

MARRIOTT INTERNATIONAL HEADQUARTERS

TRAFFIC MITIGATION AGREEMENT
(office/commercial)

THIS TRAFFIC MITIGATION AGREEMENT (“Agreement”), is made this _____ day of _____, 2018, by and among (a) 7750 WISCONSIN AVENUE LLC and BCH HOTEL, LLC (collectively “Applicant”); (b) MONTGOMERY COUNTY, MARYLAND (“County”); and (c) MONTGOMERY COUNTY PLANNING BOARD OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION (“Planning Board”), a Maryland public body corporate.

RECITALS:

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

A. Applicant is the owner of a certain 2.25 +/- acre tract of land in the CR zone, located in the southwest quadrant of the intersection of Wisconsin Avenue and Norfolk Avenue on the west side of Wisconsin Avenue and the east side of Woodmont Avenue in Bethesda, Montgomery County, Maryland (the “Property”).

B. Applicant proposes to redevelop the Property with a commercial mixed-use project of two (2) buildings consisting of 770,089+/- square feet of office/commercial, 240+/- hotel rooms, and ____ square feet of restaurant and retail uses (the “Project”), which was the subject of an Application for Preliminary Plan of Subdivision that was captioned Preliminary Plan No. _____ (the “Preliminary Plan”).

C. The Project is located in the Bethesda Downtown Sector Plan Area, the Red Transportation Policy Area, and the Bethesda Transportation Management District.

D. On _____, 2017, the Planning Board approved the Preliminary Plan for the Project. Attached hereto as Exhibit “A” is a copy of the Planning Board’s Resolution for the Preliminary Plan dated _____, 2017 (the “Resolution”).

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

The Applicant must enter into a Traffic Mitigation Agreement (“Agreement”) with the Planning Board and MCDOT to participate in the Bethesda Transportation Management District (TMD) and must execute the Agreement prior to the release of any building permit for the proposed development.

F. Montgomery County, through its Department of Transportation (MCDOT), operates the Bethesda TMD and either directly or through its contractors, functions as the

Transportation Management Organization. MCDOT is the implementing agency on behalf of the County for purposes of this Agreement.

NOW, THEREFORE, in consideration of the above Recitals, each of which is made a part of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which each of the parties hereto acknowledges, and intending to be legally bound 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 must commence upon issuance of the Use and Occupancy (U&O) certificate for that allows for initial occupancy of the first building of the Project. 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 the Bethesda TMD. Applicant agrees to actively participate with staff in the Bethesda Transportation Management Organization (the "Bethesda TMO") to achieve and maintain the 55% average combined peak period non-driver mode share for employees and residents within the Bethesda Downtown Sector Plan area and related goals of the TMD.

3. Appointment of Transportation Benefits Coordinator. Applicant will designate in writing to MCDOT a Transportation Benefits Coordinator (TBC) who will assist tenants and/or employees 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 Master Plan. The TBC will interact with MCDOT in promoting ridesharing and other alternative transportation programs in order to maximize the participation of tenants and employees at the site in such programs to help meet transportation mitigation goals. The TBC may be a property manager or other employee with other employment duties. Applicant will ensure that the TBC attends periodic meetings and training sessions held by MCDOT or other local or regional agencies which are related to performance of these duties and coordination with other traffic mitigation programs. Applicant will promptly notify MCDOT in writing of the designated TBC(s) and contact information, and any subsequent change in the TBC(s) or contact information.

4. Activities of Transportation Benefits Coordinator.

(a) Promotional Programs. The TBC will conduct promotional activities and information distribution for all features of the TMD program at the Project; facilitate access to commercial tenants/employers and employees, for purposes of informing 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 to be provided by MCDOT to new tenants, new employers, and new employees. Applicant will provide MCDOT with an updated list of tenants/employers on a semi-annual basis. This information must be used by MCDOT solely for transportation demand management-related purposes. Applicant must ensure that all activities required

of the TBC are supported by adequate budgetary allocations so that efforts to help meet trip reduction and mode share goals of the TMD are feasible.

Promotional activities will include distribution of information to employers and employees, through the use of displays, bulletins, brochures, email notices, social media, and the periodic hosting of ridesharing days and contests, prepared or conducted solely 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, and other passes and/or incentive programs provided by public or private institutions.

(b) Surveys. The TBC, in cooperation with MCDOT, will facilitate 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 employees and related issues. Applicant and the TBC will use commercially reasonable efforts to achieve an 80% response return rate from among employees in the development. MCDOT will tabulate and analyze this information, and provide results on the aggregate mode share profiles of employers/employees in the Project upon request.

