oh stated that  
 26 provisions that have been implemented would not be undone but its not clear what the implications would be  
 27 for those items not completed. It is possible they may not occur. Another Board member asked if the  
 28 maintenance fund was essentially going for upkeep of the Carroll’s home and Mr. Oh confirmed that was true.  
 29 One Board member asked to confirm that the extension would continue to prohibit use of Burnside Drive for  
 30 ingress and egress to the Westmount subdivision. Mr. Oh concurred that this provision would be maintained  
 31 in the extension.

Testimony

Six individuals provided public testimony on merits of the Development Rights and Responsibilities Agreement First Amendment but did not address consistency with the General Plan.

Mr. Ilenda, having previously submitted written testimony on behalf of the Chateau Ridge community group, provided testimony as a resident in support of the DRRA extension. He cited the agreement to not use Burnside Drive as a connecting street for the Westmount Subdivision as the reason for his support.

Mr. Guarneri provided testimony and spoke about the pre-submission meeting on May 23, 2019 and that residents who attended expressed concerns about the Burnside Drive provision and traffic impacts.

Ms. Rollins provided testimony in favor of extending the DRRA stating that she would prefer that the conditions and agreements not be reevaluated.

Ms. Sorak stated that she had submitted written testimony in support of the extension. She asked that the extension be set at ten years to give the project additional time for completion.

Mr. Hurewitz provided testimony to suggest that the focus of the Board decision should be on answering the question of what is left to be completed under the terms of the current DRRA. He asked about what would happen if no action is taken on the extension.

Mr. Happel was the final person to provide testimony. He stated that his main concern was that the five-year extension maintains the provision to prevent access from the Westmount Subdivision through Burnside Drive. He indicated that he was in support of the extension.

Board Discussion and Recommendation


In work session, one Board member generally commented that they had no issues with recommending the extension the DRRA for approval, particularly after hearing from the community about Burnside Drive, and especially those most directly affected.

One Board member stated that DRRA's are typically very lengthy and complicated agreements. While sometimes adjustments may need to be made, they didn't see any reason not to extend it another five years.

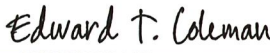
Based on the information presented, and the Board's discussion, Ms. Adler made a motion that the Planning Board recommend finding the First Amendment to the Doughoregan Development Rights and Responsibilities Agreement (DRRA) consistent with the General Plan. Mr. McAliley seconded the motion, which passed 4-0.

1 For the foregoing reasons, the Planning Board of Howard County, Maryland, on this **24th** day of **July**  
2 2020, recommends to the County Council that First Amendment to the Development Rights and  
3 Responsibilities Agreement, as described above, be APPROVED.  
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9 HOWARD COUNTY PLANNING BOARD

10 DocuSigned by:  
  
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11 Erica Roberts, Chair

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13 Ed Coleman, Vice-chair

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15 Delphine Adler

16 Absent

17 Phillips Engelke

18 DocuSigned by:  
  
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19 Kevin McAuley

20 ATTEST:

21 DocuSigned by:  
  
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22 Amy Gowan, Executive Secretary  
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County Council Of Howard County, Maryland

2020 Legislative Session

Legislative Day No. 10

Resolution No. 107 -2020

Introduced by: The Chairperson at the request of the County Executive

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Introduced and read first time July 6, 2020.

By order Diane Schwartz Jones, Administrator

Read for a second time at a public hearing on \_\_\_\_\_, 2020.

By order Diane Schwartz Jones, Administrator

This Resolution was read the third time and was Adopted \_\_, Adopted with amendments \_\_, Failed \_\_, Withdrawn \_\_, by the County Council on \_\_\_\_\_, 2020.

Certified By Diane Schwartz Jones, Administrator

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**WHEREAS**, a presubmission community meeting as required by Section 19.701(b) of the County Code was held on May 23, 2019; and

**WHEREAS**, at a public meeting held on July 2, 2020, the Planning Board determined that the First Amendment was consistent with PlanHoward2030, the County's General Plan, and a copy of the Planning Board report is attached to the First Amendment; and

**WHEREAS**, a public hearing has been held before the County Council on this Resolution; and

**WHEREAS**, the criteria set forth in Title 16, Subtitle 17 of the Howard County Code have been met and the County Executive may execute the First Amendment to the Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County, Maryland this \_\_\_\_ day of \_\_\_\_\_, 2020 that the First Amendment to Development Rights and Responsibilities Agreement, substantially in the form attached as Exhibit 1, having met the criteria set forth in Title 16, Subtitle 17 of the Howard County Code is hereby approved.

**AND BE IT FURTHER RESOLVED**, that the County Executive is hereby authorized to execute the First Amendment to Development Rights and Responsibilities Agreement in the name of and on behalf of the County.

