

**LINOWES**  
**AND BLOCHER LLP**  
ATTORNEYS AT LAW

June 2, 2005

Emily J. Vaias  
301.961.5174  
evaia@linowes-law.com

**VIA HAND DELIVERY**

Ms. Cathy Conlon  
Development Review  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, MD 20910

Re: Amendment to Preliminary Plan No. 1-98091 – Parcel 14 (previously known as Parcels 2A and 5A), Rock Spring Park (the “Property”)  
Request for Adequate Public Facilities Approval of Final Office Building (117,175 square feet)

Dear Ms. Conlon:

On behalf of Elizabethan Court Associates I & II Limited Partnerships (the “Applicant”), the owners of the above-referenced Property, we hereby submit this request to amend the Preliminary Plan to approve the final unbuilt office building on the Property. This Property is recorded as Parcel 14 on Plat No. 21681 (plat attached hereto as Exhibit A) and was approved by Preliminary Plan No. 1-98091 (the Preliminary Plan and Preliminary Plan Opinion, dated September 7, 1999 are attached hereto as Exhibits B and C, respectively), pursuant to the FY 2000 Annual Growth Policy (the “AGP”) Alternative Review Procedures for Expedited Development Approval (“Pay-and-Go”). The entire Property received approval for 463,651 square feet of office development, consisting of four office buildings. Two of these buildings, totaling 247,926 square feet, were constructed in the early 1990’s (they consist of the 6-story Camalier Building and the 6-story Champlain Building). The third building was completed in December of 2001 and consists of 98,550 square feet of medical office space (the “Suburban Hospital Building”). The final and fourth building will have 117,175 square feet of office space (the “Final Building”).

The Suburban Hospital Building and the Final Building were approved by Site Plan No. 8-90027A (the Site Plan Opinion is attached hereto as Exhibit D).<sup>1</sup> Consistent with the Preliminary

<sup>1</sup> Although the Site Plan approved 98,500 square feet of medical office space and 117,225 square feet of general office space, the Suburban Hospital Building was actually constructed with 50 additional square feet or 98,550 square feet, accordingly, the Final Building will be limited to 117,175 square feet.



Ms. Cathy Conlon  
June 2, 2005  
Page 2

Plan and Site Plan approvals, the Applicant entered into a Traffic Mitigation Agreement dated May 10, 2001 (the "TMA") which was recorded in the Land Records at Liber 21199, folio 768 (a copy of the TMA is attached hereto as Exhibit E). The Applicant also entered into an Adequate Public Facilities Ordinance Agreement – Expedited Development Approval Excise Tax Agreement (the "APFO Agreement"), dated December 19, 2000 (a copy of the APFO Agreement is attached hereto as Exhibit F). Pursuant to these agreements and prior to issuance of the building permit for the Suburban Hospital Building, the Applicant paid to the County the required Pay-and-Go fee of \$344,925.00.

Pursuant to a letter dated October 30, 2003, from Ronald C. Welke, Transportation Planning (the "Transportation Letter") (a copy of the Transportation Letter is attached hereto as Exhibit G), and consistent with the Applicant's request, the remaining 117,175 square feet for the Final Building were placed in the queue of pending preliminary plans at that time. As you are aware, the queue has no impact under the current Annual Growth Policy. Therefore, we are submitting this amendment to the Preliminary Plan pursuant to Section 50-20(c)(3)(iii). Pursuant to this section, we are requesting a twelve-year adequate public facilities determination for the Final Building. We have enclosed herewith a Traffic Study prepared by Wells & Associates, dated May 27, 2005, showing that all of the required intersections operate at acceptable levels of congestion with construction of the Final Building. In addition, we have included herewith the application and filing fee in the amount of \$7,365.25.

We look forward to working with you on this Property. If you have any questions please feel free to contact me.

Sincerely,

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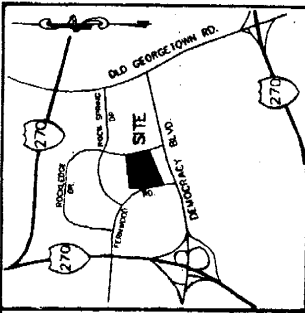
**LINOWES AND BLOCHER LLP**



Emily J. Vaias

Enclosures

cc: Charles A. Camalier, Esq.  
Mr. Martin Wells  
Barbara A. Sears, Esq.



