

## TRAFFIC MITIGATION AGREEMENT

THIS TRAFFIC MITIGATION AGREEMENT (“Agreement”), is made this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, by and among (a) ARDENNES PARTNERS, 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:

Applicant is the owner of a certain 1.73 acre tract of land in the CR 2.0, C 1.5, R 2.0, H 145T zone, located in the southwest corner of the intersection of Twinbrook Parkway and Ardenes Avenue, Montgomery County, Maryland (the “Property”).

Applicant proposes to redevelop the Property with a project consisting of a maximum of 203 multi-family residential units, structured parking, and related amenities (the “Project”), which was the subject of an Application for Site Plan that is governed by Site Plan No. 8202000080 (the “Site Plan”).

The Project is located in the North Bethesda Transportation Management District.

On \_\_\_\_\_, 201\_, 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”).

The Resolution contains the following requirement of the Applicant:

***[Insert quote from Planning Board Resolution requiring Agreement]***

Montgomery County, through its Department of Transportation (MCDOT), operates the Twinbrook 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 again when the Applicant receives the permit.

2. Participation in North Bethesda TMD. The Applicant agrees to actively participate with MCDOT to achieve and maintain commuting and related goals of the TMD.

3. Appointment of Transportation Benefits Coordinators. The Applicant must designate in writing to MCDOT a Transportation Benefits Coordinator for the Project (the “TBC”). The TBC must assist residents and employees working on-site in exercising commuting options and serve as a point of contact for MCDOT. The 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 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. The Applicant must ensure that the TBC attends periodic meetings and training sessions held by MCDOT or other local or regional agencies which are related to the performance of these duties, and to coordinate with other traffic mitigation programs. The Applicant must promptly notify MCDOT in writing of its designated TBC and contact information, and any subsequent change in the TBC(s) or contact information.

4. Activities of Transportation Benefits Coordinators.

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 occupants and on-site employees for purposes of information and educating about programs and services available in the TMD; and distribute electronic “Welcome Packets” with information about commuting alternatives or other materials provided by MCDOT or the County to new residents and employees. The Applicant must ensure that all activities required of the TBC are 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 (or \$0.0075 per square foot) per year, and MCDOT must 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-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, email notices 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. The 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 and employee 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 employees and related issues. The Applicant must use commercially reasonable efforts to achieve an 80% response return rate from among residents and employees 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.

Applicant must provide space for one Real Time Transit Information sign at a highly used location in the Project to assist employees, residents, and visitors with commuter information. The Applicant must provide conduit, electrical and internet connections, and must install County-provided equipment, including a display monitor. The Applicant must reimburse MCDOT for the cost of the monitor up to a maximum of \$15,000. The Applicant must pay for maintenance of the sign for five years.

In lieu of providing the County-provided Real Time Transit Information sign, the Applicant has the option of displaying County-provided information on monitors that the Applicant will use to display information to the public related to the Project (i.e., building directory or location of specific sections or rooms in the project or building). Applicant may provide Real Time Transit Information and other commuter information and promotional material on transportation management programs on these monitors.

6. Emergency Transportation. The Applicant must make good faith efforts 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.

7. Car/Van Pooling Parking. The Applicant must provide car- and van-pool parking spaces in the Project in a preferred, highly convenient location for employees and visitors. At least one space for every 100 parking spaces provided must be dedicated to car and vanpooling vehicles initially. As demand increases, the Applicant must increase the number of spaces accordingly.

8. Electric Vehicle (EV) Charging Station(s). The Applicant must provide at least one EV charging station in the Project, or the number required by law, whichever is greater. The charging station must be located in a preferential, highly visible location and 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). The 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.

9. Bicycle Facilities. The 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 and employees 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. The Applicant will impose no charges for bicycle parking.

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

11. Annual Report. The Applicant must provide annual summary reports (1-2 pages) to MCDOT on an annual date designated by MCDOT. These reports 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 their respective current Transportation Benefits Coordinator. MCDOT will provide the Applicant with a template to use in preparing the report.

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

13. 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.

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

15. 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, Metrobus, 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, employees and visitors. MCDOT may require the Applicant to reimburse MCDOT for the costs incurred in providing materials for this purpose.

