

TRAFFIC MITIGATION AGREEMENT

THIS TRAFFIC MITIGATION AGREEMENT ("Agreement"), is made this _____ day of _____, 2014, by and among (a) _____ ("Applicant"); (b) MONTGOMERY COUNTY by and through its DEPARTMENT OF TRANSPORTATION ("MCDOT"); and (c) MONTGOMERY COUNTY PLANNING BOARD OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION ("Planning Board"), a Maryland public body corporate.

RECITALS:

This Agreement is entered into on the basis of the following facts, understandings, and intentions of the parties:

A. Applicant is the owner of a certain _____-acre tract of land in the CBD-2 zone, located at the southwestern corner of the intersection of _____ and _____ in Bethesda, Montgomery County, Maryland (the "Property").

B. Applicant proposes to redevelop the Property with a project consisting of up to 250 multi-family dwelling units and up to 7,000 square feet of non-residential uses (the "Project"), which was the subject of an Application for Site Plan that was captioned Site Plan No. _____ (the "Site Plan").

C. The Project is located in the Bethesda Metro Station Policy Area and in the Bethesda Transportation Management District.

D. On _____, the Planning Board approved the Site Plan for the Project. Attached hereto as Exhibit "A" is copy of the Planning Board's Resolution dated _____ (the "Resolution").

E. The Resolution contains the following requirement of the Applicant:

Condition #4(d): "Prior to the release of any above grade building permit for development on the Subject Property, the Applicant must enter into a Traffic Mitigation Agreement ("TMAg") with the Planning Board and MCDOT to participate in the Bethesda Transportation Management District ("TMD"). The TMAg must include trip mitigation measures recommended by MCDOT."

F. MCDOT operates the Bethesda TMD, and either directly or through its contractors functions as the Transportation Management Organization.

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 to the following in compliance with the above requirements:

1. Commencement. The obligations and requirements set forth in this Agreement will commence upon issuance of the first Use and Occupancy (“U&O”) permit for the Project. Applicant will notify MCDOT and the Planning Board when receipt of the initial U&O permit is estimated to be within six weeks and again when the permit is received.

2. Participation in Bethesda TMD. Applicant agrees to actively participate with MCDOT to achieve and maintain commuting goals as specified in the Bethesda CBD Sector Plan (the “Sector Plan”) and related goals of the TMD.

3. Appointment of Transportation Benefits Coordinator. Applicant will designate in writing to MCDOT, a Transportation Benefits Coordinator (TBC). The TBC will assist residents and/or employees working on-site in exercising commuting options and serve as a point of contact for TMD staff. Applicant will arrange for an initial meeting between the TBC and MCDOT and provide the opportunity for subsequent meetings as needed. The TBC will plan and coordinate with MCDOT and monitor achievement of traffic mitigation as anticipated by the Master Plan. On an ongoing basis, the TBC will interact with MCDOT in promoting ridesharing and other alternative transportation programs in order to maximize the participation of residents and employees at the site in such programs to help the TMD meet its goals. The TBC may be a property manager or other employee with other employment duties. Applicant will ensure the TBC attends periodic meetings and training sessions held by MCDOT and/or other local or regional agencies which are related to performance of these duties and coordination with other traffic mitigation programs. Applicant will promptly notify MCDOT in writing of the designated TBC(s) and contact information, and any subsequent change in the TBC(s) or contact information.

4. Activities of Transportation Benefits Coordinator.

(a) Promotional Programs. The TBC will conduct promotional activities and information distribution for all features of the TMD program at the Project; facilitate access to residential and commercial tenants/employers and employees and residents for purposes of information and educating about programs and services available in the TMD; and distribute paper and/or electronic “Welcome Packets” with information about commuting alternatives or other materials provided by MCDOT or the County to new residents and new employers and employees. TBC Applicant will provide MCDOT with an updated list of commercial tenants/employers on a semi-annual basis. Upon request, this information will be used solely for transportation-related purposes. Applicant will ensure that all activities required of the TBC will be supported by adequate budgetary allocations so that efforts to help meet trip reduction goals of the TMD are feasible. Payments may be required to be made by Applicant to MCDOT for reimbursement of costs incurred in providing materials for this purpose. This amount will not exceed \$7.50/1,000 gross square feet, or \$1,500.00, per year, and MCDOT will provide an invoice(s) for the requested reimbursement from the Project for its promotional materials. Such limit may be increased every three (3) years by the same percentage as the “CPI” has increased over the three (3)-year period. “CPI” means the Consumer Price Index for All Urban Consumers (CPI-U), Washington Baltimore, DC-MD-VA-WV as published by the Bureau of Labor Statistics of the United States Department of Labor. If such index is no longer published, CPI

will mean a similar index generally accepted and used in commercial practice as a substitute for such index to determine annual cost of living increases in the Washington, D.C. region.

