

**TRAFFIC MITIGATION AGREEMENT**

THIS TRAFFIC MITIGATION AGREEMENT ("Agreement") is made this 3rd day of November, 2015, by and among (a) LG GEORGETOWN LLC ("Applicant"); (b) MONTGOMERY COUNTY, MARYLAND THROUGH THE MONTGOMERY COUNTY DEPARTMENT OF TRANSPORTATION ("MCDOT"); and (c) MONTGOMERY COUNTY PLANNING BOARD OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION ("Planning Board" or "M-NCPPC"), 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. The subject property consists of a gross tract area of approximately 5.15 acres of land that consists of the following: (1) approximately 3.18 acres of land owned by the Applicant that is bounded to the west by Old Georgetown Road, to the north and east by the current Executive Boulevard right-of-way, and to the south by Wall Park and a bank (the "Applicant's Property"); (2) approximately 34,403 square feet of the current Executive Boulevard right-of-way owned by Montgomery County (the "County") (the "County ROW"); (3) approximately 22,179 square feet of a portion of a surface parking lot owned by the County that is part of the Montgomery County Conference Center (the "County Property"); and (4) prior public street dedications of approximately 29,489 square feet from the Applicant's Property for Old Georgetown Road (collectively, the "Property").

B. The Applicant's Property is zoned CR-3: C-1.5, R-2.5, H-70, the County ROW is zoned CR-3: C-1.5, R-2.5, H-70, and the County Property is zoned CR-4: C-2.0, R-3.5, H-250.

C. Applicant proposes to redevelop the Property with a mixed-use project consisting of a maximum of approximately 521,000 square feet ("SF") of total development in three interconnected buildings, including a maximum of 490,000 SF of multi-family residential development (maximum of 476 units), a maximum of 31,000 SF of non-residential development (retail and restaurant uses), and a parking structure (the "Project") in accordance with Sketch Plan No. 320130010 (the "Sketch Plan") approved by the Planning Board by Resolution dated October 30, 2013 and corrected on December 11, 2013 (the "Sketch Plan Resolution"), Preliminary Plan No. 120150010 approved by the Planning Board by Resolution mailed on May 7, 2015 and corrected on July 28, 2015 ("Preliminary Plan Resolution"), a copy of which is attached as Exhibit "A", and Site Plan No. 820150010 approved by the Planning Board by Resolution mailed on May 7, 2015 and corrected on July 28, 2015.

D. The Project is located within the area of (i) the White Flint Sector Plan, adopted and Approved April 2010 (the "Sector Plan"); (ii) the White Flint Metro Station Policy Area; and (iii) in the North Bethesda Transportation Management District (the "TMD").

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

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Tax Fee 40.00  
RECORDING FEE 75.00  
TOTAL 115.00  
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MONTGOMERY COUNTY CIRCUIT COURT (Land Records) BHM 51341, p. 0095, MSA\_CE63\_51298. Date available 12/16/2015. Printed 12/14/2021.

F. The Sector Plan includes a Staging Plan that allocates new development in the Sector Plan area to three phases of transportation improvements (individually, a "Sector Plan Phase") and requires certain public improvements, including but not limited to transportation network and pedestrian and bicycle mobility improvements, to be provided as prerequisites before a new phase can be opened (the "Prerequisites"). As of the date of this Agreement, the Sector Plan is in Sector Plan Phase 1.

G. The Sector Plan recommends the following non-auto driver mode share goal ("NADMS Goal") applicable in each Sector Plan Phase: 34% as a prerequisite in moving from Sector Plan Phase 1 to Phase 2; 42% as a prerequisite in moving from Sector Plan Phase 2 to Phase 3; and 51% for Sector Plan Phase 3.

H. Condition No. 9.e. of the Sketch Plan Resolution contains the following requirement of the Applicant:

At preliminary plan review, the Applicant must enter into a Traffic Mitigation Agreement with the Planning Board and MCDOT to participate in the North Bethesda Transportation Management District ("TMD") and assist in achieving and maintaining the non-auto driver mode share ("NADMS") goals recommended in the White Flint Sector Plan. The Traffic Mitigation Agreement must be executed prior to release of any building permits.

The condition also lists the elements of the Traffic Mitigation Agreement that may be included.

I. Condition No. 6 of the Preliminary Plan Resolution contains the following requirement of the Applicant:

Prior to the release of any residential building permit, the Applicant must enter into a Traffic Mitigation Agreement (TMAg) with MCDOT and the Montgomery County Planning Board to participate in the North Bethesda Transportation Management District (TMD) and assist in achieving and maintaining the non-auto mode share goals recommended in the White Flint Sector Plan.

J. It is intended that this Agreement will apply to the entire Project.

K. The parties desire to enter into this Agreement in fulfillment of the requirements of Condition 9.e. of the Sketch Plan Resolution and Condition No. 6 of the Preliminary Plan Resolution.

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 the date of this Agreement.

2. Participation in the North Bethesda TMD. As provided herein, Applicant agrees to participate with MCDOT in efforts to attempt to achieve and maintain the NADMS Goals of the Sector Plan.

3. Appointment of Transportation Benefits Coordinator. Applicant will designate in writing to MCDOT a Transportation Benefits Coordinator (TBC) who will assist residential and non-residential tenants in the Project 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 must plan and coordinate with MCDOT and monitor achievement of traffic mitigation goals as anticipated by the Sector Plan. On an ongoing basis, the TBC must interact with MCDOT in promoting ridesharing and other alternative transportation programs in order to promote the participation of residents and employees at the site in such programs to meet the White Flint Sector Plan Transportation Demand Management goals. The TBC may be a property manager or an employee with other employment duties. Applicant must 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 must promptly notify MCDOT in writing of the designated TBC and contact information, and any subsequent change in the TBC 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 reasonable access to residential and non-residential tenants for purposes of informing and educating about programs and services available in the TMD and on-site, including electric vehicle (EV) charging facilities; and distribute paper and/or electronic "Welcome Packets" with information about commuting alternatives or other materials to be provided by MCDOT to new residential and non-residential tenants. To the extent permitted by law, Applicant must use commercially reasonable efforts to provide MCDOT with an updated list of the number of residential tenants and the contact information for non-residential tenants on a semi-annual basis. All information provided by the Applicant to MCDOT must be used by MCDOT solely for transportation demand management-related purposes. Applicant must ensure that all activities required of the TBC, including the TBC's efforts to assist the County in meeting trip reduction and mode share goals of the TMD, will be supported by reasonable budgetary allocations.