VICINITY MAP  
SCALE: 1" = 200'

CURVE TABLE

CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING	DELTA
1	540.00	178.24	147.47	177.94	S 06° 48' 12" E	133° 36' 26"
2	2174.86	288.67	181.56	288.67	S 89° 39' 40" W	077° 49' 56"
3	2560.70	58.30	28.20	58.30	S 89° 23' 42" W	071° 13' 13"
4	1590.00	492.54	243.14	490.98	N 21° 47' 06" W	173° 21' 16"

NOTES:

- THE PROPERTY SHOWN HEREON IS LOCATED ON TAX ASSESSMENT MAP NO. 0953 AS PARCELS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.
- TAX ACCOUNT NUMBERS: (PARCEL 1818) 04-0004996 (PARCEL 1822) 04-0172207.
- THE HORIZONTAL DATUM IS BASED ON THE FOLLOWING W.S.S.C. CONTROL STATIONS:  
W.S.C. STATION C-187-H = NORTH 48.688.05 WEST 34.044.08  
W.S.C. STATION C-187-J = NORTH 48.591.73 WEST 34.388.69
- THIS SUBDIVISION RECORD PLAT IS NOT INTENDED TO SHOW EVERY MATTER AFFECTING THE PROPERTY, THE SUBDIVISION RECORD PLAT IS NOT INTENDED TO REPLACE ANY EXAMINATION OF TITLE OR TO DEPEND ON OR NOTE ALL MATTERS AFFECTING TITLE.
- ALL TERMS, CONDITIONS, AGREEMENTS, LIMITATIONS, AND REQUIREMENTS ASSOCIATED WITH ANY PROPERTY, APPROVED BY THE MONTGOMERY COUNTY PLANNING BOARD, INCLUDING DEVELOPMENT OF THE PLAN AS APPROVED, THE OFFICIAL PUBLIC FILES, FOR ANY SUCH PLAN ARE HEREBY INCORPORATED BY AND SHALL BE A PART OF THIS SUBDIVISION RECORD PLAT, UNLESS EXPRESSLY CONTAINED BY THIS MAP OR OTHERWISE SPECIALLY NOTED THEREON.
- THE PROPERTY DELINEATED HEREON IS SUBJECT TO THE ZONING REGULATIONS AS SET FORTH IN THE MONTGOMERY COUNTY CODE, ARTICLE 59-C-5. DEVELOPMENT OF THE PROPERTY IS CONTROLLED BY THE TERMS AND CONDITIONS AS DETERMINED BY APPROVAL BY THE MONTGOMERY COUNTY PLANNING BOARD OF PRELIMINARY PLAN NO. 1-99098 AND THE SITE PLAN NO. B-90027A, AS AMENDED TO DATE OF THIS MAP. 43,651 SQUARE FEET INCLUDES THE DEVELOPMENT EXISTING AT GENERAL OFFICE AND MEDICAL OFFICE USE. PRELIMINARY AND SITE PLANS (247,928 SF.) PLUS THE DEVELOPMENT PROPOSED WITH THE REFERENCED PRELIMINARY AND SITE PLANS (143,728 SF.) THIS SUBDIVISION IS SUBJECT TO A TRAFFIC MITIGATION AGREEMENT WITH THE M-NDP&C, A SITE PLAN FOR THE PRIVATE STORM DRAIN SYSTEM AND OPEN SPACE AS RECORDED ON MARCH 8, 2000, IN THE LAND RECORDS OF MONTGOMERY COUNTY IN LIBER 17026, FOLIO 598.
- THE AREAS LABELED HEREON AS PART 1 AND PART 2 -- TYPE B FOREST CONSERVATION ESMT -- REFLECT AREAS THAT HAVE RESTRICTIONS ON THE LAND AND NATURAL FEATURES AS DESCRIBED IN A DOCUMENT RECORDED IN THE MONTGOMERY COUNTY LAND RECORDS IN LIBER 13178 AT FOLIO 421.

OWNERS CERTIFICATION

WE, THE UNDERSIGNED, OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON, HEREBY ADOPT THIS PLAN OF SUBDIVISION AND ESTABLISH THE MINIMUM BUILDING RESTRICTION LINES AND THE MINIMUM BUILDING RESTRICTIONS FOR OUR SUCCESSORS AND ASSIGNS WILL CAUSE ALL PROPERTY CORNER MARKERS AND ANY OTHER RECORDED MARKERS TO BE RECORDED IN THE MONTGOMERY COUNTY CODE PRIOR TO OCCUPANCY OF THE CONSTRUCTED ACCORDANCE WITH SECTION 50-24 (4) OF THE MONTGOMERY COUNTY CODE PRIOR TO OCCUPANCY OF THE CONSTRUCTED ON THE PARCEL SHOWN HEREON.

EXCEPT FOR A CERTAIN GROUND LEASE AND THREE REEDS OF TRUST, AND THE TRUSTS ON THE PROPERTY INCLUDED IN THIS SUBDIVISION PLAN, ASSENT TO THIS PLAN.