Promotional activities will include the distribution of TMD information to residents and employees through the use of displays, bulletins, brochures, email notices and the periodic hosting of on-site marketing and promotional activities (e.g., ridesharing days, contests), prepared or conducted by the Applicant or in concert with MCDOT. Applicant and the TBC will provide and facilitate use of space in the development on a periodic basis (by prior arrangement) for marketing and promotional activities of the TMD. Upon request by MCDOT, the TBC will also promote and help to facilitate the sale of passes and tickets, including Ride On passes, SmarTrip Cards, Metrobus passes, MARC commuter rail tickets, or other passes and/or incentive programs provided by public or private institutions.

(b) Surveys. The TBC in cooperation with MCDOT, will facilitate resident and employer/employee participation in the TMD Annual Commuter Survey using a survey instrument provided by the TMD or the County. The survey will be conducted of the transportation choices of residents and employees and related issues. Applicant will use commercially reasonable efforts to achieve an 80% response return rate from among residents and employees in the development. The MCDOT will tabulate and analyze this information, and provide results on the specific mode share profiles of the development to the Applicant and/or individual employers upon request.

5. Displays. Applicant will provide a permanent information display in the Project's main lobby for commuter information and promotional material on transportation management programs in the TMD, the County, and the region.

Applicant will provide the space and necessary electrical and internet connections for one (1) Real Time Transit Information sign(s) in the Project's lobby to assist employees, residents, and visitors with commuter information. Applicant will utilize County-provided transit information software which will display on monitors the Applicant plans to use for Project-related information (i.e., building directory, location of specific sections or rooms in the project or building, etc.). Under this option, Applicant will pay for maintenance of their own software system but there will be no charges for use of County data.

6. Telework. Applicant will work with MCDOT to promote telework among employees and residents of the development. Applicant will provide a well-lit space with high-speed internet access to encourage and enable residents to telework in the event they are unable to do so from their apartment.

7. Emergency Transportation. Applicant will make a good faith effort to promote the Guaranteed Ride Home program and any other emergency ride programs that are available in the region to employees who carpool, vanpool, use transit, or use other alternative commute options.

8. Car Sharing Spaces. Applicant will take other actions in concert with MCDOT to promote use of car sharing in conjunction with other commute options to accomplish the objectives of the TMD.

9. Electric Vehicle Charging Station(s). Applicant will provide at least two EV charging stations in the Project in residential and non-residential parking facilities, in preferential, highly visible locations. Each EV charging station shall be clearly identified with signage that indicates its purpose and provides contact information for inquiries (e.g., the telephone number for the TBC contact or the applicable third party provider). Applicant will also provide "way finding" and other signage to facilitate and promote use of such EV charging stations within the Project. Applicant may determine the commercial arrangements under which charging stations will be operated, including, without limitation, the type of charging station to be used (e.g., Level 3 or Level 2 charging stations) and the use of third party providers.

In the alternative, Applicant, at its option, may satisfy the foregoing requirements by any combination of (i) providing pre-wiring for a minimum of 5% EV-ready parking spaces in employee and residential parking facilities (based on total number of parking spaces to be provided in that facility), and/or (ii) offering financial incentives to tenants (employers), employees, and/or residents of the Project to encourage their installation of wiring and charging equipment in their designated spaces. The total expenditure by Applicant under this alternate method shall at least equal the cost that Applicant would incur for providing two Level 2 (240 Volt) EV charging stations at the Project.

10. Live Near Your Work. Applicant will implement marketing efforts, in conjunction with MCDOT and other agencies, designed to attract employees working onsite or nearby to purchase or rent housing within the Project, to increase the number of employees able to walk or bike to work, or take a short bus ride.

11. Bicycle Facilities. Applicant will provide a secure weatherproof area in a conveniently-located, well-lit, high traffic part of the parking facility to house bicycles for residents and employees of the Project. Secure bicycle parking will also be provided in a location accessible for visitor use. Bicycle storage will be provided for the number of bicycle parking facilities specified in Planning Board approvals or sufficient to meet demand in the event demand exceeds the number specified. No charges will be imposed for bicycle parking.

12. Bike Sharing. Condition #4(c) of the Site Plan Resolution requires the Applicant to make a Policy Area Mobility Review (PAMR) payment prior to the release of any building permit for the Project, and provides that the PAMR payment may be used by MCDOT for, among other improvements, "bikeshare stations within the Bethesda-Chevy Chase Policy Area". Applicant will also take other actions in concert with the TMD to promote use of bike sharing among employees, residents, and visitors at the Project, in order to accomplish the objectives of the TMD.

13. Bethesda Transportation Management District Assistance. TMD staff will be available to provide transportation information, technical advice, and other forms of assistance

normally provided by the TMD, to the extent feasible within the constraints of staff and fiscal resources.

14. Annual Report. Applicant will provide an annual summary report (1-2 pages) to MCDOT on an annual date designated by MCDOT. This report will outline the traffic mitigation program and activities conducted with MCDOT during the course of the previous year, and will include the name and contact information for the current TBC.

15. Fees. Applicant will pay all transportation management fees as required by law, without regard to whether this development is construed as “new” or “existing” development.

