TRAFFIC MITIGATION AGREEMENT

THIS TRAFFIC MITIGATION AGREEMENT ("Agreement"), is made this _____ day of ____________, 2018, by and among (a) ZMA Development, LLC ("Applicant"); (b) MONTGOMERY COUNTY, MARYLAND ("County"); 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 approximately 1.32-acre tract of land in the CR Zone, located on the southeast corner of the intersection of Arlington Road and Moorland Lane in Bethesda, Montgomery County, Maryland (the "Property").

B. Applicant proposes to redevelop the Property with a project consisting of a maximum of 235 multi-family residential units (the "Project"), which was the subject of an Application for Preliminary Plan of Subdivision that is governed by Preliminary Plan No. 12018xxxx (the "Preliminary Plan").

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

D. On ____, 2018, the Planning Board approved the Preliminary Plan for the Project. Attached hereto as Exhibit "A" is a copy of the Planning Board’s Resolution _____ dated ______ (the "Resolution").

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

[Insert quote from Planning Board Resolution, e.g.: The Applicant must enter into a Traffic Mitigation Agreement ("Agreement") with the Planning Board and MCDOT to participate in the _____ Transportation Management District (TMD). The final agreement must be executed prior to the release of any building permit for the proposed development.]

F. Montgomery County, through its Department of Transportation (MCDOT), operates the Bethesda TMD and either directly or through its contractors, functions as the Transportation Management Organization. MCDOT is the implementing agency on behalf of the County for purposes of this Agreement.

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, the parties agree to the following in compliance with the above requirements:

1. **Commencement.** The obligations and requirements set forth in this Agreement must commence upon issuance of the first Use and Occupancy (U&O) permit for the Project that allows for initial occupancy. Applicant must notify MCDOT and the Planning Board when receipt of the initial U&O permit is estimated to be within six weeks and when the Applicant receives the permit.

2. **Participation in Bethesda TMD.** Applicant agrees to actively participate with MCDOT to achieve and maintain commuting goals as specified in the Bethesda Downtown Sector Plan and related goals of the TMD.

3. **Appointment of Transportation Benefits Coordinator.** Applicant must designate in writing to MCDOT, a Transportation Benefits Coordinator (TBC). The TBC must assist residents working on-site in exercising commuting options and serve as a point of contact for MCDOT. Applicant must arrange for an initial meeting between the TBC and MCDOT and provide the opportunity for subsequent meetings as needed. The TBC must plan and coordinate with MCDOT and monitor achievement of traffic mitigation as anticipated by the Sector Plan or Staging Policy. The TBC must 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 must ensure that the TBC attends periodic meetings and training sessions held by MCDOT and, or, other local or regional agencies which are related to the performance of these duties, and to coordinate with other traffic mitigation programs. Applicant must 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 must 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 or electronic “Welcome Packets” with information about commuting alternatives or other materials provided by MCDOT or the County to new residents and employees. Applicant must ensure that all activities required of the TBC must be supported by adequate budgetary allocations so that efforts to help meet trip reduction goals of the TMD are feasible.

   MCDOT may require the Applicant to reimburse MCDOT for the costs incurred in providing materials for this purpose. This amount will not exceed $7.50 per 1,000 (one thousand) square feet per year, and MCDOT must provide an invoice(s) for the requested reimbursement from the Project for its promotional materials. Such limit may

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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-PA as published by the Bureau of Labor Statistics of the United States Department of Labor. If such index is no longer published, CPI means 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 must include the distribution of information to residents and employees through the use of displays, bulletins, brochures, email notices, social media, and the periodic hosting of on-site marketing and promotional activities (e.g., ridesharing days and contests), prepared or conducted by the Applicant or in concert with MCDOT. Applicant and the TBC must provide and facilitate use of space in the development on a periodic basis (by prior arrangement) for marketing and promotional activities. Upon request by MCDOT, the TBC must also promote and arrange for the sale of passes and tickets, including Ride On passes, SmarTrip Cards, Metrobus passes, MARC commuter rail tickets, or other passes or incentive programs provided by public or private institutions.

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

5. Displays (Static and Dynamic). Applicant must provide a permanent, static information display in a highly-used location (e.g., the lobby of the building) on the Property containing commuter and general transportation information and promotional material on transportation management programs in the TMD or TDM Area, the County and the region. If the Project has primary access points for visitors and members of the public which are different from those access points for residents, a display must be provided in each of the primary access areas to reach each of these target markets.

