

APPENDIX C

MD SHA / Parkside Development Memorandum of Agreement (MOA)

AGREEMENT

MD 175 between the Baltimore Washington Parkway and MD 713
And MD 713 south of MD 175

by
and
between

BRS/EGGERL, LLC,
and
MARYLAND STATE HIGHWAY ADMINISTRATION

THIS AGREEMENT, executed in duplicate, made effective on this 27th day of May, 2010 by and between BRS/EGGERL, LLC, a Maryland limited liability company, hereinafter called "**OWNER**"; and the State Highway Administration of the Maryland Department of Transportation, acting for, and on behalf of the State of Maryland, hereinafter called "**SHA**".

WHEREAS, by Confirmatory Deed March 13, 2007 and recorded among the Land Records of Anne Arundel County, Maryland ("**COUNTY**") in Liber No. 18899, folio 821, OWNER is the owner of certain property totaling 178.47 acres, more or less, as more particularly defined below as the "**PROPERTY**" situated in Anne Arundel County, Maryland, being a part of the land that comprises the proposed Parkside Development, as more particularly defined below as "**PARKSIDE DEVELOPMENT**"; and

WHEREAS, the PARKSIDE DEVELOPMENT was zoned MXD-R as part of the Comprehensive Zoning of BWI/Linthicum and Jessup/Maryland City as Council Bill 17-04 in order to facilitate the development of the PARKSIDE DEVELOPMENT, which Council Bill was adopted on May 3, 2004; and

WHEREAS, under the COUNTY's Adequate Public Facilities Ordinance (APFO), the COUNTY's approval of the PARKSIDE DEVELOPMENT is conditioned on the requirement that certain roadway improvements to MD 175 are constructed in order to mitigate the effects of traffic that will be generated by the development of the PARKSIDE DEVELOPMENT onto MD 175, as more particularly defined below as the "**APFO IMPROVEMENTS**"; and

WHEREAS, SHA is currently designing roadway improvements to MD 175 from approximately 1255 feet west of MD 713 to approximately 2345 feet east of MD 713, a distance of approximately 3600 feet, as more particularly defined below as the "**MD 175 PROJECT**"; and

WHEREAS, SHA has requested that the OWNER modify and construct the APFO IMPROVEMENTS for MD 175 to be the same as the roadway profile of SHA's MD 175 PROJECT; and

WHEREAS, the OWNER has agreed to modify the APFO IMPROVEMENTS to include constructing a five (5) lane roadway in order to be the same as the roadway profile of

SHA's MD 175 PROJECT, as more particularly defined below as the "**MODIFIED IMPROVEMENTS**", as set forth herein; and

WHEREAS, the OWNER has agreed to accelerate the construction of the MODIFIED IMPROVEMENTS in such a time frame so as to maximize the benefit of the MD 175 PROJECT, as more particularly defined below as the "**ACCELERATED SCHEDULE**"; and

WHEREAS, the parties agree that the ACCELERATED SCHEDULE is a direct benefit to SHA and the traveling public; and

WHEREAS, the OWNER shall donate its interest in and to the necessary portions of the PROPERTY to SHA which are needed as rights-of-way for the construction of the MODIFIED IMPROVEMENTS at time of full execution and delivery of this AGREEMENT (or as soon as practicable thereafter), as more particularly defined below as the "**DONATION**"; and

WHEREAS, because a portion of SHA's MD 175 PROJECT and the OWNER's APFO IMPROVEMENTS overlap, the parties agree that SHA shall perform for the OWNER the construction of the overlapping portion of the OWNER's APFO IMPROVEMENTS as part of the MD 175 PROJECT, as more particularly defined below as the "**OVERLAP**"; and

WHEREAS, a portion of the PARKSIDE DEVELOPMENT includes Condominium Land Units A and B as shown on "**Exhibit A**" which are impacted by existing environmental constraints that prevent access to MD 175 from the westernmost portion of the PARKSIDE DEVELOPMENT adjacent to MD 713; and

WHEREAS, the OWNER has requested that SHA allow a break in access controls on MD 713 (Rockenbach Road) to provide additional access to the Condominium Land Units A and B; and

WHEREAS, due to the existing environmental constraints to the PARKSIDE DEVELOPMENT, subject to the approval of the Board of Public Works of Maryland ("**BPW**") SHA is willing to permit a break in access controls on MD 713 to accommodate additional access to the PARKSIDE DEVELOPMENT, as more particularly defined below as the "**ACCESS BREAK**"; and

WHEREAS, the OWNER is willing to design and construct improvements to MD 713 necessary to provide for safe access to the PARKSIDE DEVELOPMENT, as more particularly defined below as the "**PARKSIDE DEVELOPMENT ACCESS**"; and

WHEREAS, the OWNER has agreed to conduct a traffic impact study ("**TIS**") in order to determine the extent of improvements required for the PARKSIDE DEVELOPMENT ACCESS; and

WHEREAS, the OWNER shall be responsible to design and construct, as part of the PARKSIDE DEVELOPMENT ACCESS, all improvements which may be required on MD 175 at the intersection of MD 713 and which are beyond the scope of SHA's MD 175 PROJECT; and