16. Binding Effect. This Agreement will be binding upon and will inure to the benefit of the successors and assignees of Applicant, MCDOT, and the Planning Board. The agreements set forth herein will be deemed to be covenants running with the land with respect to the Property.

17. Enforcement. If Applicant fails to comply with the terms and conditions of this agreement, MCDOT or the Planning Board will be entitled to take such enforcement action against Applicant as may be permitted under the Montgomery County Code and other applicable law.

18. Applicant’s Obligations. The obligations of Applicant under this Agreement will apply only during the period when it is the holder of a lease or fee simple interest in the Property or any part thereof and only to land it leases or owns. At such time as Applicant ceases to hold either a lease or a fee simple interest in the Property or any part thereof, the obligations and liabilities thereafter accruing (but not any accrued and unperformed obligations and liabilities) will be the obligations or liabilities of Applicant’s successors and/or assigns, to the extent permitted by law.

19. Assignment. This Agreement is assignable, in whole or in part, by Applicant, without the consent of the Planning Board or Montgomery County. Applicant’s successor in interest or assignee will sign the Assignment form, attached hereto as Exhibit “B”, indicating their obligation to be bound by the terms and conditions of this Agreement. A copy of the executed Assignment form will be mailed to the Planning Board, and to MCDOT.

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

(a) If to Applicant to:

with a copy to:

(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 Associate General Counsel, Office of the General Counsel, 8787 Georgia Avenue, Suite 205, Silver Spring, Maryland 20910.

(c) If to MCDOT to: Director, Montgomery County Department of Transportation, Executive Office Building, 101 Monroe Street, 10th Floor, Rockville, Maryland 20850, (with a copy not to constitute notice) to County Attorney's Office, 101 Monroe Street, 3rd floor, Rockville, Maryland 20850 (attention County Attorney)

21. Entire Agreement. This Agreement constitutes the entire agreement between 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.

22. Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which will be deemed an original but all of which will constitute one and the same Agreement.

23. Amendments/Modifications. This Agreement can be modified only in writing signed by all the parties hereto, their heirs, successors, assigns or their designees hereunder. Amendments which are deemed by the parties to materially alter the agreement and which are inconsistent with its terms must be approved by the Planning Board and the Director of MCDOT.

24. Governing Law. This Agreement will be governed and construed in accordance with the laws of the State of Maryland.

25. Recordation. Applicant will record this Agreement in the Land Records of Montgomery County.

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

[SIGNATURE PAGES FOLLOW]

ATTEST/WITNESS:

By:

By:

STATE OF

*

COUNTY OF

*

to wit:

*

I HEREBY CERTIFY that on this _____ day of _____, 2014, before me, a Notary Public in and for the State and County aforesaid, personally appeared _____ and that such corporate officer, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the said Applicant in his capacity as aforesaid.

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

Notary Public

My Commission Expires:

[NOTARIAL SEAL]

ATTEST:

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

By:

STATE OF
COUNTY OF

* * *

*

*

*

to wit:

I HEREBY CERTIFY that on this _____ day of _____, 2014, 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.

My Commission Expires:

[NOTARIAL SEAL]

Approved for legal sufficiency
M-NCPPC Office of General Counsel

RECOMMENDED BY

MONTGOMERY COUNTY
DEPARTMENT OF
TRANSPORTATION

By: _

* * *

STATE OF

*

*

to wit:

