

Parcel ID No.: 13-037963315

Title Insurer:

[Draft Subject to negotiation by Applicant with MCDOT and MCPB]

TRAFFIC MITIGATION AGREEMENT

(Amendment)

Urby Silver Spring Fee Owner LLC, Studio Plaza Phase II (“Urby”)

THIS AMENDED TRAFFIC MITIGATION AGREEMENT (“Agreement”), is made this ____ day of _____, 2020, by and among (a) URBY SILVER SPRING FEE OWNER LLC (“Urby”) (“Applicant”); (b) MONTGOMERY COUNTY DEPARTMENT OF TRANSPORTATION (“MCDOT”); and (c) THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION (“M-NCPPC”).

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

A. Pursuant to the Traffic Mitigation Agreement applicable to Studio Plaza Phase I, recorded among the Land Records of Montgomery County on November 3, 2016 at Liber 53144, folio 415 (the “Phase I Agreement”), the subject Agreement amends the Phase I Agreement to extend its application to Phase II as set forth herein. The Phase I Agreement remains wholly applicable to Phase I.

B. Applicant is the owner of a certain approximately 50,318 square foot tract of land currently zoned CR-3.0, C-2.0, R-2.75, H-110T within the Fenton Village Overlay Zone. The property is located on the block bounded by Mayor Lane, Thayer Avenue, Silver Spring Avenue, and Fenton Street in the Fenton Village area of the Silver Spring Central Business District (“CBD”) in Montgomery County, Maryland (“Property”) and is within the boundaries of the Silver Spring CBD Sector Plan (2000) (“Sector Plan”). The Property is also known as Site Unit #2, Studio Plaza Condominium and is part of the larger Studio Plaza development site comprised of Lot 12, Block F, and Lot 11, Block D (together, the “Project Plan Area”). The development of Phase I of Studio Plaza and the proposed new development of Phase II are located only on Lot 12, Block F (the “Studio Plaza Site”). The Studio Plaza Site is comprised of three (3) condominium units: Site Unit #1 (Phase I of the existing mixed-use residential project) (“Phase I”), Site Unit #2 (i.e., the Property proposed for development as Phase II of the mixed-use development project) (“Phase II”), and public parking Units 1, 2, and 3, developed in connection with Site Unit #1.

C. The Property was the subject of approved Project Plan No. 920070010 (the “Project Plan”), approved by the Montgomery County Planning Board of the M-NCPPC (the “Planning Board”) on May 28, 2009 for a mixed-use development project consisting of residential, retail, office, and/or hotel uses, with a maximum density of up to 626,781 gross square feet, exclusive of any density bonuses for moderately priced dwelling units or workforce housing units (the “2009 Approval”).

D. On February 21, 2013, the Planning Board approved both the Preliminary Plan of Subdivision (No. 120130020) for the Project (the “Preliminary Plan”) and the Site Plan (No. 820130010) (the “Site Plan”) for that portion of the Property and the Project located west of the eastern edge of the proposed new private drive approved by the Project Plan and Preliminary Plan, running north-south and connecting Thayer Avenue and Silver Spring Avenue (the “Phase 1 Property” and “Phase 1 Project”). The Phase 1 Project was approved for a maximum of 415 multi-family residential units and up to 10,500 square feet of commercial uses. Attached as Exhibit “A” is copy of the Planning Board's Resolution dated May 1, 2013 (the “Preliminary Plan Resolution”).

E. Condition #19 of the Preliminary Plan Resolution states: “For each phase of development, final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, sidewalks, and bike paths will be determined at Site Plan.” Pursuant to this condition, the Applicant or its successors and assigns were required to enter into a Traffic Mitigation Agreement (“TMAg”) for each subsequent phase of the Project for which a site plan was to be approved. The TMAg was to be executed prior to issuance of any building permit for each phase. At the time of site plan for each subsequent phase of the Project, a traffic statement or similar instrument was to be submitted demonstrating that the total cumulative number of trips generated by the mix of uses in the Project, including any density bonuses, does not exceed a maximum net new trip generation of 297 morning peak-hour trips and 351 evening peak-hour trips (as provided in Conditions #2 and #3 of the Preliminary Plan Resolution).

F. The Preliminary Plan Resolution contained the following additional requirement:

“(8) The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated February 1, 2013, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.” (Preliminary Plan Resolution, attached as Exhibit “ ”).

G. MCDOT's February 1, 2013 letter contained the following requirement of the Applicant:

“(22) ... [T]he applicant will need to enter into a Traffic Mitigation Agreement (TMAg) with the Planning Board and [MCDOT].”

H. The Phase II Property and Phase II Project are located in the Silver Spring CBD Metro Station Policy Area and in the Silver Spring Transportation Management District (the “Silver Spring TMD”). The Phase II Project proposes 8,492 square feet of retail FAR, 316,988 square feet of residential FAR (for a total FAR of 325,480 square feet) and 389 residential units.

I. MCDOT operates the Silver Spring TMD, and in this capacity, either directly or through its contractors, MCDOT functions as the Transportation Management Organization.