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

Applicant will provide space and equipment for one Real Time Transit Information sign at a highly-used location in the Project to assist employees and visitors as appropriate, with transportation information. Applicant will provide conduit, electrical and internet connections. Applicant has two options in regard to providing this signage:

- a. Applicant may display County-provided transit information on monitor(s) Applicant uses to display other information related to the Project (i.e., building directory, event announcements, location of specific sections or rooms in the project or building). Applicant must display on such monitor(s) Real Time Transit Information and other commuter and general transportation information and promotional materials on transportation management programs.
- b. Alternatively, Applicant may install County-provided equipment designed to provide the relevant commuter and general transportation information, including a display monitor. Applicant must be responsible for installing such sign(s), must reimburse MCDOT for the cost of the monitor up to a maximum of \$15,000, and must pay 5 years of maintenance for the signs.

6. Flexible Work Hours. Applicant will encourage its commercial tenants to maintain a flextime and telework policy for those employers/employees for whom it is feasible, to allow work trips of employees to be shifted out of peak travel periods.

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

8. Employee Parking. Applicant will engage in parking reduction programs for the office component of the development by: (a) providing less than the maximum allowable on-site parking, (b) encouraging office employers to subsidize parking for vanpools and carpools, (c) not requiring that tenant leases in a multi-tenant office building commit to a minimum number of parking spaces as a precondition to leasing space in the office building, (d) notifying prospective office tenants of alternatives to monthly parking arrangements for their employees, including information about the availability of transit benefit programs and other transportation benefits with the materials provided by MCDOT, and (e) implementing a strategy in a multi-tenant office and hotel to help ensure that there will be adequate parking for hotel patrons within the parking facility.

9. Car/Van Pooling Parking. Applicant will attempt to provide carpool and/or vanpool parking spaces in the Project in a preferred, highly convenient location for employees. In the event parking structures cannot accommodate carpool and/or vanpool parking, the Applicant will attempt to provide such spaces as needed in preferred, highly convenient alternative parking facilities locations. Any reserved carpooling and vanpooling spaces not utilized as of 10 am each day may be made available to any other parking facility user. As demand increases, Applicant will increase the number of spaces dedicated to carpooling and vanpooling vehicles accordingly to the extent additional unassigned parking spaces are reasonably available.

10. Electric Vehicle Charging Station (EV Charging Station). Applicant will provide at least two (2) EV charging station or the number required by law, whichever is greater, in the Project in parking facilities, and 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 must also provide "way finding" and other signage to facilitate and promote use of such EV charging stations within the Project. Applicant may determine the commercial arrangements under which charging stations must be operated, including, without limitation, the type of charging station to be used (e.g., Level 3 or Level 2 charging stations) and the use of third party providers.

In addition, the Applicant is encouraged to provide pre-wiring in employee and tenant parking facilities and, or, offer financial incentives to tenants (employers), employees of the Project to encourage their installation of wiring and charging equipment in their designated spaces.

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

12. 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. 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. No charges will be imposed for bicycle parking.

13. Bikesharing. The Applicant must design space in the Woodmont Avenue streetscape area adjacent to the Project to accommodate one bikesharing docking station (or similar provision required by the County) (15 bikes) to enable this form of transportation to be used by employees and visitors at the Project. The location of this docking station must be selected in concert with MCDOT, based upon the requirements of the bikesharing system in the County, and in a highly visible, publicly accessible, convenient and well-lit near the Property. Conduit must be provided in the event of insufficient solar access. A typical station with 15 docks requires a space of 43 feet by 10 feet.

The Applicant will pay the capital cost of the on-site bikeshare station. To the extent necessary, Applicant must allow MCDOT or its contractors access to the Project to install, service and maintain the bikeshare stations. The Applicant will also contribute \$56,300 for the capital cost of one off-site bikeshare station. Applicant must take other actions in concert with MCDOT to promote use of bikesharing among employees and visitors at the Project, in order to accomplish the objectives of the TMD.

14. Shower Facilities. Applicant will encourage major employers in the Project to provide shower facilities in the Project for the use of their employees that bicycle or walk to the Property.

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

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

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

18. Binding Effect. This Agreement must be binding upon and must inure to the benefit of the successors and assignees of Applicant, MCDOT, and the Planning Board. The

agreements set forth herein are deemed to be covenants running with the land with respect to the Property.

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

20. County Information Obligations. Upon request, and to the extent feasible within the constraints of staff and fiscal resources, MCDOT must respond to inquiries from the Applicant regarding available transportation systems and facilities in the TMD and must provide the Applicant with any existing information, including printed or electronic 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 employees and visitors. MCDOT may require the Applicant to reimburse MCDOT for the costs incurred in providing materials for this purpose.

