

**ANNEXATION AGREEMENT**

THIS ANNEXATION AGREEMENT (“Agreement”), made this \_\_\_ day of 2023, by and between WALNUT HILL PROPCO, LLC, a Maryland limited liability company (“Walnut Hill Owner”), KING FISHER ASSOCIATES, LLC (“8939 Owner”) and the MAYOR AND COUNCIL OF GAITHERSBURG, a municipal corporation of the State of Maryland (hereinafter referred to as “Gaithersburg”) (collectively the “Parties”).

**W I T N E S S E T H:**

WHEREAS, Walnut Hill Owner is the fee simple owner of the subject property known as Parcel B, Block A, “Walnut Hill Section One” subdivision recorded in the Land Records of Montgomery County, Maryland at Plat 4267 situated in the northeast quadrant of the intersection of MD Route 355 and South Westland Drive, consisting of 360,477 square feet or 8.28 acres with a current property address of 16531 South Frederick Avenue, Gaithersburg, Maryland, (said property not currently within the City of Gaithersburg corporate limits), and more particularly described on the boundary survey and metes and bounds attached hereto and made a part hereof as Exhibit A (the “Walnut Hill Property”). The tax account number of the Walnut Hill Property is 09-00794560; and

WHEREAS, Walnut Hill Owner is the fee simple owner of the abandoned right of way for Maryland Route 355 as described in Equity Case Number 31265, consisting of a total of 17,441 square feet, \_\_\_ square feet of which is located within the City of Gaithersburg and the remaining 148 square feet is located outside the City of Gaithersburg corporate limits, as more particularly described on the boundary survey and metes and bounds attached hereto and made a part hereof as Exhibit A-1 (the “Abandoned ROW Property”). The tax account number of the Abandoned ROW Property is 09-00794571; and

WHEREAS, the Walnut Hill Property and the Abandonment ROW Property shall hereinafter be referred to as the “Development Property”; and

WHEREAS, Owner, in connection with the initiation of the annexation of the Walnut Hill Property, developed a concept plan for the southwest portion of Development Property ( “Concept Plan” defined and referenced below) and also intends certain other improvements to the Development Property to accommodate the planned bus rapid transit (“BRT”) and BRT station within the Route 355 right-of-way along the Development Property frontage, thus resulting in a gateway project that promotes Gaithersburg’s transportation goals; and

WHEREAS, 8939 Owner is the fee simple owner of the subject property known as Parcel B, Block G, “Walnut Hill Section One” subdivision recorded in the Land Records of Montgomery County, Maryland at Plat No. 24052, situated in the northeast quadrant of MD Route 355 and North Westland Drive, consisting of 20,886 square feet with a current property address of 8939 North Westland Drive, Gaithersburg, Maryland (said property not currently within the City of Gaithersburg corporate limits), and more particularly described on the boundary survey and metes and bounds attached hereto and made a part hereof as Exhibit A (the “8939 Property”). The tax account number of the 8939 Property is 09-03664857; and

WHEREAS, the Walnut Hill Property and the 8939 Property are hereinafter referred to collectively as the “Complete Property”; and

WHEREAS, pursuant to the provisions of Maryland Code Local Government Division II- Municipalities, Title 4, Subtitle 4 – Annexation (the “Maryland Code”), Walnut Hill Owner and 8939 Owner petitioned Gaithersburg to annex the Complete Property and the property located at 8941 North Westland Drive consisting of 10,784 square feet (collectively the “Annexation Property”), pursuant to annexation petition X-\_\_\_\_-2022 (the “Annexation Petition”); and

WHEREAS, Walnut Hill Owner and the 8939 Owner own more than 25% of the assessed valuation of the Annexation Property and there are no persons residing within the area of the Annexation Property who are registered voters in the precinct within which the Annexation Property is located; and

WHEREAS, the Annexation Property is currently located within the jurisdictional boundaries of Montgomery County, Maryland; and