MCDOT may require the Applicant to reimburse the costs incurred in providing materials for promotional programs and activities. The amount will be based on a rate of \$7.50 per 1,000 square feet of completed space for which Use and Occupancy permits have been issued. 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 must include the distribution of TMD information to non-residential tenants, employees, and residents, through the use of displays, bulletins, brochures, email notices, social media, and the periodic hosting of ridesharing days and contests, prepared or conducted by the Applicant or in concert with MCDOT. Applicant and the TBC must reasonably provide and facilitate use of space in the common areas of the Project on a periodic basis (by prior agreement) for marketing and promotional activities of MCDOT. Upon request by the County, the Applicant or TBC must also promote and arrange for the sale by the applicable third party 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. MCDOT must periodically conduct a survey or other data analysis ("Survey") of the Sector Plan area to determine the Non-Auto Drive Mode Share (NADMS) of employees and residents in accordance with the requirements and procedures set forth in Section 4.2 of the White Flint Sector Plan Implementation Guidelines, approved July 2011 (the "Implementation Guidelines"). These requirements and procedures may be modified from time to time by the County without amendment to the Implementation Guidelines after notice of the proposed modification in writing to the Applicant ("Notice"), which Notice will provide at least a 30 calendar day period from the date of receipt by Applicant of the Notice for Applicant to comment on the proposed modification. The Applicant and TBC must cooperate with MCDOT to obtain residential and non-residential tenant participation in the Survey, using a survey instrument provided by MCDOT. Applicant must also ensure participation in such Survey by its on-site employees involved in day-to-day operations of the Project. The Survey will be conducted of the transportation choices of residents and employees and related issues. Applicant must use good-faith efforts to assist MCDOT to achieve a response return of 80% from among employees and residents in the Project. Applicant must notify the tenants in writing of the purpose and importance of the Survey, including the goal of an 80% return rate from among employees and residents in the Project.

5. Displays. Applicant must provide a permanent information display in a highly used location in the common areas of the multifamily residential buildings of the Project, or in such other locations as mutually agreed to by the parties, for commuter information and promotional material on transportation management programs in the TMD, the County and the region. (If the building has primary access points for visitors and members of the public which are different from those access points for employees and/or residents, a display must be provided in each of such primary access areas to reach each of these target markets).

6. Real Time Transit Information Sign(s). Applicant must provide space for at least one (1) Real Time Transit Information sign at a highly used location in the Project to assist employees, residents, and visitors with commuter information. Applicant must provide conduit, electrical and internet connections, and may either use their own equipment or purchase equipment from the County. If Applicant's own equipment is used (e.g., lobby monitor system), County Real-Time information can be integrated and displayed on-screen with other information selected by Applicant. Alternatively, Applicant may install County-provided monitors and related equipment. The cost to developer of all essential elements for the County-provided monitor system will be limited to the actual costs to the County for such monitor system as determined at the time of installation.

7. Flexible Work Hours. Applicant must use commercially reasonable efforts to encourage its non-residential tenants to maintain a flextime and telework policy for employees for whom it is feasible, to allow work trips of employees to be shifted out of peak travel periods.

8. Emergency Transportation (Guaranteed Ride Home Program). The 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 Applicant's employees at the Project who carpool, vanpool, use transit, or use other commute options.

9. Employee Parking. Applicant must use commercially reasonable efforts to support and operate voluntary parking reduction programs by (i) encouraging tenant employers not to pay for parking for those employees who drive to work alone, (ii) encouraging employers to subsidize parking for vanpools and carpools to a greater extent than single occupant vehicles, (iii) notifying non-residential tenants of alternatives to monthly parking arrangements for their employees, including information about the availability of government transit benefits programs and other transportation benefits with the materials provided by MCDOT, (iv) encouraging non-residential tenants not to offer any employee parking discounts, and (v) providing parking-related information, including parking policies and procedures, and data on parking supply and utilization for both residential and employee parking.

10. Car/Van Pooling Parking. Applicant must provide car and van pool parking spaces for non-residential tenant employees during normal operating hours in the parking facilities that serve non-residential areas in the Project in a preferred, highly convenient location. In consultation with MCDOT and M-NCPPC, Applicant may increase or decrease the number of car and van pool spaces provided based on actual demand. Parking structures that provide van pool spaces must provide at least one entrance that can accommodate a standard size van.

11. Car Sharing Spaces. Applicant must provide at least two (2) car sharing parking spaces, or the number required by law, whichever is greater, in a preferred and highly visible location within a parking facility or in a prominent surface location convenient to the main entrance of a building. If no demand for car sharing is evidenced, or a car sharing program is not in place, Applicant must work with MCDOT, and M-NCPPC to determine alternative use for these parking spaces in support of the objectives of the TMD and this Agreement (e.g., car or van

pool, or off-peak commuting parking) until such point as a car sharing program is feasible. If demand warrants an increase in car sharing spaces, Applicant must use commercially reasonable efforts to work with car sharing providers to accommodate that demand. Furthermore, Applicant must work with MCDOT to promote the use of car sharing at the Project in furtherance of the objectives of the TMD.

12. Electric Vehicle (EV) Charging Station. Applicant must provide within the Project locations for a total of two EV charging stations in the Project, or the number required by law, whichever is greater. Either or both of the charging stations may be located in residential or non-residential parking facilities, but in any event must be preferential, highly visible spaces. Each EV charging station must be clearly identified with signage that indicates its purpose and provides contact information for inquires (*e.g.*, the telephone number for the TBC contact or the applicable third party provider). Applicant must also provide "way finding" signage for 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. In addition to the foregoing, the Applicant must comply with any applicable laws

In addition, Applicant, at its option, may (i) provide pre-wiring for a minimum of ten (10) EV-ready parking spaces in non-residential and residential parking facilities, and/or (ii) offer financial incentives to tenants (employers) and residents of the Project to encourage their installation of wiring and charging equipment in their designated spaces.

13. Live Near Your Work. Applicant must cooperate with MCDOT and other agencies in their implementation of marketing efforts 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.