Applicant must provide space and equipment for one Real Time Transit Information sign at a highly-used location in the Project to visitors and residents as appropriate, with transportation information. Applicant must provide conduit, electrical and internet connections. Applicant may display County-provided transit information on monitor(s) Applicant uses to display other information related to the Project (i.e., building directory, event announcements, location of specific sections or rooms in the project or building). Applicant must display on such monitor(s) Real Time Transit Information and other commuter and general transportation information and promotional materials on transportation management programs.
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6. **Telework.** Applicant must work with MCDOT to promote telework among residents of the development. Applicant must 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 must 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. **Employee Parking.** This requirement is inapplicable to this Project, which is solely a residential project with no nonresidential uses.

9. **Car/Van Pooling Parking.** This requirement is inapplicable to this Project, which is solely a residential project with no nonresidential uses.

10. **Car Sharing Spaces.** This requirement is inapplicable to this Project, as the garage is only accessible to residents.

11. **Electric Vehicle (EV) Charging Station(s).** Applicant must provide two EV charging stations in the Project, or the number required by law, whichever is greater. Charging stations must be located in residential parking facilities, in preferential, highly visible locations. Each EV charging station must 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 must 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 must 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.

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

13. **Bicycle Facilities.** Applicant must provide a secure weatherproof area in a conveniently-located, well-lit, high traffic part of the parking facility to house bicycles for residents of the Project. Secure bicycle parking must also be provided in a location accessible for visitor use. Bicycle storage must 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. Applicant will impose no charges for bicycle parking.

14. **Bikesharing.** Given site constraints acknowledged by all parties to this Agreement, the Applicant is not required to provide space in the Project for a bikesharing docking station. Instead, MCDOT will select an off-site location for the station based upon the requirements of the bikesharing system in the County, in a highly visible, publicly accessible,
and well-lit location near the Project. A typical station is 19 docks and requires a space of 53 feet by 12 feet. Applicant must pay the capital cost for the station. Payments must be made to the County or its designees. Applicant must take other actions with MCDOT to promote use of bikeshare among residents, employees, and visitors at the Project, in order to accomplish the objectives of the TMD.

15. **Bethesda Transportation Management District Assistance.** MCDOT will provide transportation information, technical advice, and other forms of assistance normally provided to sites within the Bethesda area, to the extent feasible within the constraints of staff and fiscal resources.

16. **Annual Report.** Applicant must 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 must include the name and contact information for the current TBC. MCDOT will provide Applicant with a template to use in preparing the report.

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

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

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

20. **County Information Obligations.** Upon request, and to the extent feasible within the constraints of staff and fiscal resources, MCDOT must respond to inquiries from the Applicant regarding available transportation systems and facilities in the TMD and provide the Applicant with any existing information, including printed or electronic files of materials, which MCDOT may have concerning Ride On bus, Metrorail, MARC, ridesharing programs, and any other public transportation systems or carpool and vanpool matching services now or hereafter serving the Project, in quantities sufficient to allow the Applicant to distribute to its residents and visitors. MCDOT may require the Applicant to reimburse MCDOT for the costs incurred in providing materials for this purpose.

21. **Applicant’s Obligations.** The obligations of Applicant under this Agreement 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) must be the obligations or liabilities of Applicant’s successors and assigns, to the extent
permitted by law. The Applicant will be released from any liabilities thereafter arising with respect to the Property or such portion thereof once the successor or assignee assumes the Applicant’s obligations.

22. **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 must 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 must be mailed to the Planning Board and to the County.

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

(a) If to Applicant to:

Andrew Cretal  
ZMA Development, LLC  
7900 Westpark Drive, Suite T605  
McLean, VA 22102  

with a copy to:

Heather Dlhopolsky, Esq.  
Linowes and Blocher LLP  
7200 Wisconsin Avenue, Suite 800  
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 Associate General Counsel, Office of the General Counsel, 8787 Georgia Avenue, Suite 205, Silver Spring, Maryland 20910.

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

24. **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 set forth in this Agreement.

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

26. **Amendments or Modifications.** This Agreement can be modified only in writing signed by all the parties hereto or their successors, assigns or designees. 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.