WHEREAS, the OWNER shall apply for and obtain an SHA Engineering Access Permit or Permits, as more particularly defined below as the "**PERMIT**", for the construction of the MODIFIED IMPROVEMENTS and PARKSIDE DEVELOPMENT ACCESS; and

WHEREAS, subject to the approval of the BPW, SHA agrees to allow the ACCESS BREAK as a break in control of the right-of-way line of through highway as shown on SHA Plat

No. 45314 to permit construction of access from each side of MD 713 to the PARKSIDE DEVELOPMENT being developed by the OWNER provided the OWNER: (i) funds and constructs the MODIFIED IMPROVEMENTS, (ii) funds and constructs the PARKSIDE DEVELOPMENT ACCESS, (iii) obtains the PERMIT and complies with its terms, (iv) reimburses SHA for construction inspection and material testing/certification (collectively, “SHA SERVICES”) provided during the construction of the MODIFIED IMPROVEMENTS and the PARKSIDE DEVELOPMENT ACCESS, (v) provides surety in the form of a performance bond acceptable to SHA in the amount of One Hundred Fifty Percent (150%) of the estimated construction cost of the MODIFIED IMPROVEMENTS, (vi) provides surety in the form of either a performance bond or an irrevocable Letter of Credit acceptable to SHA in the amount of One Hundred Fifty Percent (150%) of the estimated construction costs for the PARKSIDE DEVELOPMENT ACCESS, (vii) provides a payment bond acceptable to SHA in the amount of One Hundred Fifty (150%) of the estimated cost of the SHA SERVICES for the MODIFIED IMPROVEMENTS, and (viii) provides either a payment bond or an irrevocable Letter of Credit acceptable to SHA in the amount of One Hundred Fifty Percent (150%) of the estimated cost of the SHA SERVICES for the PARKSIDE DEVELOPMENT ACCESS ; and

WHEREAS, SHA shall own and be responsible for maintenance of the MODIFIED IMPROVEMENTS and the PARKSIDE DEVELOPMENT ACCESS located within the SHA’s right-of-way; and

WHEREAS, the parties agree that any financial obligation of the OWNER to SHA for the OVERLAP and the ACCESS BREAK is equally compensated by the MODIFIED IMPROVEMENTS and the ACCELERATED SCHEDULE, except as described elsewhere herein for the SHA SERVICES; and

WHEREAS, the OWNER and SHA agree the MD 175 PROJECT, the MODIFIED IMPROVEMENTS and the PARKSIDE DEVELOPMENT ACCESS would be a benefit to the citizens of the State of Maryland; and

WHEREAS, nothing in this AGREEMENT is intended, nor shall be construed, to hinder or obstruct points of access from the PARKSIDE DEVELOPMENT to MD 175 to be constructed as part of the MODIFIED IMPROVEMENTS.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That for and in consideration of the promises contained herein, the payment of the sum of One Dollar (\$1.00) by each of the parties hereto to the other, and other good and valuable considerations, the receipt and sufficiency whereof is hereby acknowledged, be it understood the parties do hereby agree as follows:

I. DEFINITIONS

- A. ACCELERATED SCHEDULE – A schedule submitted by the OWNER to SHA that obligates the OWNER to substantially complete (i.e., all work except final pavement and final pavement markings) the construction of the MODIFIED IMPROVEMENTS on or before November 30, 2011. The parties currently anticipate for the purposes hereof that the PERMIT will be obtained by July 1, 2010.

- B. ACCESS BREAK - a break in control of the right-of-way line of through highway as shown on SHA Plat No. 45314 to permit construction of access from each side of MD 713 to the PARKSIDE DEVELOPMENT. The ACCESS BREAK provides for the 'paper' break in access only, subject to the approval of the BPW. The physical access will be granted by PERMIT as part of the PARKSIDE DEVELOPMENT ACCESS.
- C. APFO IMPROVEMENTS - improvements required under the COUNTY's Adequate Public Facilities Ordinance. For purposes of this AGREEMENT, the OWNER's APFO IMPROVEMENTS are MD 175, from east of Clark Road to west of MD 713 consisting of widening of MD 175 sufficient to mitigate the PARKSIDE DEVELOPMENT impacts.
- D. DONATION - The portion of real property defined on SHA Right-of-Way Plats 58217, 58218, 58219 and 58220 which is currently part of the PROPERTY which will be transferred to SHA, at no cost to SHA, by the OWNER, such transfer to occur at the time of full execution and delivery of this AGREEMENT (or as soon as practicable thereafter).
- E. MD 175 PROJECT - For purposes of this AGREEMENT, SHA's MD 175 PROJECT consists of planned improvements on MD 175 consisting of a 4-lane section with turn lanes from approximately 1255 feet west of MD 713 (SHA station approximately 242+95) to approximately 2345 feet east of MD 713 (SHA station 278+65).
- F. MODIFIED IMPROVEMENTS - For purposes of this AGREEMENT, the MODIFIED IMPROVEMENTS are modifications to the limits, profile and pavement details to the OWNER's APFO IMPROVEMENTS and are on MD 175 from the MD 295 ramps, west of Clark Road, running easterly for about approximately 3,965 feet to SHA station 242+95 to consist of a 5-lane section with turn lanes and increased pavement depth of about 3 inches, such modifications to match SHA's MD 175 PROJECT details.
- G. OVERLAP - For purposes of this AGREEMENT, the OVERLAP shall consist of improvements constructed under the MD 175 PROJECT from SHA station 242+65 at the eastern limit of the APFO IMPROVEMENTS to east of MD 713 (Rockenbach Road) consisting of a 4-lane section.
- H. PARKSIDE DEVELOPMENT – For the purposes of this AGREEMENT, PARKSIDE DEVELOPMENT shall consist of "Land Unit A", "Land Unit B", "Land Unit D", "Land Unit E" and "Expansion Land Unit C" as shown on that certain plat entitled "Land Condominium Plat Parkside Land Condominium Units 'A', 'B', 'D', 'E' and Expansion Land Unit 'C'" recorded among the plat records of Anne Arundel County, Maryland in plat book 116, pages 39-41 as plats #E5989 – E5991 (collectively the "PLAT"), and the same is more particularly shown on "*Exhibit A*".
- I. PARKSIDE DEVELOPMENT ACCESS - Improvements which will be required along MD 713 which are the OWNER's sole responsibility, and which will be determined by SHA in accordance with the TIS, and which include, but are not

