

DRAFT – FOR CONSIDERATION BY TOWN COUNCIL ON 2/4/19

ANNEXATION AGREEMENT FOR ANNEXATION OF PROPERTY NORTH OF CORPORATE LIMITS OF THE TOWN OF MOUNT AIRY, MARYLAND

THIS ANNEXATION AGREEMENT (“Agreement”), dated this ___ day of _____, 2019, by and between Frall Developers, Inc. (hereinafter “Frall”), the owner of a portion of the parcels of real property located along the northern border of the limits of the Town of Mount Airy, Maryland (hereinafter “the Property”), who has petitioned, along with others who own parcels within the Property described below, for annexation of the Property into the Town of Mount Airy resulting in Annexation Resolution No. 2018-42 introduced on May 7, 2018 before the Town Council of the Town of Mount Airy (hereinafter “Petition”), and the Town of Mount Airy, Maryland, a municipal corporation organized under the laws of the State of Maryland (hereinafter “the Town”). Frall and the other parcel owners who have petitioned for annexation shall collectively be referred to below as “Petitioners”.

WHEREAS, Frall holds legal title in fee simple to and/or other rights, title and/or interest in five parcels of real property that collectively border the northern limits of the Town deeded to Frall by deeds dated May 5, 2010 and recorded among the land records of Carroll County, Maryland in Liber 6277, Folios 192, 198, 212, 219, 225 and 231 (hereinafter “the Frall Parcels”), and which are among the parcels making up the Property; and

WHEREAS, the Property consists of 12.6439 acres of land, more or less, the metes and bounds description for which is attached hereto as Exhibit A and is shown on the Plat of Annexation attached hereto as Exhibit B; and

WHEREAS, Frall and the other Petitioners filed the Petition with the Town pursuant to the Town Code, Chapter 44 and the Maryland Annotated Code, Local Government Article,

Section 4-404 seeking annexation of the Property into the Town and have paid the requisite fee to the Town for processing the Petition pursuant to the Town Code, Section 44-3; and

WHEREAS, the Petition was determined to be in proper form and compliant with the Town and Maryland Codes by the attorney for the Town; and

WHEREAS, Annexation Resolution No. 2018-42 (hereinafter “the Resolution”) was introduced at the regular Town Council meeting held on May 7, 2018; and

WHEREAS, the Resolution was thereupon referred, pursuant to the Town Code, to the Town’s Planning Commission for review and recommendations; and

WHEREAS, on or about July 30, 2018, the Town’s Planning Commission recommended against adoption or approval of the proposed annexation; and

WHEREAS, pursuant to the Maryland Annotated Code, Local Government Article, Section 4-406 , a public hearing was held on or about August 6, 2018; and

WHEREAS, the public hearing was advertised in compliance with the Maryland Annotated Code, Local Government Article, Section 4-406; and

WHEREAS, a copy of the public notice for the public hearing was provided to applicable County, regional and State planning agencies; and

WHEREAS, an annexation plan was developed by the Town and provided to the governing bodies of Carroll County the State Department of Planning and any regional and State planning agencies having jurisdiction at least thirty (30) days prior to the public hearing as required by the Maryland Annotated Code, Local Government Article, Section 4-406; and

WHEREAS, the Carroll County Planning Commission held a public hearing on the Annexation Petition on November 13, 2018 and gave a favorable recommendation to the annexation; and

WHEREAS, the Board of County Commissioners of Carroll County held an informational meeting on November 15, 2018 and a public hearing on November 29, 2018, at which time the Board of County Commissioners concurred with the Carroll County Planning Commission's favorable recommendation on the annexation; and

WHEREAS, on December 3, 2018 the Town Council held a public hearing and received public comment on the proposed Annexation Resolution 2018-42; and

WHEREAS, the Town Council considered and approved the Resolution on or about February 4, 2019, subject to certain conditions set forth in the Resolution, as amended, and subject to the terms and conditions of this Agreement; and

WHEREAS, pursuant to the Maryland Annotated Code, Local Government Article, Section 4-409, the annexation will be made effective on March 22, 2019; and

WHEREAS, no petition for referendum on the Resolution was received by the Town meeting the requirements of the Maryland Annotated Code, Local Government Article, Section 4-409 and, therefore, the Resolution became final after expiration of forty-five (45) days after its enactment, subject to execution of this Agreement and the fulfillment of the conditions set forth in the Resolution and this Agreement.