COUNTY OF

*

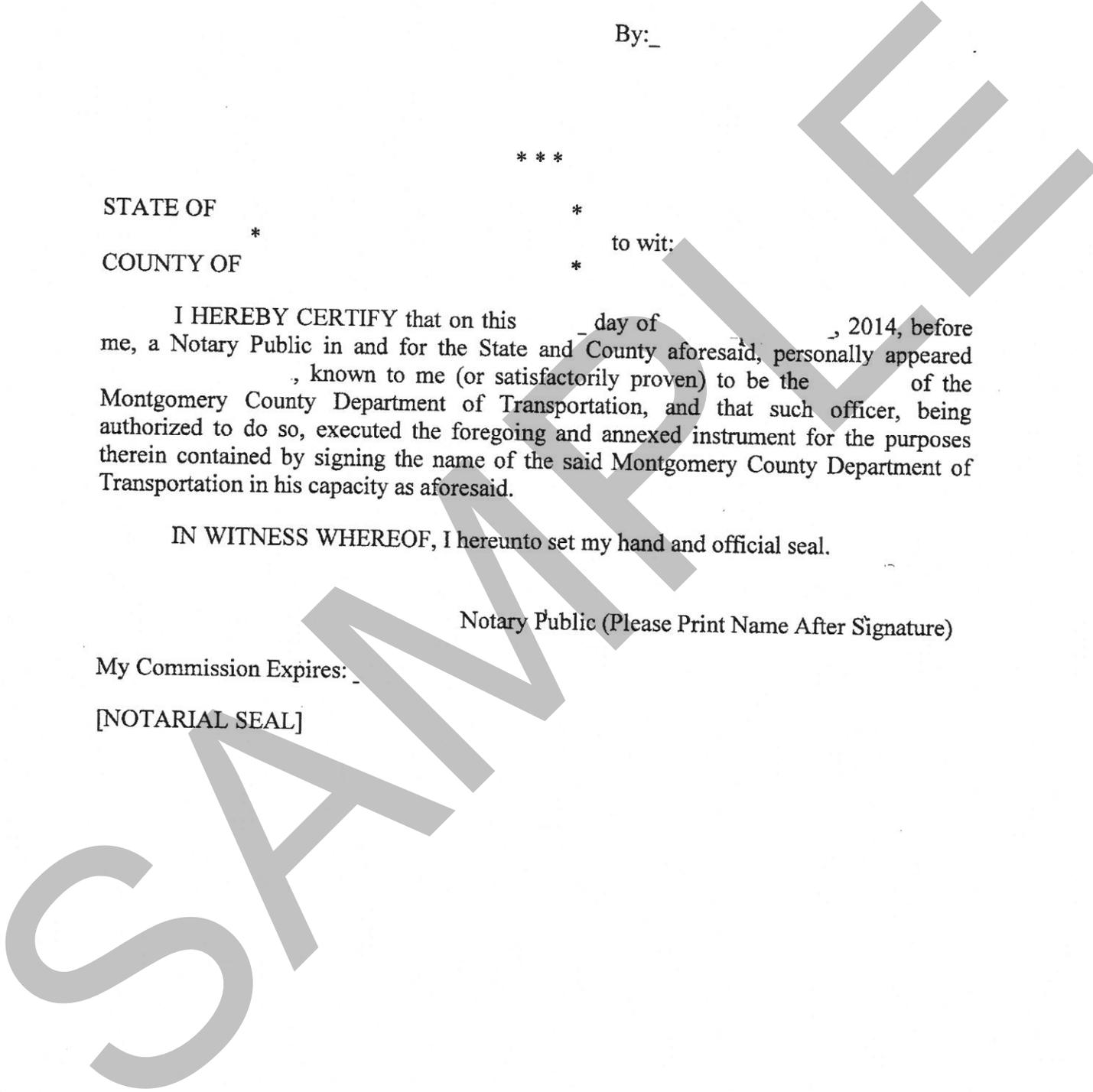
I HEREBY CERTIFY that on this _ day of _, 2014, before me, a Notary Public in and for the State and County aforesaid, personally appeared , known to me (or satisfactorily proven) to be the of the Montgomery County Department of Transportation, and that such officer, being authorized to do so, executed 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 (Please Print Name After Signature)

My Commission Expires: _

[NOTARIAL SEAL]



MONTGOMERY COUNTY, MARYLAND

WITNESS:

By:

APPROVED AS TO FORM AND LEGALITY:

Office of the County Attorney

Printed Name)

STATE OF

*

COUNTY OF

*

to wit:

*

I HEREBY CERTIFY that on this _____ day of _____, 2014, before me, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument as _____ of Montgomery County, Maryland, and acknowledged that she, as such _____, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of Montgomery County, Maryland.

IN WITNESS WHEREOF, I hereunto set my hand and Notarial Seal.

Signature)

Notary Public (Please Print Name After

My Commission Expires:
[NOTARIAL SEAL]

ATTORNEY'S CERTIFICATE

I HEREBY CERTIFY that this Agreement was prepared under my supervision,
and that I am an attorney duly admitted to practice before the Court of Appeals of
Maryland.

(Please Print Name)

AFTER RECORDATION, PLEASE RETURN TO:

MCDOT, Div. of Traffic Engineering & Operations
100 Edison Park Drive, 4th Floor
Gaithersburg, MD 20878

SAMPLE



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No.
Site Plan No.

Date of Hearing:

RESOLUTION

WHEREAS, under Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board" or "Board") is authorized to review site plan applications; and

WHEREAS, on ("Applicant"), filed an application for approval of a site plan using the density transfer provisions under Section 59-C-6.2355 of the Zoning Ordinance to transfer density from four properties as indicated below ("Sending Properties") to permit a maximum of 303,793 square feet of development; to construct a 17- story (174 foot) building of up to 250,799 square feet of residential uses with a maximum of up to 250 multi-family dwelling units, of which 15% are MPDUs plus 7,000 square feet of non-residential uses on property located on the _____ side of _____ at its intersection with _____, approximately 65 feet _____ of _____ ("Receiving Property" or "Subject Property") and retain the remaining 45,994 square feet of total allowable development on the Sending Properties, all in the area covered by the _____ to the Sector Plan for the Bethesda Central Business District (sometimes referred to as "CBD") ("Sector Plan"); and

WHEREAS, the Sending Properties are transferring 84,643 square feet of density to the Receiving Property as indicated on the following chart:

| Description of Sending Property | Zone | Density Transferred | Density Retained |
|---------------------------------|-------|---------------------|------------------|
| | CBD-1 | | |
| | CBD-1 | | |
| | CBD-1 | | |
| | CBD-2 | | |

Approved as to
Legal Sufficiency: _____

MCPB No.