CONSENT:

MONUMENTAL LIFE INSURANCE COMPANY, SUCCESSOR BY MERGER TO COMMERCIAL LIFE INSURANCE COMPANY, A KENTUCKY CORPORATION

BY: *[Signature]* DATE: 11/16/00 TRUSTEE

BY: *[Signature]* DATE: 11/16/00 TRUSTEE

BY: *[Signature]* DATE: 11/16/00 TRUSTEE

CONSENT:

PROSPER BENEFIT LIFE INSURANCE COMPANY, FORMERLY UNION AS PROVIDENT LIFE AND HEALTH INSURANCE COMPANY, A MISSOURI CORPORATION

BY: *[Signature]* DATE: 11/16/00 TRUSTEE

BY: *[Signature]* DATE: 11/16/00 TRUSTEE

BY: *[Signature]* DATE: 11/16/00 TRUSTEE

CONSENT:

FIRST UNION NATIONAL BANK, AS TRUSTEE

BY: *[Signature]* DATE: 11/16/00 TRUSTEE

BY: *[Signature]* DATE: 11/16/00 TRUSTEE

BY: *[Signature]* DATE: 11/16/00 TRUSTEE

CONSENT:

ELIZABETHAN COURT ASSOCIATES I LIMITED PARTNERSHIP, A MARYLAND LIMITED PARTNERSHIP BY ITS GENERAL PARTNER, BELMART CORPORATION, A MARYLAND CORPORATION

BY: *[Signature]* DATE: 10-27-00

BY: *[Signature]* DATE: 10-27-00

CONSENT:

SURBURBAN ROCK SPRING, LLC, A DELAWARE LIMITED LIABILITY COMPANY

BY: *[Signature]* DATE: 10-27-00

BY: *[Signature]* DATE: 10-27-00

CONSENT:

ELIZABETHAN COURT ASSOCIATES II LIMITED PARTNERSHIP, A MARYLAND LIMITED PARTNERSHIP BY ITS SOLE GENERAL PARTNER, BELMART CORPORATION, A MARYLAND CORPORATION

BY: *[Signature]* DATE: 10-27-00

BY: *[Signature]* DATE: 10-27-00

CONSENT:

ELIZABETHAN COURT ASSOCIATES I LIMITED PARTNERSHIP, A MARYLAND LIMITED PARTNERSHIP BY ITS SOLE GENERAL PARTNER, BELMART CORPORATION, A MARYLAND CORPORATION

