

## AGREEMENT TO SUPPORT ZONING RECLASSIFICATION

This Agreement to Support Zoning Reclassification (this “**Agreement**”) is made this \_\_\_\_ day of January, 2012, between the Town of Riverdale Park, a municipal corporation of the State of Maryland (“**Town**”), and Calvert Tract LLC, a Maryland limited liability company (“**Developer**”).

### *EXPLANATORY STATEMENT:*

Developer owns the five parcels of land consisting of approximately thirty-seven and 55/100 (37.55) acres, more or less, described in Deeds recorded among the Land Records of Prince Georges County in Liber 18588, page 707, Liber 18590, page 446, Liber 18601, page 413, Liber 27394, page 662, and Liber 27412, page 662, collectively commonly known as the Cafritz Property (“the **Property**”). The predominant portion of the property is located within the corporate limits of the Town. Developer desires to develop the Property into a multi-phase mixed use project currently proposed to include various types of residential and commercial uses, including a Whole Foods grocery store (the “**Proposed Project**”). The Proposed Project will require numerous zoning, site plan and subdivision approvals from the Prince George’s County Planning Board (the “**Board**”) and Prince George’s County Council sitting as the District Council (the “**Council**”).

Currently pending is Developer’s application to rezone the Property into a M-U-TC (Mixed Use Town Center) zoning classification, Zoning Map Amendment Application No. A-10018 (the “**Zoning Reclassification**”). The Zoning Reclassification is the first step necessary to the ultimate development of the Proposed Project. Developer has requested the Town to consider recommending approval of the Zoning Reclassification to the Board, the Council and other governmental entities, and to review and comment upon Developer’s zoning and land use applications for the Proposed Project.

The Town and Developer recognize and agree that the Town will require professional consulting services, including, but not limited to, planning and legal services, focused primarily on zoning, subdivision and land development issues (collectively, the “**Professional Services**”), to, among other things, assess infrastructure needs and demands, traffic needs and demands, Town service needs and demands, water and wastewater infrastructure needs and demands, and needs impacting upon other municipal services and facilities, all of which needs and demands may be affected by the possible development of the Property in accordance with the Proposed Project. The Town and Developer previously entered into a Professional Services Agreement (Professional Services Agreement”) dated as of October 27, 2011, by which Developer agreed to reimburse the Town for Professional Services up to \$25,000 in connection with Professional Services costs incurred by the Town related to the Zoning Reclassification. Developer agrees to reimburse the Town by a total additional amount not to exceed \$60,000.00 for reasonable Professional Services costs actually incurred by the Town in connection with the Town’s review of Developer’s Preliminary Plan of Subdivision (the “**Preliminary Plan**”) and Detailed Site Plans for the Proposed Project (collectively together with the Preliminary Plan, the “**Plans**”), all as set forth herein.

To induce the Town to recommend approval of the Zoning Reclassification to the Board, the Council, and all other relevant governmental entities, the Developer agrees to fulfill the terms and conditions set forth in this Agreement and in the Declaration of Covenants attached to this Agreement as Exhibit A (“**Declaration of Covenants**”).

In exchange for the Developer’s agreements as set forth in this Agreement and the Declaration of Covenants the Town has agreed to recommend that the Zoning Reclassification be approved as provided for herein.

NOW, THEREFORE, in consideration of the foregoing Explanatory Statement, which is a material part of this Agreement, and not merely prefatory, and the mutual benefits and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Reimbursement for Professional Services. Developer agrees to reimburse the Town by a total amount not to exceed \$60,000.00 for reasonable Professional Services costs actually incurred by the Town in connection with the Town’s review of the Plans. Reasonable Professional Services shall include, but not be limited to (a) the review of land development and subdivision applications and plans, (b) the evaluation of water, sewer, roads and other infrastructure needs and demands, (c) the review of legal issues and implications including, but not limited to, preparation, negotiation and review of a development agreement and a declaration of covenants acceptable to the Town, and (d) the performance of such other services and/or review functions on behalf of the Town which the Town reasonably deems to be necessary and/or appropriate in connection with the Plans. The total cost of the Professional Services for which Developer shall reimburse the Town as set forth in this Paragraph 1 shall not exceed sixty thousand dollars (\$60,000) (the “CAP”) under any circumstance. The funds to be provided by Developer under this Agreement are in addition to the funds to be provided by Developer under the Professional Services Agreement.