WHEREAS, the Annexation Property is contiguous to and adjoins the existing corporate boundaries of Gaithersburg and is identified as within the boundaries of the City's designated Maximum Expansion Limits ("MEL") as depicted in the Growth Element of the City's 2003 Master Plan, adopted April 6, 2009; and

WHEREAS, pursuant to Section 4-404 of the Local Government Article of the Annotated Code of Maryland, Gaithersburg has introduced a resolution to annex the Annexation Property pursuant to the Annexation Petition; and

WHEREAS, the annexation of the Annexation Property will promote Gaithersburg's goal of annexation within Gaithersburg's urban growth areas; and

WHEREAS, pursuant to Section 4-406 of the Local Government Article of the Annotated Code of Maryland, all required public notice and hearings pertaining to the proposed annexation have been published and conducted by Gaithersburg; and

WHEREAS, Gaithersburg intends to annex the Annexation Property as requested by the Annexation Petition; and

WHEREAS, the Complete Property is currently classified in the CRT 2.25, C 1.5, R .75, H-45 Zone under the zoning regulations of Montgomery County, Maryland; and

WHEREAS, Gaithersburg has recommended that the Walnut Hill Property be placed in the C-2 zoning classification and the 8939 Property be placed in the C-D (“Corridor Development”) zoning classification as set forth in Chapter 24 of the Code of the City of Gaithersburg (the “Zoning Code”); and

WHEREAS, the Abandoned ROW Property will remain in the R-A zoning classification as originally assigned by Resolution R-8-69 (Item 8) on March 17, 1969, as part of the X-099 Annexation; and

WHEREAS, the proposed C-2 zoning for the Walnut Hill Property and the proposed C-D zoning for the 8939 Property do not permit development of the annexed land with uses that would be substantially different from or densities that are substantially higher than what may be granted under the existing CRT 2.25, C 1.5, R .75, H-45 Zone by the Montgomery County Zoning Ordinance and therefore no affirmative action by the Montgomery County Council is required; and

WHEREAS, this Annexation Agreement is intended to govern the future development of the Development Property and the 8939 Property, but does not address the 8941 North Westland Drive property; and

WHEREAS, in an effort to achieve approval of a Final Site Plan and Record Plat and all necessary development approvals and permits for development of the Development Property (the “Development Approvals”), the Walnut Hill Owner has submitted a Concept Plan of the proposed development located in the southwest corner of the Development Property for the retail pad site (Retail Pad Site defined and referenced below) (the “Proposed Retail Pad Site Development”), a copy of which is attached hereto as Exhibit B, which said Concept Plan, by approval of this Annexation Agreement will be accepted by Gaithersburg as fully complying with the requirements

of Article III, Division 12 of the Zoning Code and the Walnut Hill Owner has also identified herein in Section 3 the additional improvements proposed for the remainder of the Development Property (the “Additional Proposed Development”) with the Retail Pad Site Development and the Additional Proposed Development collectively referred to as the “Overall Development”; and

WHEREAS, Walnut Hill Owner and Gaithersburg agree to work cooperatively in an expeditious manner and to use best efforts to process the necessary Development Approvals in order to facilitate Walnut Hill Owner’s effort to commence the Proposed Retail Pad Site Development and the Additional Proposed Development in a timely manner; and

WHEREAS, the Walnut Hill Owner shall have the option of pursuing the Development Approvals for the Overall Development at one time or may pursue separate Development Approvals for the Proposed Retail Pad Site Development and the Additional Proposed Development;

WHEREAS, on \_\_\_\_\_, 2023, Gaithersburg adopted Resolution No. \_\_\_\_\_ expanding the boundaries of the City to encompass the Annexation Property and placing the Walnut Hill Property within the C-2 General Commercial Zone and the 8939 Property within the C-D Zone, which annexation and zoning shall take effect forty-five days following the approval of Resolution No. \_\_\_\_\_, unless a timely petition for referendum is filed in accordance with Section 4-407 of the Local Government Article of the Annotated Code of Maryland; and

WHEREAS, the Parties desire to execute this Annexation Agreement to establish the conditions under which the Development Property and 8939 Property shall be developed.