14. Bicycle Facilities. Applicant must provide a secure weatherproof area in a conveniently located, well lit, high traffic part of the Project to house resident and employee bicycles. Indoor and outdoor bicycle storage must be provided for the number of bicycle parking facilities specified for the Project or in an amount sufficient to meet the demand, in the event demand exceeds the number specified, to the extent space is available for such additional bicycle parking spaces as determined by the Applicant in its reasonable discretion. No charges must be imposed for bicycle parking located in any parking facility that serves non-residential uses.

15. Bikesharing. Applicant must provide space in the Project for at least one (1) bikesharing docking station (or similar provision required by the bikesharing system) to enable this form of transportation to be used by residents, employees and visitors at the Project. The potential location for the bikesharing docking station discussed above is generally shown on Exhibit "B" attached hereto and incorporated by reference herein. In addition, Applicant agrees to discuss with MCDOT locating additional bikesharing docking stations within the Project to the extent feasible and desirable, at Applicant's sole but reasonable discretion. Bicycle access to and from the bikesharing station must be provided. The final location of the docking station

must be selected in consultation with MCDOT and Applicant. The station must be placed in a highly visible, convenient and well-lit location within the Project. If no acceptable on-site location can be identified at the Project, the bikeshare station may be located on abutting public property or right-of-way adjacent to the site, contingent on final approval by the County. A typical station requires 52' x 12' of space, although a lesser area may be agreed to by MCDOT and the Applicant based on the final location of the station.

Applicant will be required to pay the capital cost of the bikeshare station and 50 percent of the operating cost over two years. Applicant and MCDOT recognize, however, that property owners in the Sector Plan area who are required to execute Traffic Mitigation Agreements as conditions of land development approvals may offer a proposal to the County to pay for a share of operating expenses for bikeshare stations in addition to capital costs. If an agreement is reached among these owners and the County regarding payment of operating expenses, the Applicant will be required to provide operating expenses pursuant to that agreement in lieu of payment for operating expenses as noted above. Applicant will take other actions in concert with MCDOT to promote bikeshare among residents, employees and visitors at the Project, in order to accomplish the objectives of MCDOT.

16. North Bethesda Transportation Management District Assistance. MCDOT must be available to provide transportation information, technical advice, and other forms of assistance normally provided to sites within the North Bethesda TMD, to the extent feasible within the constraints of staff and fiscal resources.

17. Compliance with the NADMS Goals of the Sector Plan.

(a) The Project must demonstrate compliance with the NADMS Goal for the Sector Plan Phase applicable at the time the building is surveyed as set forth in Sections (b) – (e) below.

(b) Upon the earlier to occur of (i) maintenance of an 80% or higher occupancy level in a building for six consecutive months or (ii) three years from the date of issuance of a Use and Occupancy Permit for a residential building (hereinafter, a “Stabilized Building”), the Applicant must promptly notify MCDOT in writing that the building is eligible for a determination of compliance with the NADMS Goal. The Applicant may request that a determination of compliance with the NADMS Goal be made, in the aggregate, for (i) two or more Stabilized Buildings in the Project under common ownership, or (ii) two or more Stabilized Buildings in the Project under separate ownership if the buildings were approved under a single sketch plan or preliminary plan and the owners of all of the Stabilized Buildings enter into a written agreement with the County subjecting the Stabilized Buildings to the terms of this Agreement, including the terms for enforcement of the Agreement. Multiple Stabilized Buildings aggregated for a determination of compliance with the NADMS Goal are hereinafter referred to collectively as a “Stabilized Project”.

(c) After receiving notice of a Stabilized Building or a Stabilized Project, MCDOT must include the Stabilized Building or Stabilized Project in the next scheduled Survey

conducted in accordance with Paragraph 5(b) above. Notwithstanding the above, if a major disruption in the normal transportation system occurs during a Survey (e.g., strikes affecting public transit services, closure of transit facilities, elimination of funds for transit services), the results of such Survey will not be used for determining a Stabilized Building's or Stabilized Project's compliance with the NADMS Goal.

(d) If the initial Survey of a Stabilized Building or Stabilized Project determines that the Building or Project is in compliance with the NADMS Goal, then the Building or Project is compliant ("Compliant"). If two consecutive Surveys of a Stabilized Building or a Stabilized Project determine the Building or Project, as applicable, is not in compliance with the NADMS Goal ("Non-Compliant"), then within five (5) business days of the completion of the Survey and related analysis, the County must send Applicant written notice that the Building or Project is Non-Compliant (the "Non-Compliant Notice"). The Non-Compliant Notice must include a copy of the Survey with all supporting documentation and results from the Survey that determined the Stabilized Building or Stabilized Project is Non-Compliant. A Non-Compliant Building or Project is Compliant if determined in a subsequent Survey to be in conformance with the applicable NADMS Goal.

(e) Notwithstanding the above, after a new Sector Plan Phase is opened in accordance with the Staging Plan of the Sector Plan and the Implementation Guidelines, any Compliant Stabilized Building or Stabilized Project must have five (5) years from the date each new Sector Plan Phase is opened to demonstrate compliance with the NADMS Goal of the new Sector Plan Phase. If a Stabilized Building or Stabilized Project does not demonstrate compliance with the new NADMS Goal within five years, then the Stabilized Building or Stabilized Project is Non-Compliant.

(f) The parties acknowledge that the implementation of the transportation improvements set forth in the Prerequisites of the Sector Plan, in substantial conformance with the goals and recommendations for such improvements, promote a multi-modal transportation system in the Sector Plan area and is an integral factor in the ability of the Applicant to achieve the applicable NADMS Goals. Nothing in this Agreement will constitute a waiver of the Applicant's rights and remedies under law or equity in the event the County fails to implement the transportation improvements in substantial conformance with the Sector Plan goals and recommendations to the extent the implementation of the improvements is within its discretion.

18. Annual Report. Applicant must provide an annual summary report (1-2 pages) to MCDOT on an annual interval as designated by MCDOT. This report must outline the traffic mitigation program and activities conducted by the Applicant during the course of the previous year, and must include the name and contact information for the current TBC. MCDOT must provide Applicant with a template to use in preparing this report.

19. Fees. Applicant must pay all transportation management fees as required by law.



20. 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 will be deemed to be covenants running with the land with respect to the Property.

21. Enforcement.

(a) 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. MCDOT or the Planning Board must provide Applicant with 30 days' written notice and a reasonable opportunity to cure prior to initiating any such enforcement action.

