

1 **..Title**

2 **Street Rights-of-Way in the Primrose Hill Planned Development** - For the purpose of
3 privatizing the street rights-of-way in the Primrose Hill Planned Development in accordance with
4 Section 20.20.01.A of the Code of the City of Annapolis.

5 **..Body**

6 **CITY COUNCIL OF THE**
7 **City of Annapolis**

8
9 **Resolution 24-15**

10
11 **Introduced by: Mayor Pantelides**

12
13 **Referred to**

14 **Economic Matters**

15 **Environmental Matters**

16 **Rules and City Government**

17
18 **A RESOLUTION** concerning

19
20 **Street Rights-of-Way in the Primrose Hill Planned Development**

21
22 **FOR** the purpose of privatizing the street rights-of-way in the Primrose Hill Planned
23 Development in accordance with Section 20.20.01.A of the Code of the City of
24 Annapolis.

25
26 **WHEREAS**, a development is underway for certain property owned by the Developer consisting
27 of approximately 4.37 acres, more or less, located at 1 and 3 Milkshake Lane,
28 Annapolis, Maryland 21401; and

29
30 **WHEREAS**, the development of the Property shall be comprised of a neotraditional
31 development consisting of one (1) retained historic home, six (6) single family
32 detached homes and nineteen (19) townhomes; and

33
34 **WHEREAS**, the Plan was approved by the City of Annapolis Planning Commission on August
35 17, 2015; and

36
37 **WHEREAS**, the Approval for the Project was based upon the Plan that specifies that all
38 road/street rights-of-way within the Project shall be privately owned and maintained
39 by the future residents of the Project acting collectively as the Association; and

40
41 **WHEREAS**, pursuant to § 20.20.010(A) of the Code of the City of Annapolis, as may be
42 amended, a community association may assume responsibility and liability for
43 roads/streets within the boundaries of its community, which roads/streets shall
44 remain privately owned by that community association instead of the City taking
45 ownership of or maintenance responsibilities for such streets/roads; and
46

1 **WHEREAS**, the Primrose Hill Community Association has agreed to assume responsibility and
2 liability for the roads/streets of the Project pursuant to § 20.20.010(A) of the Code.
3

4
5 **NOW THEREFORE BE IT RESOLVED BY THE ANNAPOLIS CITY COUNCIL** that
6 pursuant to Section 20.20.01.A of the Code of the City of Annapolis regarding the City of
7 Annapolis' ownership and maintenance of certain street rights-of-way, the City of Annapolis
8 shall not take ownership of or maintenance responsibilities for the street rights-of-way within the
9 boundaries of the Primrose Hill residential planned development, and said street rights-of-way
10 shall be privately owned and maintained by the Primrose Hill Community Association with the
11 Association assuming responsibility and liability for the same in accordance with the Agreement
12 made a part of this Resolution by and among the City of Annapolis and MILKSHAKE LANE,
13 LC, a Maryland limited company, and THE PRIMROSE HILL COMMUNITY ASSOCIATION,
14 a Maryland homeowner's association.
15

16 **NOW THEREFORE BE IT FURTHER RESOLVED BY THE ANNAPOLIS CITY**
17 **COUNCIL** that this Resolution shall become effective on the date of its adoption by the City
18 Council.
19

20 **EXPLANATION**

21 CAPITAL LETTERS indicate matter added to existing law.

22 ~~Strikethrough~~ indicates matter stricken from existing law.