27. **Governing Law.** This Agreement must be governed and construed in accordance with the laws of the State of Maryland and Montgomery County. Applicant must comply with all laws that impose new or additional requirements regarding matters covered by this Agreement, including bikeshare.

28. **Recordation.** Applicant must record this Agreement in the Land Records of Montgomery County as notice that the obligations of this Agreement must bind the Applicant’s successors and assigns, to the extent permitted by law.

29. **Appropriations.** Any obligation or liability of MCDOT arising from this Agreement is subject to, limited by, and contingent upon the appropriation and availability of funds, as well as the damage caps and notice requirements provided for in state law, including the Local Government Tort Claims Act. This Agreement is not intended to create any rights or causes of action in any third parties or to increase MCDOT’s liability above the caps established by law.

IN WITNESS WHEREOF, Applicant, the Planning Board and MCDOT have entered into this Agreement on the day and year first written above.
APPLICANT: ZMA Development, LLC, a _______ limited liability company

By: ____________________________

_________________________________ By: ______________________(SEAL)

STATE OF ________________________ )

COUNTY OF ______________________ )

I HEREBY CERTIFY that on this _____ day of _____________, 2018, before me, a Notary Public in and for the State and County aforesaid, personally appeared _______, the _______ of ZMA Development, LLC, a _______ limited liability company, and did acknowledge that he executed the foregoing Agreement for the purposes therein contained, and further acknowledged the foregoing Agreement to be the act and deed of such corporation in its capacity as the General Manager of such limited liability company.

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

________________________________________
Notary Public (Please Print Name After Signature)

My Commission Expires: ______________________
MONTGOMERY COUNTY PLANNING BOARD OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, a public body corporate

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

WITNESS:

______________________________________  By:_________________________________

* * *

STATE OF  *
COUNTY OF  *

to wit:

I HEREBY CERTIFY that on this _____ day of _______________, 2018, before me, a Notary Public in and for the State and County aforesaid, personally appeared ____________________________, known to me (or satisfactorily proven) to be the __________________________________ (title) of Montgomery County Planning Department of the Maryland-National Capital Park and Planning Commission, a public body corporate, and that such ________________________________ (title), being authorized to do so for the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission, 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 (Please Print Name After Signature)

My Commission Expires: __________

[NOTARIAL SEAL]
RECOMMENDED BY

MONTGOMERY COUNTY
DEPARTMENT OF
TRANSPORTATION

WITNESS:

________________________________________  By:_________________________________

Al R. Roshdieh, Director

** * **
STATE OF *

* to wit:

COUNTY OF

I HEREBY CERTIFY that on this _____ day of ______________, 2018, before me, a Notary Public in and for the State and County aforesaid, personally appeared Al R. Roshdieh, 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 (Please Print Name After Signature)

My Commission Expires: __________

[NOTARIAL SEAL]
MONTGOMERY COUNTY, MARYLAND, a political subdivision of the State of Maryland

WITNESS:

___________________________________  By:_________________________________

Ramona Bell-Pearson
Assistant Chief Administrative Officer

APPROVED AS TO FORM AND LEGALITY:

___________________________________

____________________________(Printed Name)
Office of the County Attorney

STATE OF MARYLAND  *
  * to wit:
COUNTY OF MONTGOMERY  *

I HEREBY CERTIFY that on this ____ day of ______________, 2018, before me, the undersigned officer, personally appeared Ramona Bell-Pearson, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument as Assistant Chief Administrative Officer of Montgomery County, Maryland, and acknowledged that she, as such Assistant Chief Administrative Officer, 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.

________________________________________
Notary Public (Please Print Name After Signature)

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:

Sandra L. Brecher
Chief, Commuter Services Section
MCDOT, Office of the Director
101 Monroe Street, 10th Floor
Rockville, MD 20850
EXHIBIT B

ASSIGNMENT

[Name of Successor in Interest/Assignee], successor in interest and/or assignee of [Name of Applicant], hereby agree to be bound by the terms and provisions of the Traffic Mitigation Agreement dated ________________ , 20____, by and among [Name of Applicant], the Montgomery County Department of Transportation, and the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission.

Name

Title

***

STATE OF MARYLAND
COUNTY OF MONTGOMERY

I HEREBY CERTIFY that on this ____ day of ______(year), before me, a Notary Public in and for the State and County aforesaid, personally appeared ____________________________, and that such person signed the above Affidavit.

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