NOW, THEREFORE, for the mutual promises contained herein and other good and valuable consideration, which the parties deem to be good and sufficient, the parties do hereby agree as follows:

1.0 Definitions.

1.1 "Agreement" shall mean this Annexation Agreement.

1.2 "Frall" shall mean Frall Developers, Inc.

1.3 “Frall Parcels” shall mean those five parcels of real property in which Frall currently holds legal title in fee simple to and/or other rights, title and/or interest that collectively border the northern limits of the Town deeded to Frall by deeds dated May 5, 2010 and recorded among the land records of Carroll County, Maryland in Liber 6277, Folios 192, 198, 212, 219, 225 and 231 (hereinafter “the Frall Parcels”), and which are among the parcels making up the Property.

1.4 “Maryland Code” shall mean the Code of the State of Maryland.

1.5 “Mayor” shall mean the Mayor of the Town of Mount Airy.

1.6 “Nonconforming use” for the purposes of this Agreement shall mean a use of a building or of land lawfully existing at the time of the effective date of this Agreement and of the annexation to which this Agreement relates but which does not conform with the use regulations as set forth in Chapter 112 of the Town Code for the zone in which the building or land is located.

1.7 “Parties” shall mean the parties to this Agreement.

1.8 “Petition” shall mean the petition for annexation of the Property resulting in Annexation Resolution No. 2018-42 introduced on May 7, 2018 before the Town Council of the Town of Mount Airy.

1.9 “Petitioners” shall mean those owners of parcels of real property in part comprising the Property who were signatories to the Petition.

1.10 “Plat of Annexation” shall mean the plat attached hereto as Exhibit B showing the boundaries of the Property and, within those boundaries, the zoning classifications under Chapter 112 of the Town Code for sections of the Property that will apply upon annexation.

1.11 “Property” shall mean 12.6439 acres of land, more or less, the metes and bounds description for which is attached hereto as Exhibit A and which is shown on the Plat of Annexation attached hereto as Exhibit B.

1.12 “Resolution” shall mean Annexation Resolution No. 2018-42 introduced on May 7, 2018 before the Town Council of the Town of Mount Airy and shall include any and all amendments thereafter made and approved by the Town Council.

1.13 “Sewer hookup fees” as used herein shall refer to those fees or charges defined and/or referred to in Sections 1-25D and 91-32, and which are as of the effective date of this Agreement \$1,700.00 plus the sum of \$2,500.00 to be allocated to the sewer expansion and replacement funds, for a total of \$4,200.00.

1.14 “Town” shall mean the Town of Mount Airy, a municipal corporation organized under the laws of the State of Maryland.

1.15 “Town Code” shall mean the Code of the Town of Mount Airy.

1.16 “Town Council” shall mean the Town Council of the Town of Mount Airy.

1.17 “Water Connection Charges” as used herein shall refer to those fees or charges defined and/or referred to in Sections 1-25E and 109-20, and which are as of the effective date of this Agreement \$1,700.00 per equivalent dwelling unit.

1.18 “Zoning Classifications” shall mean the zoning classifications under Chapter 112 of the Town Code for sections of the Property that will apply upon annexation and which are shown in the Plat of Annexation attached hereto Exhibit B.

2.0 Recitals.

2.1 The recitals set forth above are incorporated herein and made a part hereof as though fully set forth.

3.0 Conditions and Effective Date.

3.1 This Agreement is expressly conditioned upon the passage and approval of the Resolution and this Agreement by the Town Council, expiration of all referendum periods pursuant to of the Maryland Annotated Code, Local Government Article, Section 4-404 or approval of the Resolution and the terms of this Agreement by referendum, and the execution of this Agreement by and on behalf of the Town and Frall within 60 days after the annexation becomes effective.