(b) For a Stabilized Building or Stabilized Project determined to be Non-Compliant as set forth in Paragraph 19 above, for so long as that Building or Project is Non-Compliant, Applicant must pay the County annually as liquidated damages an amount equal to 10¢ per square foot ("SF") of gross floor area ("GFA") (the "Non-Compliant Assessment"). The Non-Compliant Assessment will be calculated by the same method as provided for Transportation Management Fees under Section 42A-29 of the Code and the first payment will be due beginning on January 1<sup>st</sup> of the year following the receipt of the Non-Compliant Notice. Unless terminated earlier pursuant to Sections (c) or (d) below, the requirement to pay the Non-Compliant Assessment for a Stabilized Building or Stabilized Project will automatically terminate upon the earlier to occur of (i) 20 years from the date of the first payment of the Non-Compliant Assessment for such Stabilized Building or Stabilized Project, or (ii) approval of an amendment to the Sector Plan by the Montgomery County Council.

(c) If MCDOT does not conduct a Survey for three consecutive years, then the requirement to pay the Non-Compliant Assessment will automatically terminate for any Stabilized Building or Stabilized Project subject to the Non-Compliant Assessment until such time as MCDOT resumes conducting a Survey.

(d) If a Survey shows a Stabilized Building or Stabilized Project has not achieved the applicable NADMS Goal, then the Applicant, in its sole discretion, may retain a third party entity, mutually agreed to by MCDOT and the Applicant, to conduct an independent survey of the Stabilized Building or Stabilized Project to determine if the building is in compliance with the NADMS Goal (the "Independent Survey"). The Independent Survey can employ the same general methodology as the Survey, or it can employ driveway counts and generally recognized trip generation models, or any other recognized method for measuring NADMS. The Applicant and MCDOT must also mutually agree to the methodology of the Survey. Data collected by an Independent Survey will be provided to MCDOT for review. MCDOT will determine if the Independent Survey shows the Stabilized Building or Stabilized Project is in compliance with the applicable NADMS Goal. If such a determination is made, then the Stabilized Building or Project must be declared Compliant and any requirement to pay the Non-Compliant Assessment for such building or project must automatically terminate.

(e) It is the intent of the County to require all property owners in the Sector Plan area who are required to execute a Traffic Mitigation Agreement (“TMAg”) as a condition of required land development approvals, to include in the TMAg substantially similar terms as are included in this Agreement for determining compliance with the NADMS Goals and payment of liquidated damages after a determination of non-compliance with the NADMS Goals (a “White Flint TMAg”). If the County enters into a White Flint TMAg that (i) utilizes lower NADMS Goals for determining compliance therewith, or (ii) includes a provision for liquidated damages or other charge for non-compliance in an amount less than the liquidated damages required in this Agreement without requiring the applicant for the White Flint TMAg to provide or fund additional traffic mitigation programs or improvements, then MCDOT must notify the Applicant in writing within five (5) business days of the effective date of such White Flint TMAg and provide the Applicant with a copy. Thereafter, as applicable (i) the lower NADMS Goals stated in such White Flint TMAg will automatically be substituted for the NADMS Goals set forth in this Agreement and used for all purposes herein beginning with the first Survey immediately following the effective date of such White Flint TMAg and (ii) the amount for liquidated damages required in this Agreement will automatically be reduced to the liquidated damages or charge set forth in such White Flint TMAg, beginning with the first annual payment of the Non-Compliant Assessment immediately following the effective date of such White Flint TMAg.

22. 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 must provide the Applicant with any existing information, including printed and/or electronic materials, which the 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 employees, residents, and visitors. Payments may be required to be made by Applicant to MCDOT for reimbursement of costs incurred in providing materials for this purpose. To the extent such information is not provided to Applicant, Applicant cannot be deemed in default of any obligation hereunder to distribute such information.

23. Applicant’s Obligations. The obligations of Applicant under this Agreement must apply only during the period when it is the fee simple owner of the Property or any part thereof and only to land it leases or owns. At such time as Applicant ceases to own 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/or assigns, to the extent permitted by law.

24. 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(s) in interest or assignee(s) must sign the Assignment form, attached hereto as Exhibit “C”, 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 MCDOT.

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

(a) If to the Applicant to:

LG Georgetown LLC  
8300 Greensboro Drive  
Suite 650  
McLean, VA 22102  
Attn: Jorgen Punda

with a copy to:

Linowes and Blocher LLP  
7200 Wisconsin Avenue, Suite 800  
Bethesda, MD 20814-4842

(b) If to the Planning Board to:

Director, Montgomery County Planning Department  
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, 3<sup>rd</sup> floor  
 Rockville, Maryland 20850  
 Attention: County Attorney

26. 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.

27. 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.

28. Amendments/Modifications. This Agreement may be modified only in writing signed by all parties hereto, their heirs, successors, assigns or their designees hereunder.

29. Governing Law. This Agreement must be governed and construed in accordance with the laws of the State of Maryland. The Applicant must comply with all applicable laws.

30. Recordation. This Agreement must be recorded in the Land Records of Montgomery County as notice that the obligations of this Agreement bind the Applicant's successors and/or assigns, to the extent permitted by law.

31. Sector Plan. This Agreement is subject to the Sector Plan's Staging Plan and nothing herein will be deemed to supersede or otherwise negate the requirements thereof.

32. Appropriations. Any obligation or liability of MCDOT or the Planning Board 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 or the Planning Board'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.

[SIGNATURE PAGES TO FOLLOW]

ATTEST/WITNESS:

LG GEORGETOWN LLC

Edd 22

By: [Signature]

Print Name: Jorgen Punda

Title: Regional VP

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STATE OF VIRGINIA

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to wit:

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COUNTY OF FAIRFAX

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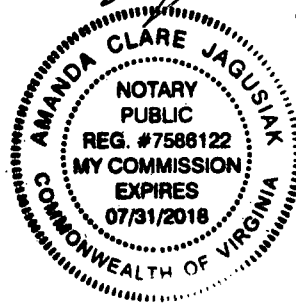
I HEREBY CERTIFY that on this 12 day of OCTOBER, 2015, before me, a Notary Public in and for the State and County aforesaid, personally appeared JORGEN PUNDA, and that such corporate officer, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the said company, as a member of the limited liability company.