limited to, (i) five (5) points of vehicular access to the PARKSIDE DEVELOPMENT from MD 713, (ii) two (2) points of vehicular access on the west side, and (iii) three (3) points of vehicular access on the east side of MD 713 (one of which currently exists). Two (2) points of vehicular access shall be in alignment with one another and may require, among other things, a traffic signal.

- J. PERMIT - SHA's Engineering Access Permit or Permits that will allow OWNER to construct the MODIFIED IMPROVEMENTS and the PARKSIDE DEVELOPMENT ACCESS.
- K. PROPERTY – For the purposes of this AGREEMENT, PROPERTY is that certain portion of the PARKSIDE DEVELOPMENT owned by the OWNER as of the date of this AGREEMENT, by Confirmatory Deed dated March 13, 2007 and recorded among the Land Records of Anne Arundel County, Maryland in Liber No. 18899, folio 821, consisting of approximately 178.47 acres, more or less, and also shown as Expansion Land Unit "C" on the PLAT, as the same is more particularly shown on "*Exhibit A*"; and
- L. TIS - Traffic Impact Study which will be used by the COUNTY and SHA to determine the extent, magnitude, and limits of the improvements required for the PARKSIDE DEVELOPMENT ACCESS.

II. DESIGN PHASE

- A. OWNER Responsibility
 1. OWNER shall perform or cause to be performed all activities necessary to design the MODIFIED IMPROVEMENTS and the PARKSIDE DEVELOPMENT ACCESS to SHA standards, specifications, and the MD 175 PROJECT.
 2. OWNER shall provide SHA with fifteen (15) sets of MODIFIED IMPROVEMENTS and the PARKSIDE DEVELOPMENT ACCESS plans, at each design milestone (i.e., PI [preliminary investigation], semi-final review, and final review) for their review and approval during each phase, however, SHA shall have final authority for determining the MODIFIED IMPROVEMENTS and the PARKSIDE DEVELOPMENT ACCESS design and revisions thereto within SHA's right-of-way.
 3. In the event OWNER desires to revise the MODIFIED IMPROVEMENTS or PARKSIDE DEVELOPMENT ACCESS plans subsequent to final plan approval, but prior to issuance of the PERMIT and commencement of construction activities, OWNER shall provide SHA with written notification of said revisions including estimated costs and shall request that SHA review and approve such revisions, however SHA shall have final authority concerning any proposed revisions within SHA's right-of-way.
 4. OWNER shall be responsible for applying for and obtaining the PERMIT and all other agency and governmental permits and approvals required for the MODIFIED IMPROVEMENTS and the PARKSIDE DEVELOPMENT

ACCESS, which may include but not be limited to mitigation requirements for any wetland and/or waterway impacts.

B. SHA Responsibility

1. SHA shall review the MODIFIED IMPROVEMENTS and PARKSIDE DEVELOPMENT ACCESS plans and design related materials provided for that purpose at each design milestone and shall provide written comments or concurrence to OWNER within thirty (30) working days following receipt thereof.
2. In the event design changes are necessary during the design phase, SHA shall provide written comments or concurrence with the changes within thirty (30) working days following receipt from OWNER of design change information in order to maintain the schedule for design and construction of the MODIFIED IMPROVEMENTS and the PARKSIDE DEVELOPMENT ACCESS. If there is a disagreement in design changes, SHA shall have final authority to determine design within SHA's right-of-way.
3. In the event SHA desires to initiate changes in the design subsequent to final plan approval, but prior to issuance of the PERMIT and initiation of construction activities, SHA shall provide OWNER with a written request of said revision including estimated costs. SHA shall have final authority concerning any proposed revisions within SHA's right-of-way.
4. SHA shall perform or cause to be performed all activities necessary to design the MD 175 PROJECT, including the OVERLAP.