22. Applicant's Obligations. The obligations of Applicant under this Agreement must apply only during the period when it is the fee simple owner/the holder of a ground lease for the Property or any part thereof and only to land it leases or owns. If the Applicant ceases to own the Property or hold a ground lease 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 of Applicant's successors and assigns, to the extent permitted by law and the applicant will be released from any liabilities thereafter arising with respect to the Property or such portion thereof once the successor or assignee assumes the Applicant's obligations.

23. 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 "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 MCDOT.

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

(a) If to Applicant to:

7750 Wisconsin Avenue LLC
BCH Hotel, LLC
Attention: Marc Duber
c/o The Bernstein Companies
3299 K Street., N.W., Suite 700
Washington, DC 20007

with a copy to:

C. Robert Dalrymple, Esquire
Linowes and Blocher LLP
7200 Wisconsin Avenue Suite 800
Bethesda, Maryland 20814

(b) If to the Planning Board to: Chairman, Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, 8787 Georgia Avenue, Silver Spring, Maryland 20910, with a copy not to constitute notice, to Associate General Counsel, Office of the General Counsel, 8787 Georgia Avenue, Suite 205, Silver Spring, Maryland 20910.

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

25. 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.

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

27. 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.

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

29. 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. Deed reference for this Agreement must be reflected on the record plat.

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

causes of action in any third parties or to increase MCDOT's liability above the caps established by law.

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

[SIGNATURE PAGE FOLLOWS]

APPLICANT:

7750 WISCONSIN AVENUE, LLC a Delaware limited liability company

By: TBC Manager LLC, a Maryland limited liability company, its Manager

By: _____
Adam K. Bernstein, Manager

* * *

STATE OF MARYLAND

*

* to wit:

COUNTY OF _____

*

I HEREBY CERTIFY that on this ____ day of _____, 2017, before me, a Notary Public in and for the State and County aforesaid, personally appeared Adam K. Bernstein, known to me (or satisfactorily proven) to be the Manager of TBC Manager LLC, the Manager of Bethesda Center, LLC, a Delaware limited liability company, and that such person, being authorized to do so, executed the foregoing and annexed instrument on behalf of such corporation for the purposes therein contained.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

APPLICANT:
BCH HOTEL, LLC,
a Delaware limited liability company

By: _____

WITNESS:

_____ By: _____

By: _____
Name: _____
Title: _____
Date: _____

STATE OF _____)

)ss:

COUNTY OF _____)

I HEREBY CERTIFY that on this ____ day of _____, 20____, before me, a Notary Public in and for the aforesaid jurisdiction, personally appeared _____ (name), _____ (title) of _____, Inc., on behalf of _____. as a member of _____, as general partner of _____, Applicant, and that he/she did acknowledge that he/she executed the foregoing instrument on behalf of _____ for the purposes therein contained, and further acknowledged the foregoing instrument to be the act of _____.

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

Notary Public (Please Print Name After Signature)

My Commission Expires: _____

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

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

WITNESS:

By: _____
Name: _____
Title: _____

STATE OF _____
*
COUNTY OF _____

* * *
*
to wit:
*

I HEREBY CERTIFY that on this ____ day of _____, 2017, before me, a Notary Public in and for the State and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the _____ (title) of Montgomery County Planning Department of the Maryland-National Capital Park and Planning Commission, a public body corporate, and that such _____ (title), being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the said public body corporate.

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

Notary Public (Please Print Name after Signature)

My Commission Expires: _____

[NOTARIAL SEAL]

RECOMMENDED BY:

**MONTGOMERY COUNTY
DEPARTMENT OF
TRANSPORTATION**

By: _____

Al R. Roshdieh
Director

WITNESS:

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

By: _____
Ramona Bell-Pearson
Assistant Chief Administrative Officer

APPROVED AS TO FORM AND LEGALITY:

_____ (Printed Name)
Office of the County Attorney

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

I HEREBY CERTIFY that on this ____ day of _____, 2017, before me, the undersigned officer, personally appeared Ramona Bell-Pearson, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument as Assistant Chief Administrative Officer of Montgomery County, Maryland, and acknowledged that she, as such Assistant Chief Administrative Officer, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of Montgomery County, Maryland.

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

Notary Public (Please Print Name after Signature)

My Commission Expires: _____
[NOTARIAL SEAL]

ATTORNEY'S CERTIFICATE

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

C. Robert Dalrymple, Esquire

AFTER RECORDATION, PLEASE RETURN TO:

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

EXHIBIT B

ASSIGNMENT

_____, successor in interest and/or assignee of Applicant, hereby agree to be bound by the terms and provisions of the Traffic Mitigation Agreement dated _____, 201_, by and among Applicant, the Montgomery County Department of Transportation, and the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission. Notification of this assignment must be provided by Applicant to all parties as required under Section 23 of the Traffic Mitigation Agreement.

Name of Assignee

Contact Person

Address

City, State, ZIP

Area Code & Phone Number

Attach Notarization Page