23 Underlining indicates amendments.
24

1 **CITY OF ANNAPOLIS PRIVATE RIGHT-OF-WAY AGREEMENT**

2
3 **THIS PRIVATE RIGHT-OF-WAY AGREEMENT** (“Agreement”) is made this
4 _____ day of _____, 2015, by and among the City of Annapolis, a municipal corporation
5 of the State of Maryland (“City”), MILKSHAKE LANE, L.C., a Maryland limited company, on
6 behalf of Milkshake Lane II, L.C., a Maryland limited company (collectively, the “Developer”),
7 and PRIMROSE HILL COMMUNITY ASSOCIATION, a Maryland homeowner’s association
8 (the “Association”).
9

10 **WHEREAS**, a development is underway for certain property owned by the Developer
11 consisting of approximately 4.37 acres, more or less, located at 1 and 3 Milkshake Lane,
12 Annapolis, Maryland 21401 and as more accurately described in a deed recorded at Liber 27757,
13 folio 158 and Liber 25147, folio 459 among the Land Records of Anne Arundel County
14 (collectively, the “Property”); and
15

16 **WHEREAS**, the development of the Property shall be comprised of a neotraditional
17 development consisting of one (1) retained historic home, six (6) single family detached homes
18 and nineteen (19) townhomes (the "Project") per the site plan dated April 2015 (the “Plan”),
19 attached hereto and incorporated herein as **Attachment A**; and
20

21 **WHEREAS**, the Plan was approved by the City of Annapolis Planning Commission on
22 August 17, 2015 (the "Approval"); and
23

24 **WHEREAS**, the Approval for the Project was based upon the Plan that specifies that all
25 road/street rights-of-way within the Project shall be privately owned and maintained by the
26 future residents of the Project acting collectively as the Association; and
27

28 **WHEREAS**, pursuant to § 20.20.010(A) of the Code of the City of Annapolis (the
29 “Code”), as may be amended, a community association may assume responsibility and liability
30 for roads/streets within the boundaries of its community, which roads/streets shall remain
31 privately owned by that community association instead of the City taking ownership of or
32 maintenance responsibilities for such streets/roads; and
33

34 **WHEREAS**, the Association has agreed to assume responsibility and liability for the
35 roads/streets of the Project pursuant to § 20.20.010(A) of the Code; and
36

37 **WHEREAS**, such private ownership of all the Project’s roads/streets shall be indicated
38 on the recorded subdivision plat for the Project (the “Subdivision Plat”), which Subdivision Plat
39 is incorporated herein by reference; and
40

41 **NOW THEREFORE**, in consideration of these premises and the mutual
42 covenants and promises set forth below, and other good and valuable consideration, the receipt
43 and sufficiency of which the parties acknowledge, the parties agree as follows:
44

1
2 **1. Ownership and Maintenance of Private Road/Street Rights-Of-Way.**
3

4 a. Upon recordation of the Subdivision Plat and the Developer's conveyance of the
5 road/street rights-of-way of the Project (collectively, the "Streets") to the Association, the
6 Association shall have exclusive ownership of all Streets within the Project, which shall be so
7 indicated on the recorded Subdivision Plat and shall be based upon the Plan.
8

9 b. The Association shall be the fee simple owner of the Streets, and the appurtenances
10 thereto and shall, at its own cost and expense, be solely responsible for any and all maintenance,
11 both preventative and routine, reconstruction, construction and/or repair of the Streets or any
12 portions thereof, and any and all costs and expenses therefore. Said maintenance shall include,
13 but not be limited, to the following, along any and all Streets within the Project:
14

- 15 1. Routine maintenance, both preventative and routine, of all Streets, alleys,
16 sidewalks and other vehicular and pedestrian ways within the Project.
- 17 2. Maintenance, removal and planting of trees and other vegetation along or
18 near the Streets.
- 19 3. All maintenance and energy costs associated with lighting the Streets.
- 20 4. Maintenance and operation of all stormwater management facilities and
21 drainage facilities for the Streets subject to a maintenance agreement to be
22 executed after the execution of this Agreement (the "Maintenance
23 Agreement"), which Maintenance Agreement is incorporated herein by
24 reference.
- 25 5. Snow removal for the Streets, with the additional provision that no snow
26 shall be plowed into, or disposed of in, any City street.
- 27 6. Street sweeping.
- 28 7. Litter, trash, garbage, yard waste and refuse removal and recycling for the
29 Project, except as otherwise provided in Paragraph 3 of this Agreement.
- 30 7. All requirements of the Real Property Article, Title II of the Annotated
31 Code of Maryland, as may be amended, and all standards for public streets
32 as determined by the City Director of Public Works.
33