3.2 This Agreement shall become effective on the date that the Resolution becomes effective under the law.

3.3 This Agreement shall become null and void *ab initio*, even if executed by one or more of the Parties, if for any reason the Resolution does not become effective and/or the Resolution or any part of this Agreement is stricken, voided or held in any manner invalid by a court of competent jurisdiction.

3.4 As a condition precedent to annexation, this Agreement is conditioned, as set forth in the Annexation Resolution and as set forth in this Agreement below, upon the following terms and conditions:

3.4.1 Frall, its successors and assigns, pursuant to Section 44-8 of the Town Code, shall pay the costs of any required advertising of the Annexation Resolution, as well as the outstanding balance, after application of the \$5,000 deposit paid to the Town upon filing of the Petition pursuant to Section 44-3 of the Town Code, of any charges made or incurred by the Town for review of the proposed annexation, services of the Town Attorneys and any

consultants, plus 15% toward the Town's administrative costs and overhead. To the extent that the expenses of the Town for which the deposit is made are upon final accounting less than \$5,000, Frall shall be refunded the balance of the deposit.

3.4.2 Municipal real estate taxes (hereinafter referred to as "Town taxes") shall be imposed on the Property at the full municipal real estate tax rate beginning with the next fiscal year after the effective date of the annexation pursuant to the Town Code, Section 101-7;

3.4.3 Subject to Term/Condition 3.4.4 below, the Town will allow extension of sanitary sewer, water and storm drain lines, driveways, streets, curbs, gutters, and other public improvements typically provided by the Town and/or Carroll County within the Property, to the extent allowed by law and unless provided otherwise by the Annexation Resolution or by the Annexation Agreement, at the expense of the owner requesting same subject to conditions set forth in the Annexation Resolution and/or Annexation Agreement and applicable law.

3.4.4 Provided such extensions are requested under the terms outlined herein, and provided that the Town has allocated water and sewer capacity to the appropriate allocation category, the Town will allow owners of properties within the area to be annexed, subject to the provisions and pursuant to the procedures set forth in the Town Code, Chapter 109, Section 109-19.1, *et. seq.*, and the provisions herein, to extend sanitary sewer and water service to the Property and, in accordance with and subject to Town law and regulations governing the allocation of public water and sewer, will allocate water and sewer taps to the Property at the time the extensions are completed and inspected by the Town, and such taps are requested by the owners. Allocation of water and sewer service to the Property shall be in accordance with Town laws, rules and regulations, as may be amended, in effect at the time such are allocated. All water connection charges, as defined above, will be paid to the Town as provided herein. All

water engineering plans will be submitted to the Town Engineer for review and approval. All sewer hookup fees, as defined above, will be paid to the Town as provided herein. All sewer engineering plans will be submitted to the Town Engineer for review and approval. Frall shall be responsible for the water connection charges and sewer hookup fees in the amounts in effect on the effective date of this Agreement.

3.4.5 Subject to all appropriate laws and administrative requirements, the Property is hereby zoned by the adoption of the Annexation Resolution, and simultaneously with is annexation into the corporate boundaries of the Town, as R-2, Residential zoning classification. The Town hereby agrees that if the R-2, Residential zoning classification for the Property is determined by the Board of County Commissioners of Carroll County to permit a land use substantially different from the use for the Property as currently zoned by Carroll County the Town will cooperate with Petitioners in all regards and make all reasonable efforts to seek the express consent and approval by the Board of County Commissioners of Carroll county, Maryland, to such zoning classification for the Property.