**FIRST AMENDMENT TO  
DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT**

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RECITALS

1. Subtitle 3 of Title 7 of the Land Use Article of the Annotated Code of Maryland (the "**DRRA Law**") grants Howard County the authority to establish procedures and requirements for the consideration and execution of Development Rights and Responsibilities Agreements.

2. Subtitle 17 of Title 16 of the Howard County Code (the "**County Ordinance**") authorizes Howard County to amend previously executed Development Rights and Responsibilities Agreements.

3. The Parties hereto are parties to that certain Development Rights and Responsibilities Agreement dated September 23, 2010 and recorded among the Land Records of Howard County, Maryland (the "**Land Records**") in Liber 12722, folio 248 (the "**Existing DRRA**") regarding certain real property more particularly described and identified in the Existing DRRA.

4. Section 16.1701 of the County Ordinance provides the procedure for amending previously executed Development Rights and Responsibilities Agreements such as the Existing DRRA.

5. Additionally, Section 9.4 of the Existing DRRA provides that the Parties may amend the Existing DRRA "by mutual consent after Howard County holds a public hearing and complies with all applicable laws of the County Ordinance concerning amendment of a Development Rights and Responsibilities Agreement."

6. Section 9.2.A of the Existing DRRA provides that the Existing DRRA "shall terminate and be void on the tenth (10<sup>th</sup>) anniversary of the Effective Date of [the Existing DRRA], unless extended by an amendment to [the Existing DRRA] complying with all procedures required in [the Existing DRRA], the County Ordinance and Maryland Law . . . ."

7. The Parties desire to extend the term of the Existing DRRA for an additional

period of five (5) years.

8. This Amendment is intended to constitute an amendment to a Development Rights and Responsibilities Agreement as provided for in the DRRA Law and the County Ordinance.

9. On or about \_\_\_\_\_, 2020, Petitioner petitioned Howard County to enter into this Amendment.

10. On or about \_\_\_\_\_, 2020, Howard County reviewed this Amendment and determined to accept this Amendment and to initiate the process of considering an amendment to the Existing DRRA.

11. This Amendment was negotiated between Petitioner and the Howard County Executive.

12. A pre-submission community meeting regarding this Amendment was conducted in accordance with the requirements of the County Ordinance and Howard County law on May 23, 2019.

13. This Amendment was referred to the Howard County Planning Board (the "**Planning Board**") for an advisory determination of whether this Amendment is consistent with Howard County's general plan, Plan Howard 2030 (the "**General Plan**"). At a public meeting held on \_\_\_\_\_, 2020, the Planning Board determined that this Amendment was consistent with the General Plan. The recommendation of the Planning Board is attached hereto and incorporated herein by reference as **Exhibit A**.

14. On \_\_\_\_\_, 2020, the Howard County Council held a duly advertised public hearing on this Amendment in accordance with Howard County law, and approved this Amendment on \_\_\_\_\_, 2020 by Council Resolution \_\_\_\_\_.

NOW, THEREFORE, in consideration of the foregoing recitals, which are not merely prefatory but are hereby incorporated into and made a part of this Amendment, and the mutual covenants and agreements as set forth below, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, Petitioner and Howard County hereby agree as follows:

## ARTICLE I

### AMENDMENT

1.1 Term. Section 9.2.A of the Existing DRRA is hereby deleted in its entirety

and is hereby replaced as follows:

"A. This Agreement shall constitute covenants running with the land and shall run with and bind the Property. This Agreement shall terminate and be void on September 23, 2025, unless extended by an amendment to this Agreement complying with all procedures required in this Agreement, the County Ordinance and Maryland Law or in accordance with Section 8.4 above or unless terminated by agreement of the Parties or as permitted by law."

1.2 Nature, Survival, and Transfer of Obligations. The Parties agree that this Amendment shall run with the land and be binding upon and inure to the benefit of Petitioner and their respective heirs, successors and assigns, and upon any and all successor owners of record of all or any portion of the Property (except owners of an individual lot improved as part of the Project and pursuant to a validly issued building permit). To assure that all such successors, assigns, and successor owners have notice of this Amendment and the obligations created by it, Petitioner agrees that they shall:

A. Have this Amendment recorded among the Land Records within twenty (20) days after the Effective Date of this Amendment; and

B. Incorporate, by reference, this Amendment into any and all real estate sales contracts entered into after the Effective Date of this Amendment for the sale of all or any portion of the Property; and

C. Prior to the transfer of all or any portion of the Property (except the transfer of an individual lot solely for use as a private residence), or any equitable interest therein, require the transferee to execute an enforceable written agreement, in a form reasonably satisfactory to Howard County, binding transferee to this Amendment.