34 c. Neither the Association, nor the individual property owners within the Property or
35 the Project (collectively, the "Individual Owners"), shall petition the City to modify Paragraphs
36 1(a) or 1(b) of this Agreement.
37

38 **2. Easements to the City.**
39

40 a. In advance of the granting of any other rights-of-way or easements, or fee simple
41 transfer of property, the Developer shall reserve unto itself easements for the construction,
42 reconstruction, repair, inspection and other activities as may be necessary by the City
43 Department of Public Works for the operation of water and sanitary sewer on the Property and
44 for the Project. Such easement widths and locations shall be as specified by the City Department
45 of Public Works.
46

1 b. In advance of granting of any other rights-of-way or easements or fee simple
2 transfer of the property, the Developer shall reserve unto itself rights to establish an easement for
3 police and fire vehicular and personnel access via the Streets within the Project.
4

5 c. At the time of the release of the Developer's bond for the Project, as required by
6 the City, the Developer shall transfer the easement rights indicated in Paragraphs 2(a) and 2(b) to
7 the City in accordance with the terms and conditions of instruments to be prepared by, and
8 satisfactory to, the City. These easement rights shall be perpetual and subject to no liens of any
9 mortgages or deeds of trust.
10

11 **3. Trash, Garbage, Refuse, Yard Waste and Recycling Removal from the Property.**

12
13 All trash, garbage, yard waste, refuse, and recyclable collection and removal for the
14 Project shall be privately contracted.
15

16 **4. Recordation; Binding.**

17
18 a. This Agreement, the Subdivision Plat and the Maintenance Agreement shall all be
19 recorded among the Land Records of Anne Arundel County at the Association's sole cost and
20 expense, and the duties and responsibilities of this Agreement shall run with the title(s) to the
21 Property and the Project, including all those portions individually owned by the Individual
22 Owners and their successors and assigns.
23

24 b. The Subdivision Plat shall include the following notation: "At no time from this
25 date henceforth shall the owners of the individual housing units or the Association (on behalf of
26 the owners) petition the City to take over the road/street rights-of-way or assume responsibilities
27 for maintenance as outlined in the Maintenance Agreement recorded among the Land Records of
28 Anne Arundel County at _____."
29

30 c. The parties and their respective successors, assigns and purchasers shall be
31 entitled to all of the rights and privileges of this Agreement and shall be bound by all of its duties
32 and responsibilities. All references to the "Property Owner" herein shall be interpreted to
33 specifically refer to all of the Developer's and Association's respective successors, assigns and
34 purchasers, without regard to privity with the City under this Agreement.

35 d. The terms of this Agreement shall be binding upon and shall inure to the benefit
36 of the parties, any successor municipal authorities of the City or any successor quasi-
37 governmental authority. Successor owners of record of the Property and/or the Project, or any
38 respective portion thereof, and/or the successors and assigns of the Individual Owners may
39 assign their benefits, rights, duties and obligations hereunder either as part of the conveyance of
40 the Property and/or the Project as an entirety or severally as part of the conveyances of portions
41 of the Property and/or the Project.

42 **5. Disclosure.**

43
44 a. The Developer shall incorporate, within the bylaws of the Association, a
45 provision memorializing this Agreement (the "Provision"). This Provision shall not be

1 incorporated into the bylaws of the Association until reviewed and approved, in writing, by the
2 City Office of Law, after consultation with the City Department of Public Works.

3
4 b. The Provision shall be recited within all deeds transferring real property fee
5 simple rights to any property within the Property and/or the Project. All such deeds shall include
6 an acceptance signature line by the new owners, including, but not limited to, the Individual
7 Owners.

8
9 c. The Developer and all Individual Owners shall disclose in writing to each
10 potential buyer of the Property and/or the Project the contents of this Agreement. The Individual
11 Owners and each potential buyer shall be provided a copy of this Agreement by the Developer or
12 the Association prior to any contract of sale being executed for any portion of the Property
13 and/or the Project.