III. RIGHT-OF-WAY PHASE

A. OWNER Responsibility

1. OWNER shall, at time of full execution and delivery of this AGREEMENT (or as soon thereafter as practicable), convey to SHA, at no cost to SHA, good and marketable title, free and clear of all liens and encumbrances, by SHA's special warranty deed, for the DONATION, including, but not limited to, title search and reports, title insurance, lien releases, if any, and any other documents or items needed to transfer good and marketable title to the SHA. The DONATION shall become part of SHA's right-of-way and will be owned and maintained by SHA. OWNER shall execute all deeds prepared by SHA within five (5) business days of receipt of same from SHA. OWNER shall thereafter produce any new SHA right-of-way plats or any revisions to existing SHA right-of-way plats that may be necessary as a result of OWNER'S construction of the MODIFIED IMPROVEMENTS.
2. In the event additional property interests (e.g., right-of-way, easement, fee simple, right-of-entry) are required for the construction of the MODIFIED IMPROVEMENTS or the PARKSIDE DEVELOPMENT ACCESS, other than those property interests currently owned or controlled by SHA or the OWNER, the OWNER shall acquire and shall be responsible for all tasks and

costs to acquire such additional property interests. All such additional acquisitions shall be in accordance with SHA's standard procedures, this AGREEMENT, and all applicable Federal and State laws, and shall include, but not be limited to, production of any new SHA right-of-way plats or any revisions to existing SHA right-of-way plats, title search and reports, title insurance, preparation of deeds and descriptions of the property and the interests being conveyed, and any other documents or items needed to transfer good and marketable title to SHA at no cost to SHA.

3. The OWNER shall convey to SHA, at no cost to SHA, good and marketable title, free and clear of all liens and encumbrances, by SHA's special warranty deed, for all portions of the PARKSIDE DEVELOPMENT needed for the construction and maintenance of the PARKSIDE DEVELOPMENT ACCESS, which shall become part of SHA's right-of-way and will be owned and maintained by SHA and shall include, but not be limited to, production of any new SHA right-of-way plats or any revisions to existing SHA right-of-way plats, title search and reports, preparation of deeds and descriptions of the property and the interests being conveyed, and any other documents or items needed to transfer good and marketable title to SHA. Said conveyance shall occur prior to (i) issuance of the PERMIT by SHA for the PARKSIDE DEVELOPMENT ACCESS, and (ii) commencement of construction of the PARKSIDE DEVELOPMENT ACCESS.
4. The OWNER shall provide perpetual drainage easements for any outfall required, as determined by SHA, for the MODIFIED IMPROVEMENTS, the MD 175 PROJECT, the OVERLAP and the PARKSIDE DEVELOPMENT ACCESS that are essential to highway drainage.

B. SHA Responsibilities

1. In the event additional property interests are required for the construction of the MD 175 PROJECT, including the OVERLAP, SHA shall acquire the property interests in SHA's name at the sole expense of SHA .
2. SHA shall prepare all deeds and descriptions of the DONATION and the interests being conveyed and shall prepare the deeds to the OWNER for execution.

IV. CONSTRUCTION PHASE

A. OWNER Responsibility

1. The OWNER shall apply for and obtain separate PERMITS to construct the MODIFIED IMPROVEMENTS and the PARKSIDE DEVELOPMENT ACCESS. SHA shall not issue the PERMIT for the PARKSIDE DEVELOPMENT ACCESS until the OWNER has completed and SHA has accepted the construction of the MODIFIED IMPROVEMENTS.

2. The OWNER shall provide SHA with the ACCELERATED SCHEDULE as part of their submittal for the PERMIT required for the MODIFIED IMPROVEMENTS.
3. Concurrent with execution of this AGREEMENT, the OWNER shall submit the required surety for the MODIFIED IMPROVEMENTS as follows:
 - a. A Performance Bond in an amount equal to One Hundred and Fifty Percent (150%) of the estimated cost to construct the MODIFIED IMPROVEMENTS pursuant to an estimate approved in writing by SHA.
 - b. A Payment Bond in an amount equal to One Hundred Fifty Percent (150%) of the estimated cost of the SHA SERVICES required for the MODIFIED IMPROVEMENTS pursuant to a written estimate prepared by SHA.
 - c. SHA may immediately file a claim against the Performance Bond or otherwise seek recourse against the Performance Bond if the OWNER fails to construct the MODIFIED IMPROVEMENTS in conformity with SHA's specified standards (in SHA's sole discretion) and in accordance with the ACCELERATED SCHEDULE.
 - d. SHA may immediately file a claim against the Payment Bond or otherwise seek recourse against the Payment Bond if the OWNER fails to reimburse SHA for the SHA SERVICES required for the construction of the MODIFIED IMPROVEMENTS.
4. The OWNER shall submit, at its election, either bonds or Letters of Credit for the PARKSIDE DEVELOPMENT ACCESS as follows:
 - a. A Performance Bond or a Letter of Credit in an amount equal to One Hundred Fifty Percent (150%) of the estimated cost to construct the PARKSIDE DEVELOPMENT ACCESS pursuant to an estimate approved in writing by SHA.
 - b. A Payment Bond or a Letter of Credit in an amount equal to One Hundred Fifty Percent (150%) of the estimated cost to reimburse SHA for the cost of the SHA SERVICES for the PARKSIDE DEVELOPMENT ACCESS, pursuant to a written estimate prepared by SHA.
 - c. If the sureties provided under this Section IV(A)(4) are in the form of bonds, then:
 - (1) SHA may immediately file a claim against the Performance Bond or otherwise seek recourse against the Performance Bond if the OWNER fails to construct the PARKSIDE DEVELOPMENT ACCESS pursuant to this AGREEMENT and the PERMIT; and
 - (2) SHA may immediately file a claim against the Payment Bond or otherwise seek recourse against the Payment Bond if the OWNER fails to reimburse SHA for the SHA SERVICES required for the construction of the PARKSIDE DEVELOPMENT ACCESS.