J. This Phase II TMAg satisfies the conditions of approval described above for the Phase II Property and Phase II Project. The amended TMAg must be executed prior to the issuance of any building permit for Phase II and must include traffic mitigation measures that address trips generated by these future phase(s).

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 permit for the Phase II 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 Silver Spring TMD. Applicant agrees to actively participate with MCDOT to achieve and maintain commuting goals as specified in the Silver Spring 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 MCDOT. 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 Sector 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 Phase II 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 employees. Applicant will provide MCDOT with an updated list of commercial tenants/employers on a semi-annual basis. This information will be used by MCDOT solely for transportation demand management-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 _____ square feet of total gross floor area per year, and MCDOT will provide an invoice(s) for the requested reimbursement from the Phase II 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 (Nov. 2013=100) 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 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. Upon request by MCDOT, the TBC will 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 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 MCDOT. The survey will be conducted of the transportation choices of residents and employees and related issues. Applicant will use best efforts to achieve an 80% response return rate from among residents and employees in the development. 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 a highly used location on the Phase II Property for commuter information and promotional material on transportation management programs in the TMD, the County and the region. If the Phase II Project has primary access points for residents, visitors and members of the public which are different from those access points for residents and/or employees, a display will be provided in each of the primary access areas to reach each of these target markets.

Applicant will provide the space for Real Time Transit Information sign(s) at highly-used location(s) in the Phase II Project (if required) to assist employees, residents, and visitors with commuter information. Applicant will provide conduit, electrical and internet connections, and will install County-provided equipment, including display monitor. The Applicant will be responsible for installing such sign(s). Applicant will reimburse MCDOT for the cost of the monitor up to a maximum of \$[10,600]. The Applicant will pay for five (5) years of maintenance for the sign(s).

Applicant has the option of utilizing 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 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 (2) EV charging stations in the Phase I Project in the private residential parking facility, 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 Phase II 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.

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 Phase II 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 Phase II 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. Silver Spring Transportation Management District Assistance. MCDOT will be available to provide transportation information, technical advice, and other forms of assistance normally provided to sites within the Silver Spring TMD area, to the extent feasible within the constraints of staff and fiscal resources.

13. 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 Transportation Benefits Coordinator. MCDOT will provide Applicant with a template to use in preparing the report.

14. 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.

15. 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 Phase I Property.

16. 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.

17. County Information Obligations. Upon request, and to the extent feasible within the constraints of staff and fiscal resources, MCDOT will 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 and/or electronic files of materials, which MCDOT may have concerning Ride On bus, Metrobus, Metrorail, MARC, the future bus rapid transit (“BRT”), the future Purple Line, 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. Payments may be required to be made by Applicant to MCDOT for reimbursement of costs incurred in providing materials for this purpose.

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 Phase II 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:

Urby Silver Spring Fee Owner LLC
c/o Ironstate Development
Attn:
50 Washington Street
Hoboken, NJ 07030

with a copy to:

Patricia A. Harris, Esq.
Lerch, Early & Brewer, Chtd.
7600 Wisconsin Avenue, Suite 700
Bethesda, MD 20814

(b) If to M-NCPPC, to:

Executive Director
Maryland-National Capital Park and Planning Commission
6611 Kenilworth Avenue
Riverdale, MD 20737

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

(d) 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. Recording reference for this Agreement will be reflected on the record plat.

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:

**Urby Silver Spring Fee Owner LLC, a
Maryland limited liability company**

By: _____

By: _____

Name: _____

Title: _____

* * *

STATE OF _____

*

to wit:

COUNTY OF _____

*

I HEREBY CERTIFY that on this ____ day of _____, 2020, before me, a Notary Public in and for the State and County aforesaid, personally appeared _____, 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 corporation, as a member of the limited partnership.

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

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

ATTEST:

MARYLAND-NATIONAL CAPITAL PARK
AND PLANNING COMMISSION

Joseph Zimmerman
Secretary-Treasurer

By: _____
Asuntha Chiang-Smith
Executive Director

* * *

STATE OF MARYLAND

*

to wit:

COUNTY OF MONTGOMERY

*

I HEREBY CERTIFY that on this _____ day of _____, 2020, before me, a Notary Public in and for the State and County aforesaid, personally appeared Asuntha Chiang-Smith, who is acknowledged to be the Executive Director of The Maryland-National Capital Park and Planning Commission, and that as such is authorized to do so and executed the foregoing and annexed instrument for the purposes therein contained.

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

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

ATTEST:

MONTGOMERY COUNTY
DEPARTMENT OF TRANSPORTATION

By: _____
Christopher Conklin, Director

* * *

STATE OF MARYLAND

*

to wit:

COUNTY OF MONTGOMERY

*

I HEREBY CERTIFY that on this _____ day of _____, 2020, before me, a Notary Public in and for the State and County aforesaid, personally appeared Christopher Conklin, 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 public body corporate.

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

Notary Public

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.

Patricia A. Harris, Esq.

EXHIBIT A

[INSERT PRELIMINARY PLAN RESOLUTION]