

TRAFFIC MITIGATION AGREEMENT

THIS TRAFFIC MITIGATION AGREEMENT (“Agreement”) is made this _____ day of November, 2005, by and among _____, its successors and assigns; MONTGOMERY COUNTY DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION (“MCDPWT”); and MONTGOMERY COUNTY PLANNING BOARD OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION (“Planning Board”), a public body corporate.

RECITALS:

A. Woodmont Triangle is the owner of certain land located at _____ and consisting of approximately _____ acres, in Bethesda, Montgomery County, Maryland (“Property”).

B. COMPANY will develop the Property with _____ dwelling units and _____ square feet of retail space (“Project”) in accordance with approved Project Plan No. 0-00000, approved Preliminary Plan No. 1-11111, and approved Site Plan No. 2-22222.

C. The Project is located in the Bethesda Central Business District (“CBD”), as defined in Section 59-C-6.12(c) of the Montgomery County Code (1994, as amended) (“Code”).

D. In 1988, a transportation management district (“TMD”) was established in the CBD. Pursuant to Section 42A-25(a) of the Code, any proposed subdivision or optional method of development in the CBD must be subject to a traffic mitigation agreement. Pursuant to Section 42A-25(b) of the Code, a traffic mitigation agreement must specify the transportation demand management measures which will be undertaken by an applicant for subdivision or optional method development, which measures must be calculated to ensure that public transportation facilities will be adequate to meet the commuting goals specified in the Annual Growth Policy.

E. COMPANY has agreed to enter into this Agreement with MCDPWT and the Planning Board to set forth the transportation demand management measures to satisfy the requirements of Section 42A-25 of the Code and the Approvals received for the Property.

NOW, THEREFORE, in consideration of the above Recitals, each of which is made a part of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which each of the parties hereto acknowledges, and intending to be legally bound thereby, the parties hereby agree as follows:

1. The recitals above are incorporated into this Agreement.
2. Commencement. The obligations and requirements set forth in this Agreement shall commence upon the issuance of the first Use and Occupancy Certificate for the Project.
3. Traffic Mitigation Program. COMPANY shall implement a transportation demand management program (the “Program”) as follows:

- a. The TMD is currently operated by Bethesda Transportation Solutions, a division of the Bethesda Urban Partnership, under contract with the Montgomery County Government. COMPANY will appoint a Transportation Benefits Coordinator (“TBC”) to promote the TMD’s programs to residents and on-site employees. The TBC may be a property manager or other employee of the Property owner with other employment duties. COMPANY shall promptly notify Bethesda Transportation Solutions @ 7700 Old Georgetown Road, Bethesda, MD 20814 in writing of any new appointment to the TBC position and shall update contact information.
- b. COMPANY will designate a permanent commuter information display area in a portion of the building which is highly used and convenient to residential and commercial tenants (this may be in a lobby or mailbox area, or other area with a bulletin board and space for displaying information/materials).
- c. The TBC will arrange for an initial meeting between the TBC and Bethesda Transportation Solutions’ staff and provide the opportunity for subsequent meetings as needed. The TBC will cooperate with the TMD and permit and facilitate use of space in the development on a periodic basis (by prior arrangement) for marketing and promotional activities of Bethesda Transportation Solutions. In addition, the TBC will provide tenants with available packaged materials from Bethesda Transportation Solutions and/or the County regarding transit alternatives and programs serving the Bethesda CBD area.
- d. The TBC will facilitate participation by the Project’s unit owners and on-site employees in the Bethesda Transportation Solutions’ annual transportation survey. The TBC will use commercially reasonable efforts to assure that at least 80 percent of the residents and 80 percent of the employees fill out and return the Bethesda Transportation Solutions’ annual commuter survey forms and will compile the information and monitor results of the traffic mitigation program elements of the development/ building.
- e. The design of the Project includes pedestrian connectivity to adjacent streets through the extensive sidewalk system shown on the site plan.
- f. The TBC will compile the information and monitor results of the traffic mitigation program elements at the development/building. The TBC will prepare a brief report (1-2 pages) each year, summarizing the results of the program and outlining activities conducted to promote commute options during the course of the previous year. This report will include the name and contact information for the current TBC and will be submitted to MCDPWT Commuter Services Section on or about the anniversary of the agreement, with a copy to Bethesda Transportation Solutions.
- g. COMPANY shall provide a secure weatherproof area in a convenient part of the garage structure to house bicycles sufficient to meet demand.

4. County Information Obligations. Upon request, Bethesda Transportation Solutions and/ or MCDPWT shall respond to inquiries from COMPANY regarding transportation systems and facilities available in the CBD, and, to the extent reasonably possible, shall provide COMPANY with any existing relevant information, including readily available mass-produced printed materials, regarding Ride-On Bus, Metrobus, Metrorail, MARC, Share-A-Ride, and any other public transportation systems or carpool and vanpool matching services now or hereafter serving the CBD, in quantities sufficient to allow COMPANY to distribute to residents and employees in order to comply with the terms of the Agreement.