NOW, THEREFORE, in consideration of the foregoing recitals, each of which shall be deemed a part of this Annexation Agreement, and for other good and valuable consideration, the

receipt and sufficiency of which the parties acknowledge, the parties covenant and agree as follows:

1. Upon annexation of the Walnut Hill Property into Gaithersburg, the Walnut Hill Property shall be zoned General Commercial (C-2).

2. The Concept Plan accepted by Gaithersburg as fully complying with the requirements of Article III, Division 12 of the Zoning Code shall include:

- a. an approximately 57,851 square foot retail pad site in the southwest corner of the Development Property (the “Retail Pad Site”);
- b. a retail building containing between 4,500 square feet and 5,500 square feet of gross floor area (the “Retail Building”) on the Retail Pad Site;
- c. a maximum of six (6) gasoline canisters including twelve (12) pumping stations provided as an accessory use to the Retail Building; and
- d. Parking spaces to be allocated toward the total number of parking spaces for the Overall Development.

3. The Additional Proposed Development shall include:

- a. pedestrian connections in and around the Retail Pad Site;
- b. dedication at no cost when requested by the appropriate governmental entity in writing of the land area along the North Frederick Avenue frontage of the Development Property to accommodate the future BRT system only (the “Dedication Area”). Until such time as construction is commenced for the BRT, Walnut Hill Owner may continue to occupy and use the Dedicated Area in a manner consistent with its current uses;

- c. subject to approval by the appropriate governmental entity, retention of all existing driveway entrances to the Development Property except for a middle driveway entrance along South Westland Drive that will be eliminated;
- d. reconfiguration of the parking in the southeast portion of the Walnut Hill Property to provide continuous parking arrays running parallel to South Westland Drive;
- e. retention of the 33 parking spaces located immediately east of the northeast corner of the Retail Pad Site as shown on the Overall Site Plan attached as Exhibit C; unless Walnut Hill Owner seeks and the City approves elimination of said spaces;
- f. demolition of the existing pad site structure located in the southeast corner of the Walnut Hill Property;
- g. a minimum of 450 parking spaces;
- h. 10 percent of the surface parking lot area of the Development Property devoted to planting area and environmental site design, which shall include the existing green panel frontage along North Frederick Avenue; and
- i. A minimum of two percent (2%) of the surface parking lot spaces converted to Electric Vehicle (EV) charging spaces and a minimum of three percent (3%) of the surface parking lot spaces identified as ready to convert to an EV charging space. The EV charging spaces may be disbursed throughout the Development Property as determined by the Walnut Hill Owner.

4. The Walnut Hill Owner may pursue the Development Approvals, including the Preliminary/Final Site Plan for the Overall Development at one time or may pursue separate Development Approvals for the Proposed Retail Pad Site Development and the Additional Proposed Development, but in all instances the Preliminary/Final Site Plan and the other Development Approvals must be substantially in accordance with the approved Concept Plan and the improvements identified above in Section 3. In the event the Walnut Hill Owner pursues separate Development Approvals for the Additional Proposed Development, all improvements identified as the Additional Proposed Development must occur prior to the earlier of the issuance of a Use and Occupancy permit for the Retail Pad Site or December 31, 2026, except that with respect to the surface parking landscaping in accordance with Section 3h above, if the issuance of the use and occupancy permit for the Retail Building use or December 31, 2026 is not hospitable to planting then the landscaping must occur during the first planting season following the earlier of either of these events.