Page 2

² The approved plans for _____ (Project Plan No. _____, Preliminary Plan No. _____ and Site Plan No. _____) will become invalid when the density transfer easements are recorded as conditioned in the project plan approval for this project...

WHEREAS, Applicant's site plan application was designated Site Plan No. _____ ("Site Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated _____, setting forth its analysis of and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on _____, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on _____, the Planning Board voted to approve the Application subject to conditions, on the motion of Commissioner _____, seconded by Commissioner _____, with a vote of _____; Commissioners _____ and _____ voting in favor and Commissioner _____ absent from the hearing.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. _____ for a maximum of 303,793 square feet of development; to construct a 17- story (174 foot) building of up to 250,799 square feet of residential uses with a maximum of up to 250 multi-family dwelling units, of which 15% are MPDUs plus 7,000 square feet of non-residential uses, on the Receiving Property, and to retain the remaining 45,994 square feet of total allowable development on the Sending Properties, subject to the following conditions:¹

Plan Conformance

1. Project Plan Conformance

The development must comply with the conditions of approval for Project Plan No.

¹ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

Density and Housing

2. Density

The development, including the Receiving Property and the Sending Properties, is limited to a Floor Area Ratio of 4.73, which includes a maximum of 303,793 square feet of development; the Receiving Property to include 250,799 square feet of residential uses for a maximum of up to 250 multi-family dwelling units and 7,000 square feet of non-residential uses; the Sending Properties to retain a total of 45,994 square feet of non-residential uses.

3. Moderately Priced Dwelling Units ("MPDUs")

- a. The Applicant must provide a minimum of 15% MPDUs derived from the total number of residential units, consistent with the requirements of Chapter 25A of the Montgomery County Code. The Applicant is receiving a 22% density bonus for providing 15% MPDUs on the site.
- b. Prior to building permit issuance, the Applicant must execute a MPDU agreement with the Montgomery County Department of Housing and Community Affairs, which shall address all provisions for the construction of MPDUs.

Adequate Public Facilities ("APF")

The APF approval for this development will remain valid for 85 months from the date of mailing of the Planning Board Resolution approving the Site Plan.

4. Transportation

- a. The Applicant must limit development on the Subject Property to 250 high-rise residential units and 7,000 square feet of non-residential uses.
- b. The Applicant must show on the Site Plans the following rights-of-way along property frontage consistent with the 1994 Approved and Adopted Bethesda CBD Sector Plan:
 - i. – minimum of 40 feet from the roadway right-of-way centerline or 80 feet from the opposite roadway right-of-way line.
 - ii. – minimum of 30 feet from the roadway right-of-way centerline or 60 feet from the roadway right-of-way line.
- c. Prior to the release of any building permit for the development, the Applicant must pay \$163,800.00 to Montgomery County Department of Transportation ("MCDOT") to satisfy the Policy Area Mobility Review ("PAMR") requirement of the APF test to mitigate 14 net "new" weekday site-generated peak-hour trips at \$11,700 per peak-hour trip. The PAMR payment may be used by MCDOT for the construction of a mid-block pedestrian crossing to connect the on-site pedestrian path to the pedestrian

path on the _____ site, with a curb extension on the north side of _____ to reduce the crosswalk width as well as bikeshare stations within the Bethesda-Chevy Chase Policy Area.

- d. Prior to the release of any above grade building permit for development on the Subject Property, the Applicant must enter into a Traffic Mitigation Agreement ("TMAg") with the Planning Board and MCDOT to participate in the Bethesda Transportation Management District ("TMD"). The TMAg must include trip mitigation measures recommended by MCDOT.
- e. The handicapped ramps and crosswalks at the intersection must be upgraded to a width of 10 feet.
- f. The Applicant must reduce the inbound right-turn radius for the residential garage driveway to 20 feet, to slow vehicles turning right into the garage and to improve pedestrian/bicyclist safety.
- g. The Planning Board has accepted the recommendations of MCDOT in its letter dated May 22, 2012 ("Agency Letter"), and does hereby incorporate them as conditions of the Site Plan approval. Therefore, unless specifically modified herein, the Applicant must comply with each of the recommendations as set forth in the Agency Letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Site Plan approval.

5. Schools

Prior to issuance of any building permit, the Applicant must make school facilities payments to the Montgomery County Department of Permitting Services ("MCDPS") at the elementary, middle, and high school levels.

Environment

6. Forest Conservation

- a. The Applicant must show all applicable offsite work within the Limits of Disturbance LOD and provide Staff with a square foot measurement of the net tract area (property size + the offsite LOD).
- b. Revise note 12 on the Site Plan to reference the current net tract area and clarify whether the work still conforms to the exemption which was previously granted.
- c. If the net tract area exceeds one acre, Applicant must obtain staff approval for a new exemption (or forest conservation plan, if applicable), prior to approval of the certified Site Plan.