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

[Signature]  
Notary Public

My Commission Expires: 07/31/2018

[NOTARIAL SEAL]



MONTGOMERY COUNTY CIRCUIT COURT (Land Records) BHM 51341, p. 0107, MSA\_CE63\_51298. Date available 12/16/2015. Printed 12/14/2021.

**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:

*Edward Arden*

By: *Rose Krasnow*

Print Name: Rose Krasnow

APPROVED AS TO LEGAL SUFFICIENCY  
*[Signature]* 10/30/15  
M-NCPPC LEGAL DEPARTMENT

Title: Deputy Director

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STATE OF MARYLAND  
COUNTY OF MONTGOMERY

\* to wit:  
\*

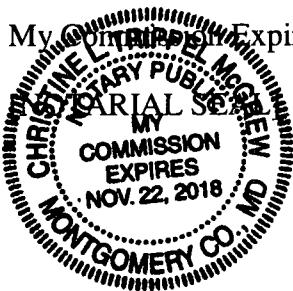
I HEREBY CERTIFY that on this 3rd day of November, 2015, before me, a Notary Public in and for the State and County aforesaid, personally appeared Rose Krasnow, known to me (or satisfactorily proven) to be the Deputy Director of the Montgomery County Planning Department of the Maryland-National Capital Park and Planning Commission, a public body corporate, and that such Deputy Director, 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.

*Christine L. Trippel McGrew*  
Notary Public (Please Print Name After Signature)

*Christine L. Trippel McGrew*

My Commission Expires: Nov 22, 2018



RECOMMENDED BY

MONTGOMERY COUNTY

DEPARTMENT OF  
TRANSPORTATION

WITNESS:

Stacy W. Leach

By: [Signature]  
Al R. Roshdieh, Acting Director

\*\*\*

STATE OF MARYLAND

\*

to wit:

COUNTY OF MONTGOMERY

\*

\*

I HEREBY CERTIFY that on this 30 day of November, 2015, 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 Acting 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.

Stacy W. Leach Stacy W. Leach  
Notary Public (Please Print Name After Signature)

My Commission Expires: 8-15-17

[NOTARIAL SEAL]

STACY W. LEACH  
NOTARY PUBLIC  
MONTGOMERY COUNTY  
STATE OF MARYLAND  
MY COMM. EXP. 8-15-17

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) BHM 51341, p. 0109, MSA\_CE63\_51298. Date available 12/16/2015. Printed 12/14/2021.

MONTGOMERY COUNTY, MARYLAND

WITNESS:

Julie L. White

By: Ramona Bell-Pearson

Ramona Bell-Pearson  
Assistant Chief Administrative Officer

APPROVED AS TO FORM AND LEGALITY:

Clifford Rognette

CLIFFORD ROGNETTE (Printed Name)  
Office of the County Attorney

STATE OF MARYLAND

\*

\*

to wit:

\*

COUNTY OF MONTGOMERY

I HEREBY CERTIFY that on this 3rd day of December, 2015, 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.

Julie L. White

Notary Public (Please Print Name After Signature)

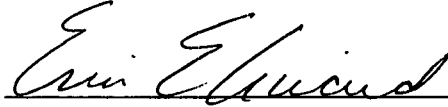
My Commission Expires:  
[NOTARIAL SEAL]

4/30/2017



ATTORNEY CERTIFICATION

I HEREBY CERTIFY that this Declaration was prepared by me or under my supervision, and that I am an attorney duly licensed to practice before the Court of Appeals of Maryland.

  
Erin E. Girard

Tax ID #s 04-03262813  
04-00049860  
04-01508248  
04-00047017

After recording, please return to:

Erin Girard  
Linowes and Blocher LLP  
7200 Wisconsin Ave. Ste. 800  
Bethesda, MD 20814

51341 112



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

JUL 28 2015

MCPB No. 15-41  
Preliminary Plan No. 120150010  
Gables White Flint  
Date of Hearing: April 30, 2015

**CORRECTED RESOLUTION**

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board (Planning Board or Board) is authorized to review preliminary plan applications; and

WHEREAS, on July 30, 2014, LG Georgetown LLC, filed an application for approval of a preliminary plan of subdivision to create one lot and a private roadway parcel, for up to 490,000 square feet of residential uses and 31,000 square feet of non-residential development on approximately 5.14 acres in the CR-3 C1.5 R2.5 H70 and CR-4 C2.0 R3.5 H250 Zones (the Property), located along Old Georgetown Road (MD 187), south of the future Market Street and west of realigned Executive Boulevard (future Grand Park Avenue) in the 2010 White Flint Sector Plan ("Master Plan" or "Sector Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120150010, Gables White Flint ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, April 17, 2015, setting forth its analysis and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, on April 30, 2015 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, at the Hearing, the Planning Board voted to approve the Application, subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 120150010, subject to the following conditions:

1. This approval is limited to one lot for a maximum density of 521,000 square feet of total development, including a maximum of 490,000 square feet of residential

8787 Georgia Avenue, Silver Spring, Maryland 20910

Chairman's Office: 301.491.6000

[www.MCParkandPlanning.org](http://www.MCParkandPlanning.org)

E-Mail: [mcp-chairman@mncppc.org](mailto:mcp-chairman@mncppc.org)

APPROVED AS TO LEGAL SUFFICIENCY

*[Signature]*  
MNCPPC LEGAL DEPARTMENT

- uses and a maximum of 31,000 square feet of non-residential uses. A minimum of 12.5% of residential units must be moderately priced dwelling units (MPDUs).
2. The Applicant must dedicate, and the record plat must reflect, the Sector Plan recommended 70-foot right-of-way for business district street (Market Street) as shown on Montgomery County Department of Transportation (MCDOT) Capital Improvements Program (CIP) White Flint West Workaround No.501506 and the approved Preliminary Plan No. 120150010.
  3. The Applicant must dedicate, and the record plat must reflect, the Sector Plan recommended 150-foot right-of-way for Old Georgetown Road (MD 187) as shown on MCDOT's CIP White Flint West Workaround No.501506 and the approved Preliminary Plan No. 120150010.
  4. The Applicant must dedicate, and the record plat must reflect, the Sector Plan recommended 89 foot right-of-way for a realigned Executive Boulevard (future Grand Park Avenue) as shown on MCDOT's CIP White Flint West Workaround No.501506 and the approved Preliminary Plan No. 120150010.
  5. The Planning Board accepts the recommendations of MCDOT in its letter dated December 4, 2014 and March 6, 2015 and April 28, 2015 electronic mails, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations 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.
  6. Prior to the release of any residential building permit, the Applicant must enter into a Traffic Mitigation Agreement (TMAg) with MCDOT and the Montgomery County Planning Board to participate in the North Bethesda Transportation Management District (TMD) and assist in achieving and maintaining the non-auto mode share goals recommended in the White Flint Sector Plan.
  7. Private Street A and Private Street B must be implemented with a common access easement to Montgomery County in a form approved by the M-NCPPC Office of General Counsel and the Montgomery County Attorney's office. The easement must be shown on the record plat for the private streets and adjacent parallel sidewalks. The common access easement must, at a minimum, include the following:
    - a. The design of the roads must follow or improve on the corresponding Montgomery County Road Code standard for a similar public road, unless approved by MCDOT and the Planning Board.
    - b. Installation of any public utilities must be permitted within such easements.
    - c. The streets may not be closed for any reason unless approved by MCDOT.