- d. If the sureties provided under this Section IV(A)(4) are in the form of Letters of Credit, then:
- (1) SHA may immediately issue a sight draft calling any Letter of Credit or otherwise seek recourse against any Letter of Credit if: (i) OWNER fails to construct the PARKSIDE DEVELOPMENT ACCESS pursuant to this AGREEMENT and the PERMIT, (ii) OWNER fails to reimburse SHA pursuant to this AGREEMENT for the SHA SERVICES required for the construction of the PARKSIDE DEVELOPMENT ACCESS; and/or (iii) SHA receives notification that any Letter of Credit will not remain in full force and effect until released by SHA as required herein; and
 - (2) The Letters of Credit shall contain the following language:

“It is a condition of this letter of credit that it shall be deemed automatically extended without amendment for one (1) year from the present or any future expiration date unless at least forty-five (45) days prior to such expiration date, SHA is notified by certified letter that (insert name of issuing bank), elects not to consider this letter of credit renewed for any such additional period.”
5. Upon receipt of the PERMIT, the OWNER shall construct, or have constructed, the MODIFIED IMPROVEMENTS or the PARKSIDE DEVELOPMENT ACCESS, in accordance with SHA standards and specifications, the latest version of the “Manual on Uniform Traffic Control Devices”; the approved plans and specifications; and the terms of the PERMIT.
 6. In the event utility relocations and/or adjustments are required to construct the MODIFIED IMPROVEMENTS or the PARKSIDE DEVELOPMENT ACCESS, the OWNER shall be responsible for implementing and paying for said relocations and/or adjustments.
 7. The OWNER may, at its option and expense, provide independent inspection during construction of the MODIFIED IMPROVEMENTS or the PARKSIDE DEVELOPMENT ACCESS; however, SHA’s inspectors shall have final authority during construction.
 8. When SHA has determined that the construction of the MODIFIED IMPROVEMENTS or the PARKSIDE DEVELOPMENT ACCESS has been satisfactorily completed, the OWNER shall forward to the SHA two (2) complete sets of as-built plans in electronic and paper media. The OWNER shall retain the services of a licensed engineer, acceptable to SHA, in SHA’s sole discretion, for the purpose of reviewing and signing any necessary shop drawings prepared by the OWNER’s contractor or subcontractors as required by SHA.
 9. The OWNER shall complete the construction of the MODIFIED IMPROVEMENTS in accordance with the ACCELERATED SCHEDULE. If the construction of the MODIFIED IMPROVEMENTS is delayed, in

addition to other remedies provided for in this AGREEMENT and otherwise available, SHA shall have the right to withhold issuance of the PERMIT for the PARKSIDE DEVELOPMENT ACCESS until such time as the construction of the MODIFIED IMPROVEMENTS is completed to the satisfaction of SHA.

B. SHA Responsibility

1. In regard to the MODIFIED IMPROVEMENTS and the PARKSIDE DEVELOPMENT ACCESS, in each case, after SHA has approved the plans, prior to solicitation for bids, subject to the status of utility relocations being acceptable to SHA, and subject to approval of the PERMIT by SHA, SHA shall issue to the OWNER a PERMIT for the purpose of constructing either the MODIFIED IMPROVEMENTS or the PARKSIDE DEVELOPMENT ACCESS as the case may be, in accordance with: (i) the approved plans and specifications, (ii) the terms and conditions of the PERMIT for each, and (iii) this AGREEMENT.

SHA shall not approve the PERMIT for the PARKSIDE DEVELOPMENT ACCESS until such time the MODIFIED IMPROVEMENTS have been constructed by the OWNER and accepted in writing by SHA.