7. Noise

- a. Prior to building permit, the Applicant must provide the Staff with a certification from an engineer specialized in acoustics that the building shell has been

designed to attenuate projected exterior noise levels to an interior level not to exceed 45 dBA Ldn. The builder must construct the units in accord with these design specifications, with any changes that may affect acoustical performance approved by the acoustical engineer in advance of installation.

- b. After construction is complete, and prior to use and occupancy, the builder must provide Staff with a certification from an engineer specialized in acoustics confirming that interior noise levels do not exceed 45 dBA Ldn.

8. LEED Certification

- a. The Applicant must achieve a LEED (Leadership in Energy and Environmental Design) Certified rating certification at a minimum. The Applicant must make good faith efforts to achieve a LEED Silver rating. Before the issuance of any use and occupancy permit, the Applicant must inform Staff of the LEED Certification level for which they are applying. If this level is less than a Silver rating, before the issuance of the final use and occupancy permit, the Applicant must provide to Staff a written report for public record purposes only from the Applicant's LEED consultant analyzing the feasibility of achieving a LEED-Silver rating, including an affidavit from a LEED-Accredited Professional identifying the minimum additional improvements required to achieve the LEED Silver rating, and their associated extra cost. Submission of this report constitutes compliance with this condition.

9. Stormwater Management

The development is subject to the Stormwater Management Concept Plan waiver granted in _____, unless amended and approved by MCPDPS.

Public Use, Amenities and Facilities

10. Public Use and Amenity Space

- a. The Applicant is required to provide a total of 7,481 square feet of public use space for this project. This is based on 20% of the net lot area of the receiving site and 10% of the combined net lot area of the four sending sites as follows:
 - i. 3,622 square feet of the public use space will be on-site within the _____
 - ii. 1,190 square feet will be treated as public use space but will consist of improvements to _____ . This off site public use space will consist of improvements to _____ as specified in the Memorandum of Understanding between Montgomery County and the applicant. These improvements include, but are not limited to, relocating the entrance door to the garage, adding new _____

steps, a ramp and lighting, relocating a payment machine and restriping parking spaces.

- iii. Final determination for the allocation of the 2,926 square feet will be determined by Staff at the time of certified site plan or may be accounted for through a payment to the Amenity Fund.
- b. The Applicant shall provide a minimum of 7,932 square feet (38.5%) of the net lot area of the receiving site for off-site public amenity space to include streetscape improvements and undergrounding of utilities in
- c. The public use space must be accessible and open to the public.

11. Memorandum of Understanding

- a. The Applicant must execute a Memorandum of Understanding ("MOU") with the MCDOT for improvements to . The MOU must be consistent with the amenities approved under this Site Plan.
- b. Prior to submission of a certified Site Plan, the MOU must be fully executed.

Site Planning and Design

12. Recreation Facilities

The Applicant must provide the following onsite recreation facilities for residents in conformance with the approved M-NCPPC Recreation Guidelines: swimming pool, changing rooms, amenity terrace, pedestrian walkway, and

13. Lighting

- a. The lighting distribution and photometric plan with summary report and tabulations must conform to IESNA standards for non-residential development.
- b. All onsite down-light fixtures must be full cut-off fixtures.
- c. Deflectors shall be installed on all fixtures causing potential glare or excess illumination, specifically on the perimeter fixtures abutting the adjacent properties.
- d. The height of on-site the light poles shall not exceed 17 feet including the mounting base.

14. Public Art

- a. The Applicant must provide for and install the public art concept designed by artist as presented to the Planning Department's Art Review Panel on , and illustrated in the certified Site Plan.

- b. Any significant changes to the concept presented on _____, must be presented to the Planning Department's Art Review Panel and approved by staff before certified Site Plan.
- c. Significant changes to the concept, as determined by Staff, proposed after certified Site Plan will require a Site Plan Amendment.

Surety, Phasing and Compliance

15. Surety

Prior to issuance of first building permit within each relevant phase of development, exclusive of sheeting and shoring, Applicant must provide a performance bond(s) or other form of surety in accordance with Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance with the following provisions:

- i. Applicant must provide a cost estimate of the materials and facilities, which, upon Staff approval, will establish the initial surety amount.
- ii. The amount of the bond or surety shall include plant material, on-site lighting, recreational facilities, site furniture, and entrance piers within the relevant phase of development.
- iii. Prior to issuance of the first building permit, Applicant must enter into a Site Plan Surety & Maintenance Agreement with the Planning Board in a form approved by the Office of General Counsel that outlines the responsibilities of the Applicant and incorporates the cost estimate.
- iv. Bond/surety shall be tied to the development program, and completion of plantings and installation of particular materials and facilities covered by the surety for each phase of development will be followed by inspection and reduction of the surety.

16. Development Program

The Applicant must construct the development in accordance with a development program that will be reviewed and approved by Staff prior to the approval of the certified Site Plan. The development program must include the following items in its phasing schedule:

- i. Street lamps and sidewalks must be installed within six months after street construction is completed. Street tree planting may wait until the next growing season.