- d. The public access easements must be volumetric to accommodate uses above or below the designated easement areas.
  - e. Montgomery County may require the Applicant to install appropriate traffic control devices within the public easement and the easement must grant the right to the County to construct and install such devices.
  - f. Maintenance and Liability Agreements will be required for each Easement Area. These agreements must identify the respective Applicant's responsibility to maintain all of the improvements within their easement areas in good fashion and in accordance with applicable laws and regulations.
  - g. The Applicant is obligated to remove snow and provide repairs to keep the roads in working order and open and if, for any reason, the Applicant does not, the County must have the right, but not the obligation, to remove snow and/or provide repairs.
  - h. The boundary of the easements must be shown on the record plat.
8. The Planning Board accepts the recommendations of the Maryland State Highway Administration (SHA) in its letter dated February 4, 2015, 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 SHA provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
  9. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS) Water Resources Section in its letter dated December 22, 2014, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations set forth in the letter, which may be amended by MCDPS provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
  10. The Planning Board accepts the recommendations of Montgomery County Fire and Rescue (MCFRS) Service in its letter dated December 16, 2014 and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations set forth in the letter, which may be amended by MCFRS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
  11. The Subject Property is within the Walter Johnson High School Cluster. The Applicant must make a School Facilities Payment to MCDPS at the multi-family residential, 5 or more floors, for all residential units for which a building permit is issued and a school facilities payment is applicable. The timing and amount of

the payment will be in accordance with Chapter 52 of the Montgomery County Code.

12. Prior to the recordation of Lot 1, the Applicant must provide to M-NCPPC Staff proof that the portions of the subject property owned by Montgomery County have been conveyed to the Applicant.
13. 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.
14. The Applicant must comply with the White Flint Urban District requirements when it is established by Montgomery County Council.
15. No clearing, grading or recording of plats prior to Certified Site Plan approval.
16. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
17. The non-transportation portion of the Adequate Public Facility (APF) for the Preliminary Plan will remain valid for eight-five (85) months from the date of the mailing of the Planning Board Resolution.
- ~~18. This Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended).~~
18. In the event that a subsequent site plan approval substantially modifies the subdivision shown on the approved Preliminary Plan, with respect to lot configuration or location or right-of-way width, or alignment, the Applicant must obtain approval of a Preliminary Plan Amendment prior to certification of the Site Plan.
19. The Certified Preliminary Plan must contain the following note: "Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of site plan review. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for this lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval."
20. All necessary easements must be shown on the Record Plat.

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) BHM 51341, p. 0115, MSA\_CE63\_51298. Date available 12/16/2015. Printed 12/14/2021.

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 Preliminary Plan substantially conforms to the Master Plan.*

The Property is within the Metro West District-Block 2: Wall Local Park of the Approved and Adopted (2010) White Flint Sector Plan. The Sector Plan rezoned the Property to CR-3 C1.5 R2.5 H70 and CR-4 C2.0 R3.5 H250 Zones. The CR-3 zone segment is west of existing Executive Boulevard and the CR-4 zone segment is to the east, including a portion of the Bethesda North Conference Center. The Sector Plan recommends the maximum height of 70 feet for the Property.

The Sector Plan recognizes the Gables Residential property as an important site and states that the area "should be primarily residential in character and use". The Sector Plan also states that the "land area remaining after the intersection realignment of Old Georgetown Road and Executive Boulevard will be reconfigured into rectangular blocks in sizes more conducive to redevelopment. Wall Local Park should be redesigned with more active outdoor facilities through developer contributions". In addition, the Sector Plan "envisions a public/private partnership with adjacent properties to relocate the surface parking within a parking structure built in conjunction with new residential development. This would help direct public funds from building structured parking on-site to improving Wall Local Park".

The Preliminary Plan substantially conforms to the Sector Plan recommendations since the development is principally residential and the Applicant has provided land for a future parking garage that will support Wall Park's redevelopment.

#### Street Network

The public and private streets shown on the Preliminary Plan are consistent with the Sector Plan recommendations. The Sector Plan recommends the creation of Market Street (B-10) as a new 70-foot commercial business street and the realignment of Executive Boulevard (B-15) with a minimum ~~80~~89 foot right-of-way. The Sector Plan referenced Montgomery County Road Code standards 2005.02 and 2004.01, respectively, for these streets. Old Georgetown Road (MD 187) is west of the development and is classified as a major highway (M-4) with a minimum right-of-way of 150 feet. Private Streets A and B are not Master Plan streets, but they provide additional internal circulation for the development.

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Montgomery County Department of Transportation (MCDOT), via Capital Improvements Program (CIP) White Flint West Workaround (No. 501506), is responsible for constructing Market Street (B-10), realigned Executive Boulevard (B-15)-future Grand Park Avenue-and Old Georgetown Road improvements. The Applicant's Preliminary Plan has dedicated rights-of-way for roadways that surround the development and incorporates MCDOT's CIP proposal.

#### Old Georgetown Road

Old Georgetown Road (MD 187), between Nicholson Lane and Executive Boulevard, is classified as a major highway (M-4) with a minimum right-of-way of 150 feet. The Approved and Adopted *Countywide Functional Transit Corridors Master Plan* (December, 2013) recommends Old Georgetown Road as a segment of the North Bethesda Transitway (Corridor 6). A dedicated BRT lane is recommended along Old Georgetown Road between Executive Boulevard and Nicholson Lane. The Functional Plan recommends a BRT station north of the Property at Old Georgetown Road, Executive Boulevard and Towne Road.