3.5 Frall hereby agrees that it shall pay the water connection charges and sewer hookup fees for the Frall Parcels, and shall also pay the water connection charges and sewer hookpu fees incurred by any of the other owners of lots or parcels which are part of the Property and which are improved by residential homes or dwellings as of the effective date of the Annexation. Frall shall be responsible for such water connection charge and sewer hookup fees at such time as the Town extends water and sewer service to any such lot or parcel pursuant to the terms of this Agreement, pursuant to any order of the Maryland Department of Environment for the Town to extend water and/or sewer to any such lot and/or pursuant to applicable provisions of the Town Code. This agreement by Frall to pay for the water connection charges

and sewer hookup fees for other improved parcels shall be binding on all of Frall's assigns, grantees and successors in interest to the Frall Parcels, except purchasers of residential lots created by the subdivision of the Frall Parcels and improved by residential dwellings and/or who purchase said lots for their residential use. The owners of parcels making up part of the Property other than the Frall Parcels, and their assigns, grantees and successors in interest, are intended third party beneficiaries of this promise.

3.5.1 In order to secure Frall's promise with respect to the payment of water connection charges and sewer hookup fees for other residentially improved properties in the area to be annexed, Frall hereby agrees to deposit with the Town, to be held by the Town in escrow, an amount in U.S. dollars equal to the water connection charges and sewer hookup fees for each existing home or dwelling on properties within the area to be annexed upon execution of this Annexation Agreement.

3.6 This Agreement shall be recorded among the Land Records of Carroll County, Maryland at Petitioners' sole cost and expense as to each lot or parcel and at no cost or expense to the Town.

3.7 This Agreement and the annexation to which it relates shall be null and void *ab initio* in the event that any condition precedent as set forth herein or the Resolution is not timely and perfectly fulfilled to the satisfaction of the Town Council.

4.0 Zoning and Town Code Compliance.

4.1 The Property simultaneously with its annexation into the corporate boundaries of the Town shall, for the purposes of zoning, be given R-2, Residential zoning classification as reflected in the Plat of Annexation attached hereto as Exhibit B.

4.2 All current and future uses of or activities on individual parcels comprising the Property shall henceforth be governed, regulated and limited by the provisions of the Town Code applicable to the particular Zoning Classification for each individual parcel, except as set forth below.

4.3 Nonconforming uses shall be allowed to continue but shall not be allowed to expand, except in accordance with Section 112-6A. of the Town Code, and shall further be subject to the provisions of the Town Code relating to discontinuance and substitution of nonconforming uses as set forth in the Town Code, Section 112-6.

4.4 Lots of record which exist and are improved as of the effective date of this Agreement and the annexation to which it relates which do not fulfill the Town's regulations for the minimum lot area and/or width for the zone in which they are located shall be legal lots of record pursuant to the Town Code, Section 112-51.

4.5 Lots or parcels making up the Property that are improved as of the effective date of annexation shall not be required to meet the landscaping and screening requirements set forth in the Town Code, Section 112-14 and shall be considered nonconforming uses as respects landscaping and screening requirements, except that any future improvements to such shall be required to comply with Section 112-14 and the landscaping and screening requirements set forth therein and as required by the Planning Commission upon site plan or subdivision plan review.

4.6 Lots or parcels making up the Property that are improved as of the effective date of annexation shall not be required to meet the outdoor lighting requirements and restrictions set forth in the Town Code, Section 112-18 and shall be considered nonconforming uses with respect to outdoor lighting, except that any future improvements to such shall be required to comply with Section 112-18 and the outdoor lighting requirements and restrictions set forth therein and as required by the Planning Commission upon site plan or subdivision plan review.

5.0 Development.

5.1 All future development of the Property or any portion thereof shall be subject to all applicable subdivision regulations, design standards, rules, regulations, statutes and ordinances of the Town and any other applicable laws of the State of Maryland in force from time to time, to include if applicable entry into and execution of public works agreements in a form required by the Town.