(a) The Town shall invoice Developer approximately every thirty (30) days for all Professional Services rendered in accordance with this Agreement. Such invoices shall include the name(s) of each consultant rendering the services, an identification of the work performed by each consultant, and the amount of the reimbursement sought for each consultant. The Town shall include with its monthly invoices to Developer copies of the invoices received by the Town from the consultants for which reimbursements are sought. No reimbursements to the Town from the Developer shall be made prior to Developer’s receipt of copies of such corresponding invoices from the consultants to the Town. It is agreed that prior to providing an invoice from a legal consultant, the Town shall redact information from the invoice that is protected by the attorney-client privilege, but tasks performed shall be identified.

(b) The Developer understands that the consultants and professionals retained by the Town for which the Developer is providing reimbursement hereunder, will provide their services and work solely for and on behalf of the Town, and solely under the Town’s direction. Further, these professionals and consultants have no duty, professional relationship or contractual relationship to or with the Developer. Without limitation to the foregoing, the work product of the professionals and consultants shall be the property of the Town, and the Town shall have the express right to maintain as confidential, any work, work product, advice,

consultation or other service or product of any such professional or consultant which applicable law allows the Town to maintain confidential.

(c) The provisions of this Section 1 and the Town's acceptance of reimbursement for Professional Services from Developer are not an agreement by the Town that it will support or recommend approval of the Plans.

2. Zoning Text Amendment. In conjunction with its Zoning Application A-10018, Developer, at its expense, shall initiate and diligently use all reasonable efforts to obtain a zoning text amendment that will have the effect of requiring Detailed Site Plan approval prior to the approval of any permit or final subdivision plat, and concurrently with or after the approval of a special exception, for all new development and redevelopment on the property; providing that the Detailed Site Plan process shall supersede the Building Permit Application Process and Special Permit Process set forth on pages 65-66 of the Town of Riverdale Park Mixed-Use Town Center Zone Development Plan dated January, 2004; and providing that Detailed Site Plan approval shall not be required prior to the issuance of a permit when the proposed development or redevelopment does not increase the gross floor area by 15% or 7,500 square feet, whichever is less.

5. Declaration of Covenants. Concurrently with execution of this Agreement, Developer shall execute and deliver to the Town the Declaration of Covenants attached to this Agreement as Exhibit A, such document to be held by the Town in escrow in accordance with the terms contained therein.

6. Town Recommendation of Zoning Reclassification and Developer's Concurrence. The Town agrees to recommend approval of and support the Zoning Reclassification to the Board, the Council and all other relevant governmental entities, subject to the conditions set forth in the letter from the Town to the Board dated \_\_\_\_\_, 2012, a copy of which is attached as Exhibit B to this Agreement (the "**Letter**"). The Town retains the right throughout the approval and development process for the Proposed Project to comment on, object to, recommend conditions and/or appeal issues not previously addressed in this Agreement, the Declaration or the Letter. Developer agrees to represent to the Board and the Council that it concurs with the conditions contained in the Letter and that it will comply with such of the conditions that the Council incorporates into its approval of the Zoning Reclassification.

7. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the transactions contemplated herein.

8. Amendment. This Agreement may only be amended by written instrument signed by Developer and the Town.

9. Successors and Assigns. Neither Developer nor the Town may assign or transfer their interest in the Agreement without the prior written consent of the other party. This Agreement shall be binding upon and inure to the benefit of Developer and the Town and their respective permitted successors and assigns. If the Developer is composed of more than one individual or entity, this Agreement shall be binding upon them jointly and severally.