- ii. On-site amenities and landscaping including, but not limited to, sidewalks, benches, trash receptacles, and bicycle facilities must be installed prior to release of any final use and occupancy permit.
- iii. The development program must provide phasing for installation of on-site landscaping and lighting.
- iv. , including landscape, public art and seating areas must be completed prior to issuance of the final use and occupancy permit.
- v. The improvements to must be completed prior to issuance of the final use and occupancy permit.
- vi. The development program must provide phasing of stormwater management, sediment and erosion control, trip mitigation.

17. Certified Site Plan

Prior to approval of the certified Site Plan, the following revisions must be made and/or information provided subject to Staff review and approval:

- a. Ensure consistency off all details and layout between Site Plan and landscape plan.
- b. Provide final details for proposed art work.
- c. The final bedroom mix shall be determined at certified Site Plan.
- d. Record the density transfer easements.
- e. Final determination of the public use space for the 2,926 square feet.

BE IT FURTHER RESOLVED, that all site development elements as shown on drawings stamped by the M-NCPPC on , and , shall be required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED, that having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The Site Plan is consistent with an approved project plan for the optional method of development if required, unless the Planning Board expressly modifies any element of the project plan.*

The Site Plan is consistent with Project Plan No. , as approved by the Planning Board. The Site Plan refines elements contained in Project Plan No. , including building layout, size, design, height, public art, and streetscaping along both frontages of the Subject Property and landscaping

within the pedestrian walkway. The Site Plan is also consistent with the density transfer provisions pursuant to §59-C-6.2355 of the Zoning Ordinance.

2. *The Site Plan meets all of the requirements of the zone in which it is located.*

a. Receiving Property

The Site Plan meets the requirements of the CBD-2 Zone for the Receiving Property and fulfills the specific purposes of the zone by providing incentives for development and allowing a variety of land uses and activities to meet the needs of workers, shoppers and residents. The Site Plan also promotes effective use of transit facilities for employees and residents and improves pedestrian circulation.

Sending Properties

b. The Application is transferring density from the four Sending Properties, as indicated on the above chart, to the Receiving Property for a gross tract area of 64,235 square feet. The Sending Properties are zoned CBD-1 and CBD-2, and each Sending Property will retain sufficient density under the standard method of development to meet the requirements for the applicable zone. The public use space requirements for the Receiving and Sending Properties are being met through a combination of onsite and off-site improvements.

c. Data Table

Based on the following data table, which sets forth the development standards applicable to this Site Plan, approved by the Planning Board and binding on the Applicant, the Application meets all of the applicable requirements of the zones applicable to each property consistent with the density transfer provisions of the Zoning Ordinance.

| Development Standard | Permitted/ Required | Previous Approval 920070030 | Approved by the Planning Board and Binding on the Applicant |
|--|------------------------|-----------------------------------|--|
| Existing Tract Area (sf.) | | | |
| Properties to transfer density (sf) | | | |
| Proposed Dedications (sf.) | | | |
| Gross Tract Area (sf.) | | | |
| Density §59-C-6.234 | | | |
| Maximum Density (FAR) | | | |
| Maximum Density total (sf.) | | | |
| Maximum Density, non-residential (sf.) Retail | | | |
| Maximum Dwelling Units, total | | | |
| Proposed MPDU (%) | | | |
| Minimum MPDUs (du) | | | |
| Building Height §59-C- 6.235(b) | | | |
| Building Height, Maximum (ft.) | | | |
| Public Use Space & Amenities §59-C-6.233 | | | |
| Public Use | | | |
| On site Public Use Space based upon the 20,584 sf receiving site | | | |
| Off-site public use space (sf) including the improvements to the public garage based upon the 20,584 sf receiving site | | | |
| Total public use space for the receiving site | | | |
| On-site public use space (sf) based upon the 33,648 sf of the sending sites | | | |
| Total On and Off-Site Public Use Space | | | |
| Off-site public amenity space (sf.) | | | |
| Total public use & amenity space (sf) | | | |
| Parking spaces §59-E-3.7^b | | | |
| Studio (units) (14 units) | | | |
| Studio (mpdus) (3 units) | | | |
| 1- Bedrm (155 units) | | | |
| 1- Bedrm (mpdus) (28 units) | | | |
| 2 bedrm (43 units) | | | |
| 2 bedroom (mpdus) (7 units) | | | |
| Total required | | | |
| Less 15% metro proximity | | | |

| | | |
|---|--|--|
| Retail restaurant (60% retail) 7,000 sf | | |
| Less 15% metro proximity | | |
| Retail/restaurant required I | | |
| Total parking required | | |
| Total parking provided | | |

¹The receiving site is approximately 20, 584 square feet.

²Properties to transfer density includes existing lot area of sending sites: 1) 2) 3) and 4)

³Gross tract area included all existing lots plus prior dedication of right-of-way square footage for all sending and receiving properties.

⁴The Zoning Ordinance permits a height up to 200 feet in the CBD-2 zone. The recommends a height of 143 feet and if a projects includes a 22% MPDU density bonus in Block 45, the height can be increased from 143 feet to 174 feet.