#### Bikeway Network

The Preliminary Plan will begin to implement the bikeway recommendations for adjacent roadways. The Sector Plan recommends a Shared Use Path (LB-1) along Old Georgetown Road (MD 187) and another Shared Use Path (LB-3) along Market Street. The White Flint West Workaround CIP project will implement Share Use Paths that surround the Property.

#### Environmental

Minimization of carbon emissions and creating a livable urban environment by improving air and water quality are the Sector Plan's two main environmental recommendations. The Preliminary Plan will utilize environmental site design techniques, including green roofs, vegetated walls, and energy standards for the buildings that will exceed the Department of Energy standard by 10 percent. These measures, along with minimization of parking and a network of bikeways and sidewalks will substantially implement the Sector Plan's environmental recommendations.

Based on the analysis above and with the conditions of approval, the Planning Board finds that the Preliminary Plan substantially conforms to the Approved and Adopted 2010 White Flint Sector Plan.

2. *Public facilities will be adequate to support and service the area of the approved subdivision.*

#### Design Exceptions

The Planning Board and MCDOT reviewed and approved the following design exceptions that will contribute to enhancing a mixed-use and pedestrian environment:

- a) Non-standard elements in the right-of-way.
- b) Retaining walls and steps in the right-of-way.
- c) Tree planters in the right-of-way.
- d) Reduction in entrance spacing requirement.
- e) Reduction to the number of required loading spaces.

#### Site Location and Vehicular Site Access Points

Market Street, a new east-west public street, will serve as the northern boundary to the approved development, the realigned Executive Boulevard will run along the eastern frontage of the development, and Old Georgetown Road (MD 187) will continue to be on the west side of the Property. Two internal, Private Streets A and B, will provide access to Market Street, realigned Executive Boulevard and the parking garage.

#### Transportation Demand Management

This site is within the boundary of the North Bethesda Transportation Management District (TMD). Prior to the release of any residential building permit, the Applicant must enter into a Traffic Mitigation Agreement (TMAg) with Montgomery County Department of Transportation (MCDOT) and the Planning Board. The Sector Plan requires a Non-Auto Driver Mode Share (NADMS) goal of 34 percent in Phase I of the Sector Plan's staging plan.

#### Public Transit Service

The Property is located within a ½ mile from the White Flint Metrorail Station entrance. Montgomery County Ride-On route 81 operates along Executive Boulevard's current alignment and Ride-On routes 5 and 26 operate along Old Georgetown Road (MD 187) with a bus stop at the intersection of existing Executive Boulevard and Old Georgetown Road. Metrobus operates routes J-5 and C-8 along nearby Rockville Pike (MD 355).

#### Sector-Planned Roadways and Bikeways

In accordance with the *Sector Plan* and the *Countywide Bikeways Functional Master Plan*, the classified roadways and bikeways are as follows:

1. Old Georgetown Road (MD 187) is designated as a major highway (M-4) with a recommended minimum right-of-way of 150 feet with a Shared Use Path (LB-1). A 10-foot wide Shared Use Path will be provided along the eastern frontage of Old Georgetown Road.
2. Executive Boulevard (B-15), called Mid-Pike Spine Street in the Sector Plan, is designated as a commercial business street with a minimum recommended right-of-way of ~~80~~99 feet. MCDOT's Capital Improvements Program (CIP) No. 501506, White Flint West Workaround, includes the construction of this street with a Shared Use Path.



3. Market Street (B-10) is designated as commercial business street with a minimum recommended right-of-way of 70 feet and a Shared Use Path (LB-3).

#### Transportation Adequate Public Facilities Review

The White Flint Special Taxing District, established by Council Bill No. 50-10 and Resolution No. 16-570, excludes the typical Local Area Transportation Review (LATR) and Transportation Policy Area Review (TPAR) requirements for development within the White Flint Sector Plan area.

#### Other Public Facilities and Services

The site is served by public water and public sewer. Gas, electric, and telecommunications services are also available to serve the Property. Public facilities and services, including fire stations and police stations, are available and will be adequate to serve the development. Rockville Station (23) on Rollins Avenue and Bethesda Station (20) at West Cedar Lane and Old Georgetown Road can provide emergency services to the Property. The development is located in the Walter Johnson High School Cluster. A School Facilities Payment is required at the high school level. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.

Based on the analysis above and the conditions of approval, the Planning Board finds that the public facilities are adequate to support and service the area for the Preliminary Plan. The Preliminary Plan satisfies the Adequate Public Facilities Ordinance.

3. *The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision.*

The Preliminary Plan will create one lot ~~and a private parcel for private streets~~. The Planning Board finds that the size, shape, width, and area of the lot and parcel are appropriate for their location within the subdivision. The Application also complies with the dimensional requirements of the CR-3 C1.5 R2.5 H70 and CR-4 C2.0 R3.5 H250 Zones as specified in the Zoning Ordinance. The Application has been reviewed and approved by other County agencies.

#### Subdivision Regulations Waivers

Under §50-38(a)(1) of the Montgomery County Code, the Board may grant a waiver from the Subdivision Regulations if it finds that: "practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is: 1) the minimum necessary to provide relief from the requirements; 2) not inconsistent with the purposes and objectives of the General Plan; and 3) not adverse to the public interest."

The Applicant requested a waiver from Sections 50-1 and 50-30(c)(1) of the Montgomery County Code. Section 50-30(c)(1) requires that all roads are dedicated to public use to the full extent of any rights-of-way. Section 50-1 includes the definition for a right-of-way which states that "for land platting purposes, every right-of-way shown on a record plat must be separate and distinct from any adjoining lot or parcel, and not included in any other lot or parcel". However, the Planning Board finds that placing Streets A and B in their own parcel creates a practical difficulty because the streets have structures that will be developed below or above the street right-of-way that are critical to the layout and design of the development. This would conflict with the Department of Permitting Services (DPS) interpretation of the County Code, as amended, that precludes any development above or below a ~~public or private~~ right-of-way. The platting of these streets would prevent the East and Central buildings from obtaining a building permit for any development above a right-of-way. The Board finds that granting this waiver is not adverse to the objectives of the General Plan; provides minimum relief from the requirements; and is not adverse to the public interest. Further, the development is consistent with the Sector Plan recommendations for mixed-use development at this location and the configuration of the lot is created by the street network recommended in the Sector Plan.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

Staff approved a Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) for the site on July 2, 2013. The site contains no forest, streams or their buffers, wetlands or their buffers, 100-year floodplains, or rare, threatened or endangered species.