2. SHA shall provide the SHA SERVICES during the construction of both the MODIFIED IMPROVEMENTS and PARKSIDE DEVELOPMENT ACCESS at the OWNER's sole cost and expense.
3. SHA shall provide the OWNER with written review comments of all shop drawings within ten (10) working days following receipt of same.
4. SHA shall review and approve (subject to any revisions required by SHA) all Traffic Control Plans and subsequent revision thereof, for each phase of construction, prior to the start of that phase.
5. SHA shall review and approve (subject to any revisions required by SHA) all plan revisions that are required, at SHA's sole discretion, that are necessary to address differing site conditions or errors and omissions in the MODIFIED IMPROVEMENTS and the PARKSIDE DEVELOPMENT ACCESS plans, in a manner acceptable to SHA.
6. SHA's Assistant District Engineer (Construction) shall have final authority to determine: (a) the acceptability of work and the date of completion for the MODIFIED IMPROVEMENTS and PARKSIDE DEVELOPMENT ACCESS; (b) that the completed work is in accordance with SHA's specifications; (c) if any corrective action is to be taken; and (d) what the corrective action shall be. Any dispute concerning these matters may be referred to SHA's District Engineer for resolution by the District Engineer and OWNER. If not satisfied with the District Engineer's determination, OWNER may appeal to SHA's Deputy Administrator/Chief Engineer for Operations, whose decision shall be final.
7. SHA shall (i) advertise the MD 175 PROJECT and the OVERLAP for construction bids, (ii) award and administer the construction contract for both,

(iii) construct the MD 175 PROJECT and the OVERLAP as shown on the final MD 175 PROJECT plans, and (iv) provide the SHA SERVICES for the MD 175 PROJECT and the OVERLAP.

8. In the event that revisions to the MD 175 PROJECT or the OVERLAP are required in SHA's sole judgment due to conditions encountered during construction, or to coordinate with the construction of the MODIFIED IMPROVEMENTS, said revisions shall be promptly made by SHA without prior notice to or concurrence from, the OWNER.
9. SHA shall obtain all permits necessary to construct the MD 175 PROJECT and the OVERLAP.
10. SHA shall coordinate all utility relocations for the construction of the MD 175 PROJECT and the OVERLAP in accordance with SHA's Standard Utility Policy.
11. SHA shall obtain approval from the BPW for the ACCESS BREAK.

V. DESIGN PHASE FUNDING

A. OWNER Responsibility

1. OWNER shall fund all costs associated with the design of the MODIFIED IMPROVEMENTS and the PARKSIDE DEVELOPMENT ACCESS.
2. OWNER shall be responsible for all costs for design changes required by either party for the MODIFIED IMPROVEMENTS and for the PARKSIDE DEVELOPMENT ACCESS, to include, but not be limited to, changing conditions, shop drawings, etc.

B. SHA Responsibility

1. SHA shall be responsible for all costs incurred by SHA for review of the MODIFIED IMPROVEMENTS and the PARKSIDE DEVELOPMENT ACCESS plans.
2. SHA shall be responsible for all costs to design the MD 175 PROJECT and the OVERLAP.

VI. RIGHT-OF-WAY PHASE FUNDING

A. OWNER Responsibility

1. OWNER shall be responsible for all costs associated with transferring to SHA all portions of the PARKSIDE DEVELOPMENT needed for the construction and maintenance of the MODIFIED IMPROVEMENTS, including but not limited to, title search and reports, title insurance, lien releases, if any, and any other documents or items needed to transfer good and marketable title to the SHA.

2. In the event additional property interests are required for the MODIFIED IMPROVEMENTS or the PARKSIDE DEVELOPMENT ACCESS, beyond those property interests currently owned or controlled by SHA and the OWNER, the OWNER shall be responsible for all costs to acquire such additional property interests.
 3. OWNER shall be responsible for all costs associated with transferring to SHA all portions of the PARKSIDE DEVELOPMENT needed for the construction and maintenance of the PARKSIDE DEVELOPMENT ACCESS, including but not limited to, production of any new SHA right-of-way plats or any revisions to existing SHA right-of-way plats, title search and reports, title insurance, preparation of deeds and descriptions of the property and the interests being conveyed, and any other documents or items needed to transfer good and marketable title to the SHA.
- B. SHA Responsibility
1. In the event additional property interests (*e.g.*, right-of-entry, easements, fee simple) are needed for the construction of the MD 175 PROJECT and the OVERLAP, SHA shall be responsible for all costs necessary to acquire such property interests.
 2. SHA shall prepare all deeds and descriptions of the DONATION and the interests being conveyed and shall prepare the deeds to the OWNER for execution.

VII. CONSTRUCTION PHASE FUNDING

- A. OWNER Responsibility
1. OWNER shall be responsible for all costs related to the construction of the MODIFIED IMPROVEMENTS and the PARKSIDE DEVELOPMENT ACCESS.
 2. In the event utility relocations and/or adjustments are required to construct the MODIFIED IMPROVEMENTS or the PARKSIDE DEVELOPMENT ACCESS, the OWNER shall be responsible for all costs necessary for any such relocation and/or adjustment.
 3. The OWNER shall be solely responsible for all costs and expenses incurred in retaining the services of a licensed engineer during construction of the MODIFIED IMPROVEMENTS and the PARKSIDE DEVELOPMENT ACCESS for the purpose of reviewing and signing shop drawings prepared by the OWNER's contractor or subcontractor.
 4. The OWNER shall be responsible for all additional costs which result from unanticipated conditions encountered during construction and that are related to, caused by, or in any way connected to the construction of the MODIFIED IMPROVEMENTS or the PARKSIDE DEVELOPMENT ACCESS.