5.2 Notwithstanding any other provision in this Agreement, absent a zoning waiver from the Board of County Commissioners of Carroll County pursuant to the Local Government Article of the Maryland Code, Section 4-416(b), no greater density than that which exists as of the effective date of this Agreement and the annexation shall be allowed within the Property for the first 5 years after annexation becomes effective, except as would be permitted under the Carroll County Code. Thereafter, or in the event of a zoning waiver by the County Commissioners upon the annexation becoming effective, density of the Property shall be governed by the Town Code for the zoning district(s) in which, after annexation, the Property is zoned by the Town.

6.0 Municipal Taxation.

6.1 The parcels making up the Property shall be subject to 100% of the municipal tax commencing on July 1, 2019 pursuant to the provisions of Section 101-7 of the Town Code.

7.0 Police and Fire Service.

7.1 Upon the effective date of the Annexation Resolution, the Property will receive police service coverage from the Town of Mount Airy police department and fire service coverage from the Mount Airy Volunteer Fire Department in the same manner as other properties in the Town. The same police and fire service will continue to the Property after annexation and the effective date of this Agreement.

8.0 Streets and Roads Maintenance.

8.1 From the effective date of the annexation and this Agreement forward into the future, subject to Section 8.2 below, and except as set forth in Section 8.1.1 below, the Town will provide to the Property public streets and roads maintenance for any road owned by Carroll County, Maryland as of the date of this Agreement, consisting of approximately ____ () miles of road and made up of Ellis Road, from Maryland Route No. 808, North Main Street , to the end of the Carroll County maintenance, which pursuant to Section 8.2 below will be conveyed to the Town by the County upon the effective date of this Agreement and the annexation to which it relates; and for any State road, consisting as of the date of this Agreement of a __ () mile stretch of Maryland Route No. 808, North Main Street, for which the Town is obliged to provide maintenance as it is required to provide for State owned streets and roads within the limits of the Town as of the effective date of this Agreement.

8.2 This Agreement is specifically conditioned upon Carroll County conveying to the Town the County roads, or the sections of County roads, within the Property upon the effective date of this Agreement and the annexation to which it relates.

9.0 Trash, Garbage and Recycling Service.

9.1 From the effective date of the annexation and this Agreement forward into the future, the Town will provide to the Property trash, yard waste and recycling services as it provides for properties within the limits of the Town as of the effective date of this Agreement in accordance with and to the extent required by the Town Code. The owners of the parcels comprising the Property shall participate in the Town's recycling program and shall pay the Town for the recycling containers or bins at the same cost charged to residents of the Town as of the effective date of this Agreement and the annexation to which it relates, and/or as amended from time to time in the future.

10.0 Water and Sewer Service.

10.1 As stated above, provided that the Town has allocated water and sewer capacity to the appropriate allocation category, the Town will allow owners of property within the area to be annexed, subject to the provisions and pursuant to the procedures set forth in the Town Code, Chapter 109, Section 109-19.1, *et. seq.*, and the provisions herein, to extend sanitary sewer and water service to the Property and, in accordance with and subject to Town law and regulations governing the allocation of public water and sewer, will allocate water and sewer taps to the Property at the time the extensions are completed and inspected by the Town, and such taps are requested by the owners. Allocation of water and sewer service to the Property shall be in accordance with Town laws, rules and regulations, as may be amended, in effect at the time such are allocated. All water connection charges, as defined above, will be paid to the

Town as provided herein. All water engineering plans will be submitted to the Town Engineer for review and approval. All sewer hookup fees, as defined above, will be paid to the Town as provided herein. All sewer engineering plans will be submitted to the Town Engineer for review and approval. Frall shall be responsible for the water connection charges and sewer hookup fees in the amounts in effect on the effective date of this Agreement.