5. Within six (6) months of annexation of the Development Property, the Walnut Hill Owner shall:

- a. Complete the following items:
  - i. Remove all trash from the Development Property; and
  - ii. Repair and/or replace the fence along the eastern Walnut Hill Property line in accordance with Section 14 herein.
- b. Meet and confer with City staff and develop a plan of action (the “Plan of Action”) to complete the following tasks, which Plan of Action shall include specificity on all required improvements related to each task and identify a time frame for completion of each task:

- i. Improve lighting on the north side of the Development Property;
- ii. Improve open area between the two existing buildings;
- iii. Clean up rear of Development Property, including consolidation of dumpsters;
- iv. Improve pad site building located adjacent to N. Westland Drive; and
- v. Prepare a Comprehensive Sign Plan for the Development Property that shall include the removal of the following non-conforming signs, identified on the Overall Site Plan (Exhibit C): a) Multi-tenant sign located at the southwest corner; b) Monument sign located at the center entrance along North Frederick Road; c) Pole sign located at the northwest corner; and d) Monument sign located at the North Westland Drive entrance.

6. In connection with the future redevelopment of the Development Property beyond the redevelopment identified in this Annexation Agreement, the minimum commercial parking standard on the Development Property shall be one parking space per 300 square feet of gross floor area.

7. Gaithersburg agrees that the roofed dumpster enclosure located on the Retail Pad Site shall not be considered an accessory structure and as such, is not subject to any setback requirements, but is subject to architectural review and approval as part of the site plan review process.

8. In accordance with City Code Section 20-34(a)(4), Gaithersburg agrees to the establishment of a lease line parcel reflecting the Retail Pad Site pursuant to the minor subdivision procedures.

9. Walnut Hill Owner will be obligated to comply with the City of Gaithersburg's stormwater management requirements related to the development of the Retail Pad Site. Neither the demolition of the buildings located on the existing pad sites on the southern and northern ends of the Development Property nor the installation of any additional landscaping on the Development Property shall be subject to any additional stormwater management requirements beyond the requirements for the existing stormwater management, but will require the submission of a sediment and erosion control plan, but will be subject to stormwater fees and compliance with stormwater facility maintenance and inspection requirements.

10. Walnut Hill Owner agrees to make certain façade improvements to the existing improvements on the Development Property generally consistent with the Illustrative Elevations attached hereto as Exhibit D and subject to Staff approval, which shall include new canopies, new paint, improved lighting, new façade cladding materials and roofline articulation (the "Elevation Improvements"). The Elevation Improvements must be completed prior to the issuance of the use and occupancy permit for the Retail Building or by December 31, 2026, whichever is first to occur.

11. Gaithersburg agrees that the minor site revisions located along the frontage of the future grocery store consisting of grading changes, sidewalk improvements, landscaping improvements and elimination of parcel pick-up lane (the "Grocery Site Improvements") as indicated on Area A of Overall Site Plan attached as Exhibit C, may be submitted for Staff review and approval and are subject to issuance of any applicable, required building permits.

12. Walnut Hill Owner will obtain, without any required fees, City Use and Occupancy permits for all existing occupied buildings and spaces on the Development Property within three (3) months of the execution of this Agreement. To the extent a leasable space is subject to a valid Montgomery County Use and Occupancy permit, the City will issue a Use and Occupancy permit without conducting any inspections. Any leasable space not subject to a valid Montgomery County Use and Occupancy permit shall be subject to an inspection by the City prior to the issuance of the City Use and Occupancy permit.

13. Walnut Hill Owner agrees that in conjunction with the Proposed Development it will seek review and approval from the Gaithersburg Cultural Arts Advisory Committee in accordance with the City's Art in Public Places Program to commission an artist to install a mural along the northern and western façades of the most southern building on the Development Property, which said mural will be a minimum of 400 square feet in size and will be completed prior to the issuance of the use and occupancy permit for the Retail Building. The mural shall not be considered signage.

14. Walnut Hill Owner shall be permitted to replace the existing fence located along the eastern Walnut Hill Property line with a new fence measuring the greater of eight feet in height or the height of the existing fence, subject to a fence permit, without permission of the City Manager or their designee, provided compliance with all notice requirements pursuant to Zoning Code Section 24-167.