14 15 **6. City Re-Acquire Ownership of Streets.**

16
17 If the City, at any time, should agree through City Council resolution to re-acquire
18 ownership of the Streets, whether pursuant to Chapter 20.20 or Chapter 14.28 of the Code, as
19 either may be amended, then the Association shall be required to bring the Streets into
20 compliance with all federal, state, local and City standards (including, but not limited to, those
21 required in Chapters 20.20 and 14.28 of the Code) prior to the City assuming any ownership,
22 liability, obligations and/or other responsibilities of or for the Streets.

23 24 **7. Indemnification.**

25 a. The Developer shall forever indemnify, defend and hold harmless the City, its
26 elected officials, appointees, directors, employees, agents, contractors and representatives from
27 and against all liability for injuries to persons, including death, and damage to City property and
28 other property arising from acts or omissions of the Developer, its officers, agents, employees,
29 contractors, patrons, volunteers, guests or invitees resulting in connection with this Agreement or
30 the Streets of the Project.

31 b. The Association shall forever indemnify, defend and hold harmless the City, its
32 elected officials, appointees, directors, employees, agents, contractors and representatives from
33 and against all liability for injuries to persons, including death, and damage to City property and
34 other property arising from acts or omissions of the Association, its officers, agents, employees,
35 members, contractors, patrons, volunteers, guests or invitees resulting in connection with this
36 Agreement or the Streets of the Project.

37 c. Developer and/or Association indemnification does not limit any immunity which
38 the City, its elected officials, appointed officers, directors, employees, agents, contractors and
39 representatives are entitled to assert, and includes all costs and expenses, including attorney's
40 fees, whether or not related to administrative or judicial proceedings.

41 d. The City, in its sole discretion, may participate in handling its own defense or
42 exclusively handle its own defense, and select its own attorneys, including the City Attorney.
43 The indemnification for attorney fees applies whether or not the City Attorney or other attorney
44 handles the defense.

1 e. The Developer shall reimburse the City, within thirty (30) calendar days after
2 invoicing for such reimbursement, for any damage to the City's streets, utility systems, water
3 and/or sewer mains, facilities, equipment or other property caused by the negligence or willful
4 misconduct of the Developer, its officers, agents, employees, contractors, patrons, volunteers,
5 guests or invitees.

6 f. The Association shall reimburse the City, within thirty (30) calendar days after
7 invoicing for such reimbursement, for any damage to the City's streets, utility systems, water
8 and/or sewer mains, facilities, equipment or other property caused by the negligence or willful
9 misconduct of the Association, its officers, agents, employees, members, contractors, patrons,
10 volunteers, guests or invitees.

11 **8. Waiver.**

12 a. No delay or omission on the part of the City to exercise any right granted to the
13 City under this Agreement, in any one or more instances shall constitute a waiver of the City's
14 rights hereunder and each such right shall remain continuously in full force and effect.

15 b. The parties hereby understand and agree that this Agreement shall not waive any
16 rights, powers or remedies that the City may have pursuant to the Code, as may be amended.

17 **9. No Partnership.**

18 Nothing contained in this Agreement shall be construed in a manner to create any
19 relationship between the parties other than expressly specified herein, and the parties shall not be
20 considered partners or co-venturers for any purpose on account of this Agreement.

21 **10. Severability.**

22 In the event any one or more of the provisions of this Agreement shall for any reason be
23 held by a court or other lawful authority to be invalid, illegal or unenforceable, in whole or in
24 part or in any other respect, the remaining provisions hereof shall not be affected thereby, and the
25 Agreement shall remain operative and in full force and effect and shall in no way be affected,
26 prejudiced or disturbed thereby.

27 **11. Governing Law.**

28 This Agreement and its interpretation shall be governed by Maryland law. The venue for
29 all actions pursuant to this Agreement shall be the Courts of Anne Arundel County, Maryland.
30 The parties waive trial by jury in all actions brought pursuant to this Agreement.