A Final Forest Conservation Plan (FFCP) is approved with Site Plan No. 820150010. Based on the Property's size and development, the Afforestation threshold for this site, plus required off-site disturbance, is 0.79 acres. The Applicant proposes to meet this requirement through payment of a fee-in-lieu, purchase of off-site forest bank credits, or a combination of the two. The FFCP satisfies the requirements of the forest conservation law.

5. *All storm water management requirements shall be met as provided in Chapter 19, article II, title "Storm Water Management," Sections 19-20 through 19-35.*

The Montgomery County Department of Permitting Services (MCDPS) approved a stormwater management concept plan on December 22, 2014. The approved project meets stormwater requirements through a variety of Environmental Site Design techniques, including green roofs and micro-bioretenion.

BE IT FURTHER RESOLVED, that for the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner, or any successors in interest to the terms of this approval.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its initiation date (as defined in Montgomery County Code Section 50-35(h)), and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed; 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 May 7, 2015 (which is the date that ~~this~~ the original Resolution is was 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 Fani-González, seconded by Commissioner Dreyfuss, with Chair Anderson and Commissioners Dreyfuss and Fani-González voting in favor of the motion, and Vice Chair Wells-Harley and Commissioner Presley absent, at its regular meeting held on Thursday, July 23, 2015, in Silver Spring, Maryland.

  
\_\_\_\_\_  
Casey Anderson, Chair  
Montgomery County Planning Board

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) BHM 51341, p. 0121, MSA\_CE63\_51298. Date available 12/16/2015. Printed 12/14/2021.

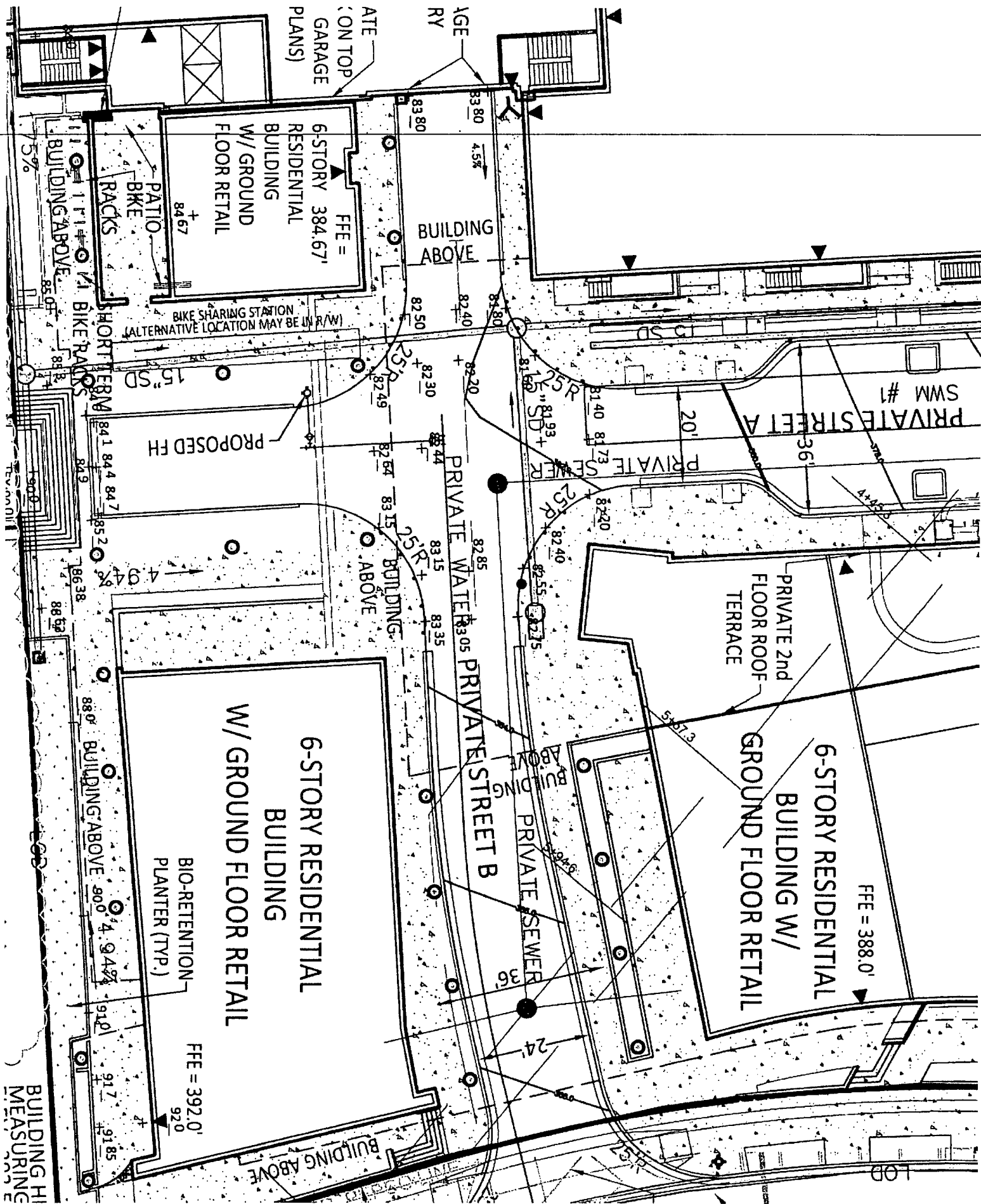


EXHIBIT C

ASSIGNMENT

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

ATTEST/WITNESS:

\_\_\_\_\_

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

\* \* \*

STATE OF  
COUNTY OF

I HEREBY CERTIFY that before me, a Notary Public in and for the aforesaid jurisdiction, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of LG Georgetown LLC, who is personally well known to me, or proven to be, the person named as \_\_\_\_\_ in the foregoing instrument, and in his capacity as aforesaid, executed and acknowledged the foregoing instrument in the name of and on behalf of the Applicant, LG Georgetown LLC, for the uses and purposes therein contained.

WITNESS my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

My commission expires:

[AFFIX NOTARIAL SEAL]