10.2 As stated above, Frall agrees that it shall pay all water connection fees and sewer hookup charges for the Frall Parcels, and shall also pay the water connection charges and sewer hookup fees incurred by any of the other owners of lots or parcels which are part of the Property and which are improved by residential homes or dwellings as of the effective date of the Annexation. Frall shall be responsible for such water connection charges and sewer hookup fees at such time as the Town extends water and sewer to any such lot pursuant to the terms of this Agreement, pursuant any order of the Maryland Department of Environment for the Town to extend water and/or sewer to any such lot and/or pursuant to applicable provisions of the Town Code. This agreement by Frall to pay for the water connection charges and sewer hookup fees for other improved parcels shall be binding on all of Frall's assigns, grantees and successors in interest to the Frall Parcels, except purchasers of residential lots created by the subdivision of the Frall Parcels and improved by residential dwellings and/or who purchase said lots for their residential use. The owners of parcels making up part of the Property other than the Frall Parcels, and their assigns, grantees and successors in interest, are intended third party beneficiaries of this promise.

10.2.1 In order to secure Frall's promise with respect to the payment of water connection charges and sewer hookup fees for other residentially improved properties in the area to be annexed, Frall hereby agrees to deposit with the Town, to be held by the Town in escrow, an

amount in U.S. dollars equal to the water connection charges and sewer hookup fees for each existing home or dwelling on properties within the area to be annexed upon execution of this Annexation Agreement.

11.0 General Miscellaneous Provisions.

11.1 This Agreement may be signed in counterparts.

11.2 This Agreement will be construed and governed in its performance by the laws of the State of Maryland.

11.3 This Agreement and the Resolution represent the entire agreement between the parties and there is absolutely no agreement on the part of any of them to do any act or thing other than is herein expressly stated and/or set forth in the Resolution and/or any of its attachments or exhibits, and to which the parties herein have clearly agreed.

11.4 This Agreement may not be modified except either in a written agreement signed by the parties or their successors in interest or by means of an amendment to the Town Code.

11.5 In the event of a dispute between the parties arising out of this Agreement, and prior to the filing of any lawsuit, the parties agree to submit to non-binding mediation before a mediator to be agreed upon by the parties, or if unable to agree, assigned by the American Arbitration Association.

11.6 In any lawsuit arising out of this Agreement, the parties hereby agree to waive a jury trial and the exclusive jurisdiction for litigation of any dispute between the parties regarding this Agreement shall be the Circuit Court for Carroll County, Maryland.

11.7 The provisions of this Agreement shall be covenants and/or restrictions on the lots or parcels of land making up the Property which shall run with the land in perpetuity and

shall be binding upon all record owners or other persons holding any right, title or interest in each individual lot or parcel making up the Property, as well as any and all of their heirs, assigns, personal representatives, administrators, executors, guardians, legatees, grantees and successors-in-interest and shall run with each of their respective lots or parcels.

SIGNATURES APPEAR ON THE FOLLOWING PAGES

IN WITNESS WHEREOF, the parties hereby affix their signs and seals.

WITNESS:

FRALL DEVELOPERS, INC.

By: _____ (SEAL)

Date

STATE OF MARYLAND
COUNTY OF _____

I HEREBY CERTIFY, that on this _____ day of _____, 2019, before me, the undersigned Notary Public of said State, personally appeared and known to me (or satisfactorily proven) to be _____, _____ of Frall Developers, Inc., a Maryland corporation, named in the foregoing instrument, and acknowledge that he/she executed the same for the purposes therein contained on behalf of Frall Developers, Inc.

WITNESS my hand and Notarial Seal.

Notary Public
My Commission Expires: _____

WITNESS:

TOWN OF MOUNT AIRY

By: _____ (SEAL)

Patrick T. Rockinberg, Mayor

Date

**STATE OF MARYLAND
COUNTY OF CARROLL**

I HEREBY CERTIFY, that on this _____ day of _____, 2019, before me, the undersigned Notary Public of said State, personally appeared Patrick T. Rockinberg, known to me (or satisfactorily proven) to be the Mayor of the Town of Mount Airy named in the foregoing instrument, and acknowledge that he executed the same for the purposes therein contained.

WITNESS my hand and Notarial Seal.

Notary Public
My Commission Expires: _____