5. The OWNER shall be responsible for all claims filed by its construction contractor and subcontractors in the construction of the MODIFIED IMPROVEMENTS or the PARKSIDE DEVELOPMENT ACCESS.
6. The OWNER shall be responsible for all costs incurred by SHA, including SHA's contractor's costs, for any delays to SHA's MD 175 PROJECT that are a direct result of the OWNER's failure to comply with the terms of the ACCELERATED SCHEDULE.
 - a. In the event the OWNER fails to reimburse SHA for all costs incurred by SHA for any delays to SHA's MD 175 PROJECT that are a result of the OWNER'S failure to comply with the terms of the ACCELERATED SCHEDULE, SHA, in its sole discretion, may withhold approval of the PARKSIDE DEVELOPMENT ACCESS and shall withhold the required PERMIT for same until all outstanding costs have been reimbursed to SHA.
7. The OWNER shall reimburse SHA within thirty days (30) days after the OWNER has received each periodic invoice for documented costs incurred by SHA for the SHA SERVICES, including SHA's direct salaries, payroll burden and overhead. The cost to be reimbursed to SHA by the OWNER for the SHA SERVICES required MODIFIED IMPROVEMENTS and PARKSIDE DEVELOPMENT ACCESS is estimated but OWNER shall be responsible for actual costs incurred by SHA whether lesser or greater.
8. In the event SHA does not receive payment of invoices from the OWNER within thirty (30) days after the OWNER has received an invoice, SHA may, in its sole discretion, issue a sight draft calling all or part of the OWNER's Letter of Credit or file a claim against OWNER'S Payment Bond, as applicable.

B. SHA Responsibility

1. SHA shall provide an invoice to the OWNER, on a periodic basis, for all actual costs incurred by SHA for the SHA SERVICES required for the MODIFIED IMPROVEMENTS and the PARKSIDE DEVELOPMENT ACCESS, to include, but not be limited to, direct salaries, payroll burden and overhead (i.e., administrative and general expenses), and other direct costs for such things as mileage and reproduction costs, etc..
2. In the event SHA's MD 175 PROJECT is delayed, hindered, or otherwise impacted by the failure of the OWNER to comply with the terms of the ACCELERATED SCHEDULE, SHA shall invoice the OWNER for all costs incurred by SHA for such delay, hindrance and/or impact, such cost to include, but limited to, delay claims, change orders, etc.
 - a. SHA, in it's sole discretion, may withhold approval of the PARKSIDE DEVELOPMENT ACCESS and shall withhold the required PERMIT for same until all outstanding costs have been reimbursed by the OWNER to SHA for all costs incurred by SHA for any delays to SHA's MD 175

PROJECT that are a result of the OWNER'S failure to comply with the terms of the ACCELERATED SCHEDULE.

3. SHA shall be responsible for all costs incurred by SHA for shop drawing reviews.
4. In the event the OWNER defaults or otherwise fails to construct the MODIFIED IMPROVEMENTS to SHA's standards and to SHA's sole satisfaction, SHA may, in its sole discretion, file a claim against the Performance Bond.
5. In the event OWNER defaults or otherwise fails to reimburse SHA for the SHA SERVICES required for the MODIFIED IMPROVEMENTS, SHA may, in its sole discretion, file a claim against the Payment Bond.
6. In the event the OWNER defaults or otherwise fails to construct the PARKSIDE DEVELOPMENT ACCESS to SHA's standards and to SHA's sole satisfaction, SHA may, in its sole discretion, issue a sight draft calling all or part of the OWNER's Letter of Credit or file a claim against the Performance Bond with respect to the PARKSIDE DEVELOPMENT ACCESS, as applicable.
7. In the event OWNER defaults or otherwise fails to reimburse SHA for the SHA SERVICES required for the PARKSIDE DEVELOPMENT ACCESS, SHA may, in its sole discretion, issue a sight draft calling all or part of the OWNER's Letter of Credit or the Payment Bond with respect to the PARKSIDE DEVELOPMENT ACCESS.

VIII. GENERAL

- A. The OWNER, its successors or assigns, shall, at their sole cost and expense, indemnify, and hold harmless and defend the State of Maryland, SHA, and the Maryland Department of Transportation, from and against any and all claims, actions, damages, liability, and expense including, but not limited to, attorney's and other professional fees, in connection with the loss of life, personal injury and/or property damage during or after the construction arising out of or connected in any way to the design or construction of the MODIFIED IMPROVEMENTS and the PARKSIDE DEVELOPMENT ACCESS by the OWNER, its successors or assigns, occasioned wholly or in part by any act or omission of the OWNER, its officers, shareholders, agents, contractors, employees, or invitees. The OWNER releases the State of Maryland, SHA, and the Maryland Department of Transportation, their respective members, officers, agents, employees and contractors from any and all claims or demands for damages due to death or injury to any person, and/or for damages to property that occurs during or after the construction of the MODIFIED IMPROVEMENTS and the PARKSIDE DEVELOPMENT ACCESS due to the OWNER's failure to properly maintain the MODIFIED IMPROVEMENTS and the PARKSIDE DEVELOPMENT ACCESS in a safe condition during the construction period. The OWNER further releases the State of Maryland, SHA, and the Maryland

Department of Transportation, their respective members, officers, agents, employees and contractors from any and all claims for damages or injuries to property or to any party of any nature whatsoever attributable, wholly or in any part, to the MODIFIED IMPROVEMENTS and the PARKSIDE DEVELOPMENT ACCESS, or caused by any act, omission, neglect, or misconduct in the design and/or the construction of the MODIFIED IMPROVEMENTS and the PARKSIDE DEVELOPMENT ACCESS, or due to non-execution of any work, or due to defective work or materials. The releases set forth herein shall continue throughout the construction and thereafter during the life of the MODIFIED IMPROVEMENTS and the PARKSIDE DEVELOPMENT ACCESS.