⁵ The public use space provided (7,481 sf – 4,555 sf [3,365 sf + 1,190 sf] = 2926 sf) and includes both the sending and receiving properties. This number represents 20 percent of the net lot area of the receiving site and 10 percent of the net lot area of the transfer properties. Final determination for the allocation of the 2,926 sf will be determined by Staff at the time of certified site plan or may be accounted for through a payment to the amenity fund.

⁶The final bedroom mix will be determined at certified site plan

⁷The site is in the parking lot district and is subject to the PLD tax if not all of the required spaces are provided on site.

3. *The locations of the buildings and structures, the open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

a. Buildings and Structures

The location of the new building will define the southwest corner of _____ and _____ by activating ground floor uses, building articulation, and enhanced streetscaping. The Sector Plan envisioned this corner with prominent structures and a more visible identity. The building location on the Subject Property provides ease of access to the adjoining and surrounding sidewalks in the _____ area. The building's location is adequate and this structure will be prominent in the Woodmont Triangle built environment. The building's height and setback separate it from the adjoining building to the south. This separation in form creates the _____, a mid-block passage. This defined space produces a safe and efficient passage for pedestrians from the parking garage to the street.

b. Open Spaces

The Site Plan provides 3,622 square feet of public use space on site and 1,190 square feet of public use space to the public parking garage off-site to meet the 20% requirement of public use space for the Receiving Property. The onsite

space creates a new, inviting public use space within the _____ and links the public garage to _____, which will help activate both the retail uses and the sidewalk along the Subject Property. The _____ will connect to the mid-block connection across _____ through to _____.

The public use space required for the Sending Properties equals 3,365 square feet, which is 10% of the net lot area of the Sending Properties; 1,190 square feet of this to be provided through the garage improvements. The remaining public use space of 2,926 square feet will be determined at the time of certified Site Plan or through a payment to the Amenity Fund. The open space adequately and efficiently addresses the needs of the project and fulfills the recommendations of the Sector Plan while providing a safe environment.

c. Landscaping and Lighting

The onsite lighting will illuminate the building, both street frontages and the _____. Lighting within the _____ is intended to illuminate both the walkway and the public art component. The landscaping in the _____ will consist of planting beds with ground cover, seating benches, a public art component, and festival lighting. Streetscape improvements on _____ and _____, including street trees and lighting, will enhance the pedestrian environment. The undergrounding of utilities within Veterans Park further enhances the public realm. The landscaping and lighting are adequate, efficient, and fulfill recommendations of the Sector Plan and are in conformance with the Bethesda Streetscape standards, while providing a safe environment.

d. Recreation Facilities

The project satisfies the M-NCPPC Recreation Guidelines by meeting or exceeding the required demand points for the on-site recreation facilities provided. The project is providing the _____, a swimming pool, community room, fitness room and seating areas. The "tots" category is projected to be 98 percent of the total demand based upon the recreation facilities provided and therefore, meets the 10 percent threshold outlined in the Guidelines. All of the remaining categories exceed 100 percent for the facilities provided and are considered adequate for the development. Off-site credits are not needed for this development.

e. Vehicular and Pedestrian Circulation

Pedestrian access from adjacent sidewalks adequately and efficiently integrates the project into the surrounding area. The vehicular circulation is designed to minimize pedestrian and bicycle conflicts. The emphasis on pedestrian and bicycle circulation coupled with the recommendations contained in the Sector

Plan are an efficient and adequate means to provide a safe atmosphere for pedestrians, cyclists, and vehicles. The locations of the buildings and structures are adequate and efficient and do not pose any safety concerns.

4. *Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.*

The structure and uses expand residential and non-residential uses along and are compatible with the existing and proposed adjacent and confronting development. This mixed use project has been designed to ensure compatibility with the existing uses and the general neighborhood. The area is composed of small scale commercial buildings and uses and larger mixed use buildings. The surrounding buildings range in height from 3 stories to 17 stories. As approved, the building's height will be compatible with the existing and proposed buildings. The project's mixed use development will continue the variety of commercial and residential structures and uses found in the . The Site Plan upgrades the sidewalks along and with enhanced streetscaping including lighting and special paving treatments. The design of the connects the properties on both sides of to reinforce the vision of a compatible and interrelated area. Based on the scale, design and orientation, the building is appropriate relative to the adjacent properties and adds architectural character to the area.

5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

The Site Plan is exempt from the forest conservation requirements, and as conditioned, if necessary Applicant must obtain staff approval for a new exemption or forest conservation plan prior to approval of the certified Site Plan. MCDPS reviewed the submitted Site Plan, which includes a green roof and onsite water quality treatments and determined that the administrative waiver granted in remains valid.

BE IT FURTHER RESOLVED, that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this Site Plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is (which is the date that this resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Presley, seconded by _____, with _____ and _____ voting in favor of the motion, with Commissioner _____ temporarily absent, at its regular meeting held on _____, in Silver Spring, Maryland.

Montgomery County Planning Board