1.3 Binding Upon Successors and Assigns of Howard County. Howard County agrees that, to the extent permitted by law, all obligations assumed by it under this Amendment shall be binding on it, its agencies, employees, governmental units, the Planning Board and its and their respective successors and assigns.

1.4 Regulation and Master Plan Consistency. Howard County has determined that this Amendment is consistent with the General Plan. The Planning Board has determined that this Amendment is consistent with the General Plan.

1.5 Public Health, Safety and Welfare. Howard County has determined that the terms and provisions of this Amendment will ensure that the public health, safety and welfare of the residents of Howard County are protected.

1.6 Ratification. The Parties hereby ratify and confirm all of the terms and

provisions of the Existing DRRA and acknowledge and agree that all of the terms and provisions of the Existing DRRA remain in full force and effect, except as otherwise expressly and specifically modified and amended by the terms and provisions of this Amendment. In the event of any conflict between the terms and provisions of the Existing DRRA, and the terms and provisions of this Amendment, the terms and provisions of this Amendment shall control.

ARTICLE II  
MISCELLANEOUS

2.1 Time of Essence. Time is of the essence in the performance of all terms and provisions of this Amendment.

2.2 Authority to Execute. Howard County and Petitioner hereby acknowledge and agree that all required notices, meetings, and hearings have been properly given and held by Howard County with respect to the approval of this Amendment and agree not to challenge this Amendment or any of the obligations created by it on the grounds of any procedural infirmity or any denial of any procedural right. Howard County hereby warrants and represents to Petitioner that the persons executing this Amendment on its behalf have been properly authorized to do so.

2.3 Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Maryland.

2.4 Severability. In case any one or more of the provisions contained in this Amendment shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Amendment, and this Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Amendment.

2.5 No Third Party Beneficiary Status. The Parties specifically agree that this Amendment is not intended to create in the public or any member thereof, third party beneficiary status in connection with the performance of the obligations under this Amendment.

2.6 Recitals. The Parties acknowledge and agree that the recitals to this Amendment are true and correct, and such recitals are incorporated herein by reference.

2.7 Defined Terms. Capitalized terms used but not otherwise defined in this Amendment shall have the meanings given such terms in the Existing DRRA.

*[Signatures on Following Pages]*

IN WITNESS WHEREOF, the Parties have hereunto set their hands under seal on the date first above written.

WITNESS/ ATTEST:

\_\_\_\_\_  
Camilla Carroll (SEAL)

STATE OF \_\_\_\_\_, CITY/COUNTY OF \_\_\_\_\_, TO WIT:

I HEREBY CERTIFY, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me, the subscriber, a Notary Public of the State aforesaid, personally appeared CAMILLA CARROLL, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purposes therein contained.

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

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

[SEAL]

\_\_\_\_\_  
[Print Name of Notary]

My Commission expires: \_\_\_\_\_

[SIGNATURES CONTINUE ON FOLLOWING PAGES]



WITNESS/ ATTEST:

\_\_\_\_\_  
Philip D. Carroll (SEAL)

STATE OF \_\_\_\_\_, CITY/COUNTY OF \_\_\_\_\_, TO WIT:

I HEREBY CERTIFY, that on this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the subscriber, a Notary Public of the State aforesaid, personally appeared PHILIP D. CARROLL, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

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

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

[SEAL]

\_\_\_\_\_  
[Print Name of Notary]

My Commission expires: \_\_\_\_\_

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

AGREED and APPROVED:

HOWARD COUNTY, MARYLAND

ATTEST:

\_\_\_\_\_  
Lonnie R. Robbins  
Chief Administrative Officer

BY: \_\_\_\_\_(SEAL)  
Calvin Ball  
Howard County Executive

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

this \_\_\_\_\_ day of \_\_\_\_\_ 2020.

\_\_\_\_\_  
Gary W. Kuc  
County Solicitor

STATE OF MARYLAND, \_\_\_\_\_ COUNTY, TO WIT:

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Calvin Ball, the County Executive for Howard County, Maryland, who acknowledged the within Amendment to be the act of the County and that he executed the foregoing Amendment for the purposes therein contained by signing in my presence the name of Howard County, Maryland as County Executive.

AS WITNESS my Hand and Notarial Seal.

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

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

ATTORNEYS' CERTIFICATION

THIS IS TO CERTIFY that the undersigned are members, in good standing, of the Bar of the Court of Appeals of Maryland, and that the within instrument was prepared by the undersigned or under their supervision.

\_\_\_\_\_  
\_\_\_\_\_

Upon Recordation Please Return To:

Sang W. Oh, Esq.  
Talkin & Oh, LLP  
5100 Dorsey Hall Drive  
Ellicott City, Maryland 21042

EXHIBIT A

PLANNING BOARD RECOMMENDATION

See attached.