- B. No review, correction or approval of any documents by SHA shall relieve the OWNER and its consultants/contractors from the entire responsibility for errors or omissions in such documents or for the adequacy thereof. SHA assumes no responsibility for and makes no representations or warranties, express or implied, as to the design, condition, workmanship, or adequacy of the documents or of the MODIFIED IMPROVEMENTS and/or the PARKSIDE DEVELOPMENT ACCESS.
- C. This AGREEMENT and all the obligations, responsibilities, and rights set forth herein shall inure to the benefit of and be binding upon the parties hereto, their respective agents, successors, and assigns, provided, however, neither this AGREEMENT nor the PERMIT are assignable without the prior written consent of SHA, which may be withheld in SHA's sole discretion.
- D. All SHA invoices shall be accompanied by sufficient documentation by SHA to evidence actual costs incurred. If the OWNER requires additional documentation, the OWNER may have the OWNER's authorized personnel visit SHA to verify all documentation and conduct independent audits. The OWNER is to contact:
 - Mrs. Jackie Steffy
 - Chief, Receipts and Disbursements
 - Office of Finance and Information Technology
 - Maryland State Highway Administration
 - 707 N. Calvert Street, MS C-504
 - Baltimore MD 21202
 - Phone: (410) 545-5703
 - E-mail: jsteffy@sha.state.md.us
- E. This AGREEMENT and the rights and liabilities of the parties hereto shall be determined in accordance with Maryland law and in Maryland courts. The provisions of this AGREEMENT are for the exclusive benefit of SHA and the OWNER, and their permitted successors or assigns and not for the benefit of, and shall in no event be deemed to confer any rights upon, any other person or entity who has not executed this AGREEMENT.
- F. The parties hereby warrant and affirm that the persons executing this AGREEMENT are authorized and empowered to act on behalf of the respective parties. The parties hereby further warrant and affirm that no cause of action

challenging the existence, scope or validity of this AGREEMENT, shall lie on the grounds that the persons signing on behalf of the respective parties were neither authorized nor empowered so to do.

- G. The recitals (WHEREAS clauses) are incorporated herein as a substantive part of this AGREEMENT.
- H. Each notice, demand, request, consent, approval, disapproval, designation, or other communications (all of the foregoing are herein referred to as "notice") that a party gives to another party shall be in writing and shall be given or communicated through facsimile machine, hand delivery, email, or United States Mail, and addressed as follows:

In the case of OWNER:

Mr. J. Thomas Scrivener
5300 Dorsey Hall Drive, Suite 200
Ellicott City, MD 21042
Phone: (410) 964-5522
E-mail: tscrivener@comcast.net

and in the case of SHA to:

Lee Starkloff, District Engineer
State Highway Administration
138 Defense Highway
Annapolis MD 21401
Phone: (410) 841-1001
Fax: (410) 841-5309
E-mail: lstarkloff@sha.state.md.us

with a copy to:

Mr. Glenn Klaverweiden, Agreements Coordinator
Regional and Intermodal Planning Division
State Highway Administration
707 N. Calvert Street, Mailstop C-502
Baltimore MD 21202
Phone: (410) 545-5677
E-mail: gklaverweiden@sha.state.md.us

and a copy to:

Mr. Steve Foster, Chief
Engineering Access Permits Division
State Highway Administration
707 N. Calvert Street
Mailstop C-302
Baltimore MD 21202
Phone: (410) 545-5601
E-mail: sfoster@sha.state.md.us

Each party may designate a different address by written notices sent to each of the other parties at least ten (10) days in advance. Unless otherwise specifically stated to the contrary elsewhere in this AGREEMENT, any notice shall be deemed to have been given, made or communicated on the date the properly addressed, with postage thereon fully prepaid, notice is mailed by certified mail, return receipt requested.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper and duly authorized officers, on the day and year first written above.

**STATE HIGHWAY
ADMINISTRATION**

By: Neil J. Pedersen 5/27/10 (SEAL)
Neil J. Pedersen Date
Administrator

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

Edward J. Moran 5/27/10
Assistant Attorney General

RECOMMENDED FOR APPROVAL:

Gregory D. Welker
Gregory D. Welker
Deputy Administrator/Chief Engineer
for Operations

Douglas H. Simmons
Douglas H. Simmons
Deputy Administrator/Chief Engineer
for Planning, Engineering, Real Estate and
Environment

Lisa B. Conners
Lisa B. Conners
Director Office of Finance

BRS/EGGERL, LLC

BY: BRS Realty Advisory Services, LLC,
Its Manager

ATTEST:



BY:  (SEAL)
J. Thomas Scrivener Date
President