15. Within thirty (30) days of the Effective Date (herein defined) Walnut Hill Owner shall provide Gaithersburg copies of all as-built stormwater facilities and infrastructure.

16. Walnut Hill Owner agrees not to seek a subdivision of the Development Property, with the exception of the minor subdivision to establish the Retail Pad Site as a lease line parcel

as provided for in Section 4 herein, until after Gaithersburg's adoption of a new Land Use Element of the Master Plan, provided that if Gaithersburg has not adopted a new Land Use Element within five years of the Effective Date (herein defined), Walnut Hill Owner may seek a subdivision of the Development Property.

17. Upon annexation of the 8939 Property into Gaithersburg, the Property shall be zoned Corridor Development (C-D).

18. The Parties agree to execute all documents and take such actions that are necessary to carry out the terms and conditions of this Annexation Agreement and to cooperate and use best effort to adhere to the Development Schedule, attached as Exhibit E.

19. This Annexation Agreement shall not become effective until the Annexation Resolution becomes effective pursuant to Section 4-407 of the Code, (hereinafter "Effective Date of Annexation").

20. This Annexation Agreement shall remain valid for twenty-five (25) years following the Effective Date (the "Effective Period") or upon redevelopment of fifty percent (50%) or more of the Walnut Hill Property to a use other than a retail shopping center, whichever is first to occur, and shall automatically terminate thereafter and shall be of no further force or effect. At any time prior to the Effective Date of Annexation, the Walnut Hill Owner may withdraw the Petition for Annexation as it relates to the Walnut Hill Property. Only in the event that the Walnut Hill Owner withdraws the Petition, may the 8939 Owner also withdraw the Petition as it relates to the 8939 Property.

21. To the extent any rezoning after the termination of the Effective Date results in any of the existing uses being deemed non-conforming, such uses shall be classified as legal non-

conforming uses and shall be able to continue, provided said use does not increase or expand and is otherwise in conformance with the City's Zoning Ordinance (Chapter 24 of the City Code).

22. To the extent Gaithersburg rezones the Development Property during the Effective Period, the uses identified on Exhibit F, attached hereto, shall continue to be allowed uses on the Development Property.

23. The provisions of this Annexation Agreement are and shall be deemed to be covenants running with the land and shall be binding upon Owner and the 8939 Owner and their respective successors and assigns with an interest in the Development Property and the 8939 Property, respectively.

24. This Agreement shall be amended only in writing, signed by (or on behalf of) the Parties hereto.

25. This Agreement shall be recorded in the Land Records of Montgomery County, subsequent to the approval of the annexation resolution.

26. The Recitals and Exhibits set forth above are hereby incorporated by reference and made a part of this Agreement.

27. This Agreement constitutes the entire agreement and understanding of the Parties hereto with respect to the subject matter hereof and supersedes all prior communications, representations, agreements, and understandings, oral or written, by the Parties relating thereto.

IN WITNESS WHEREOF, each of the Parties hereto has executed and delivered this Annexation Agreement as of the date first set forth above, as evidenced by their respective signatures and acknowledgements on the following pages.

[Signature Pages Follow]

ATTEST

MAYOR AND COUNCIL OF  
GAITHERSBURG

\_\_\_\_\_

By: \_\_\_\_\_  
Tanisha Briley  
City Manager

STATE OF MARYLAND  
COUNTY OF MONTGOMERY

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, a Notary Public in and for the State and County aforesaid, personally appeared Tanisha Briley, who acknowledged herself to be the City Manager of the Mayor and Council of Gaithersburg, a municipal corporation, and that she, as City Manager, being authorized to do so, executed the foregoing instrument on behalf of the corporation for the purposes therein contained, and acknowledged the same to be the act and deed of the corporation, by signing the name of the Mayor and Council of Gaithersburg by herself as City Manager.

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

(SEAL)

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

My commission expires: \_\_\_\_\_