5. Duration. The provisions of this Agreement shall continue in force in perpetuity, or until the Planning Board evaluates, after receipt of recommendations from MCDPWT, the progress of the Program and determines that components of the Program, in whole or in part, are no longer appropriate or necessary.

6. Fees. COMPANY shall pay all transportation management fees as required by law, without regard to whether this development would be considered as “new” or “existing” development at that time.

7. Enforcement. If COMPANY fails to comply with the terms and conditions of this Agreement, MCDPWT or the Planning Board shall be entitled to take such enforcement action against COMPANY as may be permitted under the Code and other applicable law.

8. COMPANY's Obligations. The obligations of COMPANY under this Agreement shall apply only during the period during which it is the fee simple owner of the Property. At such time as COMPANY ceases to own a fee simple interest in the Property, the obligations and liabilities thereafter accruing (but not any accrued and unperformed obligations and liabilities) shall automatically become the obligations of COMPANY's successors and/or assigns, to the extent permitted by law, and COMPANY shall have no further obligation hereunder, provided Section 9 below has been satisfied.

9. Assignment. This Agreement is assignable, in whole or in part, by COMPANY's, without the consent of the Planning Board or Montgomery County. COMPANY's assignee shall sign the Assignment Form, attached hereto as Exhibit “A”, indicating its obligation to be bound by the terms and conditions of this Agreement. A copy of the executed Assignment Form shall be mailed to the Planning Board and to MCDPWT.

10. Notices. All notices and other communications required to be given by any party under this Agreement shall be in writing and shall be deemed duly given by Certified Mail, Return Receipt Requested, Postage Prepaid, as follows:

(a) If to COMPANY to:

COMPANY
Address
Suite 101
Reston, VA 20191
Attn: NAME

with a copy to:

Attorney
Address
Bethesda, Maryland 20814

(b) If to the Planning Board to:

Chairman
Montgomery County Planning Board of
The Maryland-National Capital Park
and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

with a copy to:

Office of General Counsel
Maryland-National Capital Park
and Planning Commission
8787 Georgia Avenue
Suite 205
Silver Spring, Maryland 20910

(c) If to the MCDPW&T to:

Director
Montgomery County Department of
Public Works and Transportation
Executive Office Building
101 Monroe Street
10th Floor
Rockville, Maryland 20850

(d) If to the Bethesda TMD to:

Director
Bethesda Transportation Solutions
7700 Old Georgetown Road
Bethesda, MD 20814

11. Miscellaneous. This Agreement constitutes the entire agreement among the parties and no party is liable to the other or bound in any manner by express or implied warranties, guarantees, promises, statements, or representations pertaining to the subject matter hereof unless such warranties, guarantees, promises, statements, or representations are expressly and specifically set forth in this Agreement. This Agreement may be executed simultaneously in any number of

counterparts, each of which shall be deemed an original but all of which shall constitute one and the same Agreement. This Agreement can be modified only in writing signed by all the parties hereto. This Agreement shall be governed and construed in accordance with the laws of the State of Maryland. This Agreement supercedes all prior traffic mitigation agreements affecting all or a portion of the Property.

12. Record Plat. *COMPANY* shall record this Agreement among the Land Records of Montgomery County. The existence of this Agreement will be referenced on the record plat for the Project.

[SIGNATURE PAGE FOLLOWS]

SAMPLE

IN WITNESS WHEREOF, COMPANY, the Planning Board, and MCDPWT have entered into this Agreement on the day and year first written above.

ATTEST/WITNESS:

COMPANY

By: _____
Name: _____
Title: _____

ATTEST/ WITNESS:

MONTGOMERY COUNTY PLANNING
BOARD OF THE MARYLAND-NATIONAL
CAPITAL PARK AND PLANNING
COMMISSION, a public body corporate

By: _____
Name: _____
Title: _____

ATTEST/ WITNESS:

MONTGOMERY COUNTY
DEPARTMENT OF PUBLIC WORKS
AND TRANSPORTATION

By: _____
Name: _____
Title: _____

STATE OF

*

* to wit:

COUNTY OF

*

I HEREBY CERTIFY that on this ____ day of _____, 2005, before me, a Notary Public in and for the State and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the Director of the Montgomery County Department of Transportation, and that such officer, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the said Montgomery County Department of Transportation in his capacity as aforesaid.

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

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

* * *

STATE OF

*

*to wit:

COUNTY OF

*

I HEREBY CERTIFY that on this ____ day of _____, 2005, before me, a Notary Public in and for the State and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument as the _____ of COMPANY, and acknowledged that he/she executed the foregoing and annexed instrument for the purposes therein contained in his/her capacity as aforesaid.