10. Notices. Any notice or communication required or contemplated by this Agreement shall be deemed given: (i) when deposited the United States Mail, Certified with Return Receipt Requested, postage prepaid; (ii) when delivered by commercial messenger service (e.g., FedEx or UPS) with evidence of delivery signed by any person at the notice address; or (iii) otherwise when actually received at the notice address by the person to whom it is addressed. Notice addresses shall be as follows:

TO DEVELOPER:

Calvin Cafritz Enterprises  
Matthew Issembert  
1828 L Street, NW, Suite 703  
Washington, DC 20036:

With copy to:

Rifkin, Livingston, Levitan & Silver, LLC  
Richard K. Reed, Esquire  
7979 Old Georgetown Road  
Bethesda, Maryland 20814

TO TOWN:

Town of Riverdale Park  
c/o Town Administrator  
5008 Queensbury Road  
Riverdale Park, Maryland 20737

With copy to:

Frederick C. Sussman, Esquire  
Council, Baradel, Kosmerl & Nolan, P.A.  
125 West Street, 4<sup>th</sup> Floor  
Annapolis, Maryland 21401

11. Interpretation: This Agreement has been prepared by all parties hereto, and the language used in this Agreement shall not be construed in favor of or against any particular party or parties, it being the intent of the parties that this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any party solely because of that party's role in the drafting of this Agreement.

12. Applicable Law, Jurisdiction and Venue: This Agreement is being executed and delivered, and is intended to be performed, in the State of Maryland, and shall be interpreted, construed and enforced in accordance with the laws of such State without regard to those principles governing conflicts or choice of laws. Jurisdiction and venue for any dispute involving the interpretation or breach of this Agreement shall be in Maryland State courts located in Prince George's County, Maryland. To the extent allowed by law, the parties expressly waive the right to

bring or remove any such action to a federal Court having jurisdiction. If a proceeding must be brought in a federal court, the action shall be brought in the United States District Court for the District of Maryland.

13. Noncontestibility of Agreement. The parties agree not to challenge or contest, and waive any right to challenge or contest, in any legal or equitable proceeding, in any forum whatsoever, the validity, legality or enforceability of this Agreement or any or all of its provisions, terms or conditions.

14. Attorney Fees Upon Breach. In any adversarial proceedings between the parties hereto arising out of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief awarded, all expenses the prevailing party incurs in those proceedings, including, without limitation, reasonable attorneys' fees and expenses.

15. Interest on Unpaid Monies. Any monies not paid to the Town as required by this Agreement within thirty (30) days after demand by the Town shall bear interest on the unpaid amount at the rate of ten percent (10%) per annum from the date of demand until paid.

16. Time of Essence. Time is of the essence in this Agreement.

17. Severability. In the event any portion or provision of this Agreement is illegal, invalid, or unenforceable under present or future law, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties hereto that in lieu of each clause or provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

18. Effect of Waiver on Breach. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of such breach by any other party, as an amendment of this Agreement, or as a waiver of any subsequent breach of the same or any other provision of this Agreement by waiving party or by any other party hereto.

19. No Third Party Beneficiaries. This Agreement is not intended to, nor does it convey any rights or remedies whatsoever to any third party, including, without limitation, any consultants or professionals retained by the Town in connection with the Proposed Development or otherwise to provide the Professional Services or any other services to the Town.

20. Counterpart. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

IN WITNESS WHEREOF, the parties have executed and affixed their seals to this Agreement as of the date first above written.

TOWN OF RIVERDALE PARK:

By: \_\_\_\_\_(SEAL)  
Vernon Archer, Mayor

DEVELOPER:

Calvert Tract LLC

By: \_\_\_\_\_(SEAL)  
Name: Calvin Cafritz  
Its: Authorized Signatory

Exhibit A

*Declaration of Covenants*

Exhibit B

*Letter*