16. Applicant’s Obligations. The obligations of the Applicant under this Agreement apply only during the period during which they are 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 their 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 their successor or assignee assumes their obligations.

17. Assignment. This Agreement is assignable, in whole or in part, by the Applicant without the consent of the Planning Board or Montgomery County. Applicant's successors in interest or assignees 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.

18. 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:

If to the Applicant, to:

Ardennes Partners, LLC  
7113 Warbler Lane  
McLean, VA 22101  
Attention: John Davis

With a copy to:

Erin E. Girard, Esquire  
Miles & Stockbridge, P.C.  
11 North Washington Street, Suite 700  
Rockville, MD 20850

(c) 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, MD 20910

With a copy to:

Associate General Counsel  
Office of the General Counsel  
8787 Georgia Avenue, Suite 205  
Silver Spring, MD 20910

(d) If to Montgomery County to:

Director  
Montgomery County Department of Transportation  
Executive Office Building  
101 Monroe Street, 10th Floor

Rockville, MD 20850

With a copy (that does not constitute notice) to:

County Attorney's Office  
101 Monroe Street, 3<sup>rd</sup> Floor  
Rockville, MD 20850

Attention: County Attorney

19. 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.

20. 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.

21. 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.

22. Governing Law. This Agreement must be governed and construed in accordance with the laws of the State of Maryland and Montgomery County.

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

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

[SIGNATURE PAGES FOLLOW]

WITNESS:

APPLICANT:

ARDENNES PARTNERS, LLC

\_\_\_\_\_

By: \_\_\_\_\_

STATE OF \_\_\_\_\_

\*

\*

to wit:

\*

COUNTY OF \_\_\_\_\_

**I HEREBY CERTIFY** that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for the aforesaid jurisdiction, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of Ardennes Partners, LLC, and that he did acknowledge that he executed the foregoing instrument on behalf of Ardennes Partners, LLC, for the purposes therein contained, and further acknowledged the foregoing instrument to be the act of the \_\_\_\_\_.

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

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

Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

[NOTARIAL SEAL]

**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 \_\_\_\_\_

\*

\*

to wit:

COUNTY OF \_\_\_\_\_

\*

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2016, 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 the 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 have hereunto set my hand and official seal.

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

Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

[NOTARIAL SEAL]



**RECOMMENDED BY**

**MONTGOMERY COUNTY  
DEPARTMENT OF TRANSPORTATION**

WITNESS:

\_\_\_\_\_

By: \_\_\_\_\_  
Al R. Roshdieh, Director

\* \* \*

STATE OF

\*

COUNTY OF

\*

to wit:

\*

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2016, 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 have hereunto set my hand and official seal.

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

Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

[NOTARIAL SEAL]

**MONTGOMERY COUNTY, MARYLAND**, a political subdivision of the State of Maryland

WITNESS:

\_\_\_\_\_ By: \_\_\_\_\_  
Assistant Chief Administrative Officer

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
\_\_\_\_\_  
Office of the County Attorney Printed Name)

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

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2016, 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 have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_

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.

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Erin E. Girard

AFTER RECORDATION, PLEASE RETURN TO:

Sandra L. Brecher  
Chief, Commuter Services Section  
MCDOT, Office of the Director  
101 Monroe Street, 10<sup>th</sup> Floor  
Rockville, MD 20850

**EXHIBIT B**

**ASSIGNMENT**

\_\_\_\_\_, successor in interest and/or assignee of ARDENNES PARTNERS, LLC, hereby agrees to be bound by the terms and provisions of the Traffic Mitigation Agreement dated \_\_\_\_\_, 20\_\_, by and among Ardennes Partners, LLC, the Montgomery County Department of Transportation, and the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission.

\_\_\_\_\_

STATE OF \_\_\_\_\_ \*  
\* to wit:  
COUNTY OF \_\_\_\_\_ \*

**I HEREBY CERTIFY** that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a Notary Public in and for the aforesaid jurisdiction, personally appeared \_\_\_\_\_, successor-in-interest and/or assignee of Ardennes Partners, LLC, and that he did acknowledge that he executed the foregoing instrument for the purposes therein contained.

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

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

[NOTARIAL SEAL]