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

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

* * *

STATE OF

*

*to wit:

COUNTY OF

*

I HEREBY CERTIFY that on this ____ day of _____, 2005, before me, a Notary Public in and for the State and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the _____ of the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission, a public body corporate, and that such _____, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the said public body corporate.

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

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

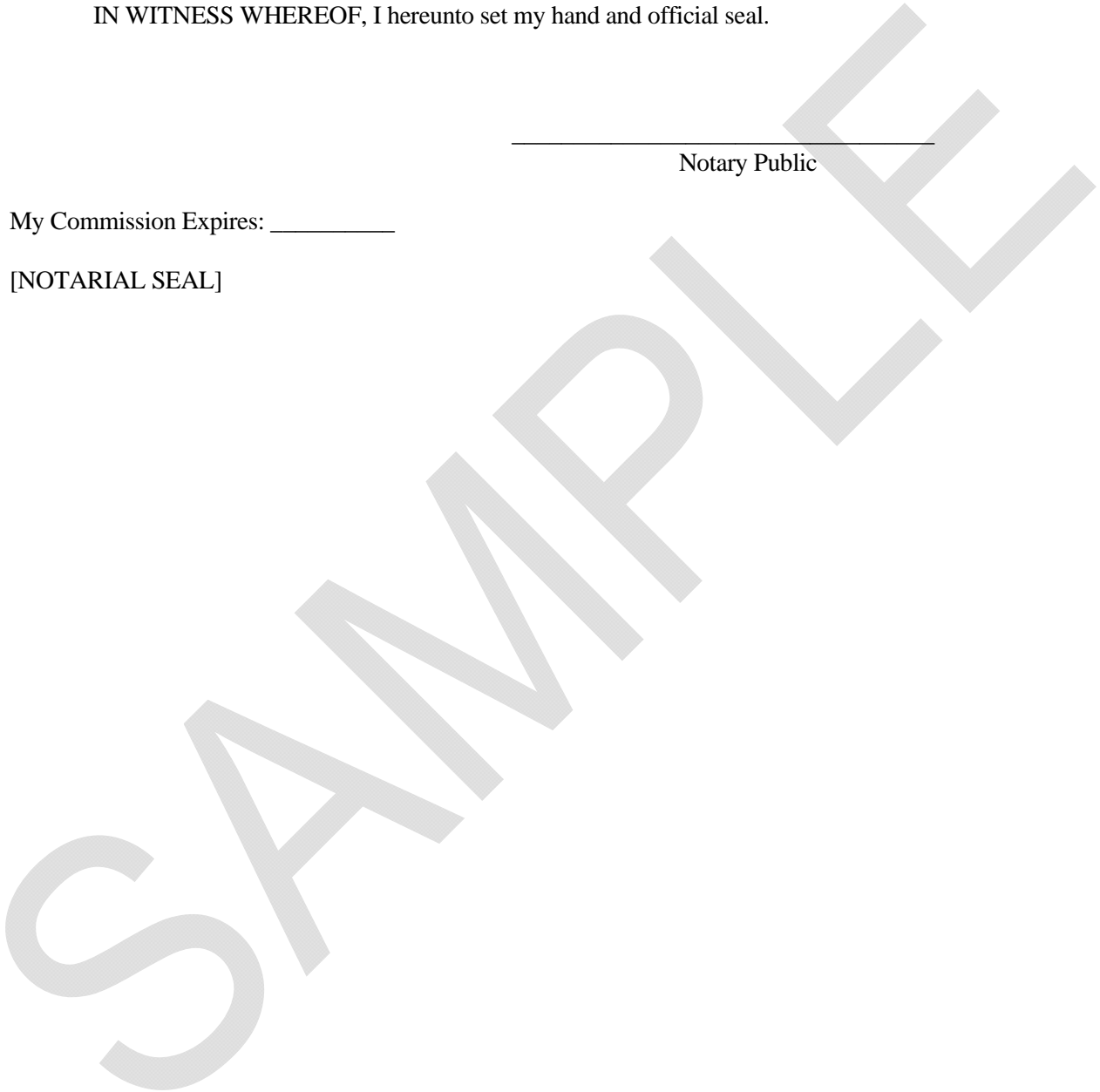


Exhibit "A"

ASSIGNMENT

_____, successor in interest and/or
assignee of _____, hereby agrees to be bound by
the terms and provisions of the Traffic Mitigation Agreement dated _____, 2005, by
and among _____, the Montgomery County Department of
Public Works and Transportation, and the Montgomery County Planning Board of the Maryland-
National Capital Park and Planning Commission.

SAMPLE