31 **12. Captions and Headings.**

32 The captions and headings contained in this Agreement are included herein for
33 convenience of reference only and shall not be considered a part hereof and are not in any way
34 intended to limit or enlarge the terms hereof.

35

1 **13. Integration; Modification.**

2 a. This Agreement is the final and entire agreement of the parties concerning all
3 matters having to do with the Streets of the Project. The parties acknowledge that there are no
4 other understandings or representations, oral or written, regarding the subject or matters having
5 to do with the Streets of the Project.

6 b. None of the terms or provisions of this Agreement may be changed, waived, or
7 modified exempt by written instrument executed by all parties hereto.

8 **14. Counterparts.**

9 This Agreement may be executed in any number of counterparts and by the parties hereto
10 in separate counterparts, each of which when so executed and delivered shall be deemed to be an
11 original and all of which taken together shall constitute but one and the same instrument.

12 **15. Notice.**

13 Any notice required to be delivered shall be deemed to have been received when the
14 notice has been sent by certified mail, return receipt, overnight carrier, or hand delivered with
15 signed receipt to the following address and individual or such other address and/or such other
16 individual as a party may identify in writing to the other party:

17 To the City: Department of Public Works
18 145 Gorman Street, 2nd Floor
19 Annapolis, Maryland 21401
20 Attn: Director

21
22 With a Copy to: City Attorney
23 160 Duke of Gloucester Street
24 Annapolis, Maryland 21401

25
26 To the Developer: Milkshake Lane, L.C. / Milkshake Lane II, L.C.
27 1355 Beverly Road, Suite 240
28 McLean, Virginia 22101
29 Attn: Michael A. Burlbaugh

30
31 To the Association: Primrose Hill Community Association
32 18310 Montgomery Village Avenue, Suite 400
33 Gaithersburg, Maryland 20879
34 Attn: Michael A. Burlbaugh

35
36 **16. Authorization.**

37 This Agreement is authorized by the City Council pursuant to Ordinance No. R-24-15.

38
39 **IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed
40 under Seal as of the day and year written below.

41

MILKSHAKE LANE, L.C.
on behalf of Milkshake Lane II, L.C.

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Witness

By: _____
Michael A. Burlbaugh
Vice President, ESDC II, Inc. - Manager

STATE OF MARYLAND, COUNTY OF ANNE ARUNDEL to wit:

I hereby certify that on this ____ day of _____, 2015, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Michael A. Burlbaugh, and he/she has signed this Agreement in my presence and acknowledged that it is his/her free and voluntary act and the free and voluntary act of Milkshake Lane, L.C. on behalf of Milkshake Lane II, L.C. made for the purposes set forth therein.

Witness my signature and Notary Seal.

NOTARY PUBLIC

PRIMROSE HILL COMMUNITY
ASSOCIATION

Witness

By: _____
Michael A. Burlbaugh
President

STATE OF MARYLAND, COUNTY OF ANNE ARUNDEL to wit:

I hereby certify that on this ____ day of _____, 2015, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Michael A. Burlbaugh, and he/she has signed this Agreement in my presence and acknowledged that it is his/her free and voluntary act and the free and voluntary act of the Primrose Hill Community Association made for the purposes set forth therein.

Witness my signature and Notary Seal.

NOTARY PUBLIC

[Signatures Continue on Following Pages]

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ATTEST:

CITY OF ANNAPOLIS

Regina C. Watkins-Eldridge, MMC,
City Clerk

By: _____
Michael J. Pantelides, Mayor (Seal)

APPROVED FOR FINANCIAL SUFFICIENCY: REVIEWED AND APPROVED BY:

Bruce T. Miller, Director
Finance Department

Thomas C. Andrews, City Manager

REVIEWED AND APPROVED BY:

David Jarrell, Director
Department of Public Works

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

OFFICE OF THE CITY ATTORNEY