BY: *[Signature]* DATE: 10-27-00

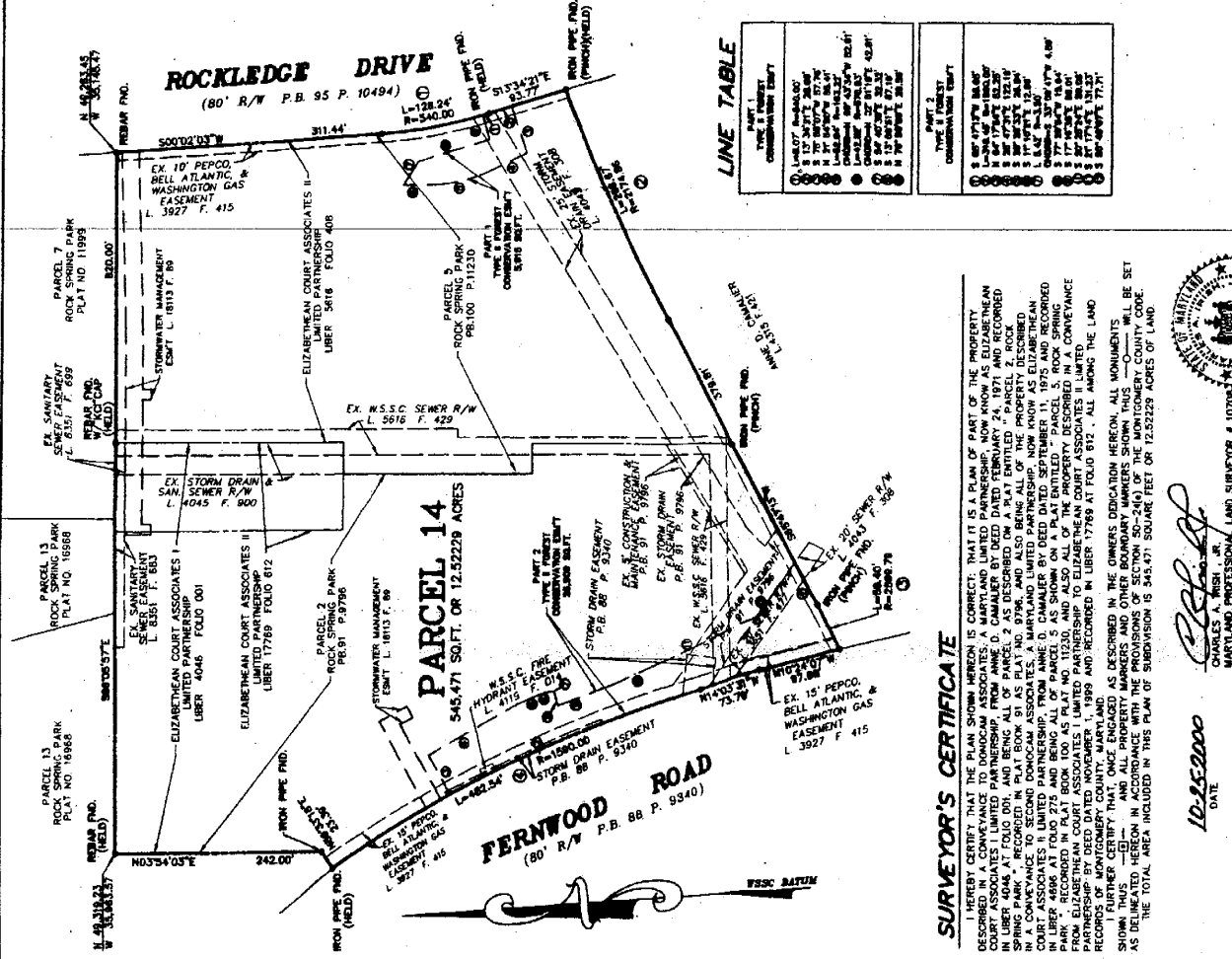
BY: *[Signature]* DATE: 10-27-00

CONSENT:

ELIZABETHAN COURT ASSOCIATES II LIMITED PARTNERSHIP, A MARYLAND LIMITED PARTNERSHIP BY ITS SOLE GENERAL PARTNER, BELMART CORPORATION, A MARYLAND CORPORATION

BY: *[Signature]* DATE: 10-27-00

BY: *[Signature]* DATE: 10-27-00



LINE TABLE

TYPE	DESCRIPTION	BEARING	LENGTH
1	CONVEYANCE FROM EX-1	S 89° 23' 42" W	58.30
2	CONVEYANCE FROM EX-2	S 06° 48' 12" E	178.24
3	CONVEYANCE FROM EX-3	S 89° 39' 40" W	288.67
4	CONVEYANCE FROM EX-4	N 21° 47' 06" W	492.54

AREA TABULATION

OLD PARCEL 2	397,285 SQ. FT. OR 7.03360 ACRES
OLD PARCEL 5	2,382,216 SQ. FT. OR 5.46689 ACRES
TOTAL AREA OF PLAT	545,471 SQ. FT. OR 12.52229 ACRES

GRAPHIC SCALE



SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE PLAN SHOWN HEREON IS CORRECT, THAT IT IS A PLAN OF PART OF THE PROPERTY DESCRIBED IN A CONVEYANCE TO DOMONICO ASSOCIATES, A MARYLAND LIMITED PARTNERSHIP, NOW KNOWN AS ELIZABETHAN COURT ASSOCIATES I LIMITED PARTNERSHIP, FROM ANNE D. CAMALEER BY DEED DATED FEBRUARY 24, 1971 AND RECORDED IN LIBER 604 AT FOLIO 001, AND BEING ALL OF PARCEL 2 AS DESCRIBED ON A PLAT DATED FEBRUARY 24, 1971 AND RECORDED IN A CONVEYANCE TO SECOND DOMONICO ASSOCIATES, A MARYLAND LIMITED PARTNERSHIP, NOW KNOWN AS ELIZABETHAN COURT ASSOCIATES II LIMITED PARTNERSHIP, FROM ANNE D. CAMALEER BY DEED DATED SEPTEMBER 11, 1975 AND RECORDED IN LIBER 606 AT FOLIO 275 AND BEING ALL OF PARCEL 5 AS SHOWN ON A PLAT DATED FEBRUARY 24, 1971 AND RECORDED IN A CONVEYANCE FROM ELIZABETHAN COURT ASSOCIATES I LIMITED PARTNERSHIP TO ELIZABETHAN COURT ASSOCIATES II LIMITED PARTNERSHIP BY DEED DATED NOVEMBER 1, 1999 AND RECORDED IN LIBER 17769 AT FOLIO 812. ALL AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND.

CHARLES A. WISH, JR., MARYLAND PROFESSIONAL LAND SURVEYOR # 107008

DATE: 10-25-2000

FOR PUBLIC WATER AND SEWER ONLY

DEPARTMENT OF PERMITTING SERVICES

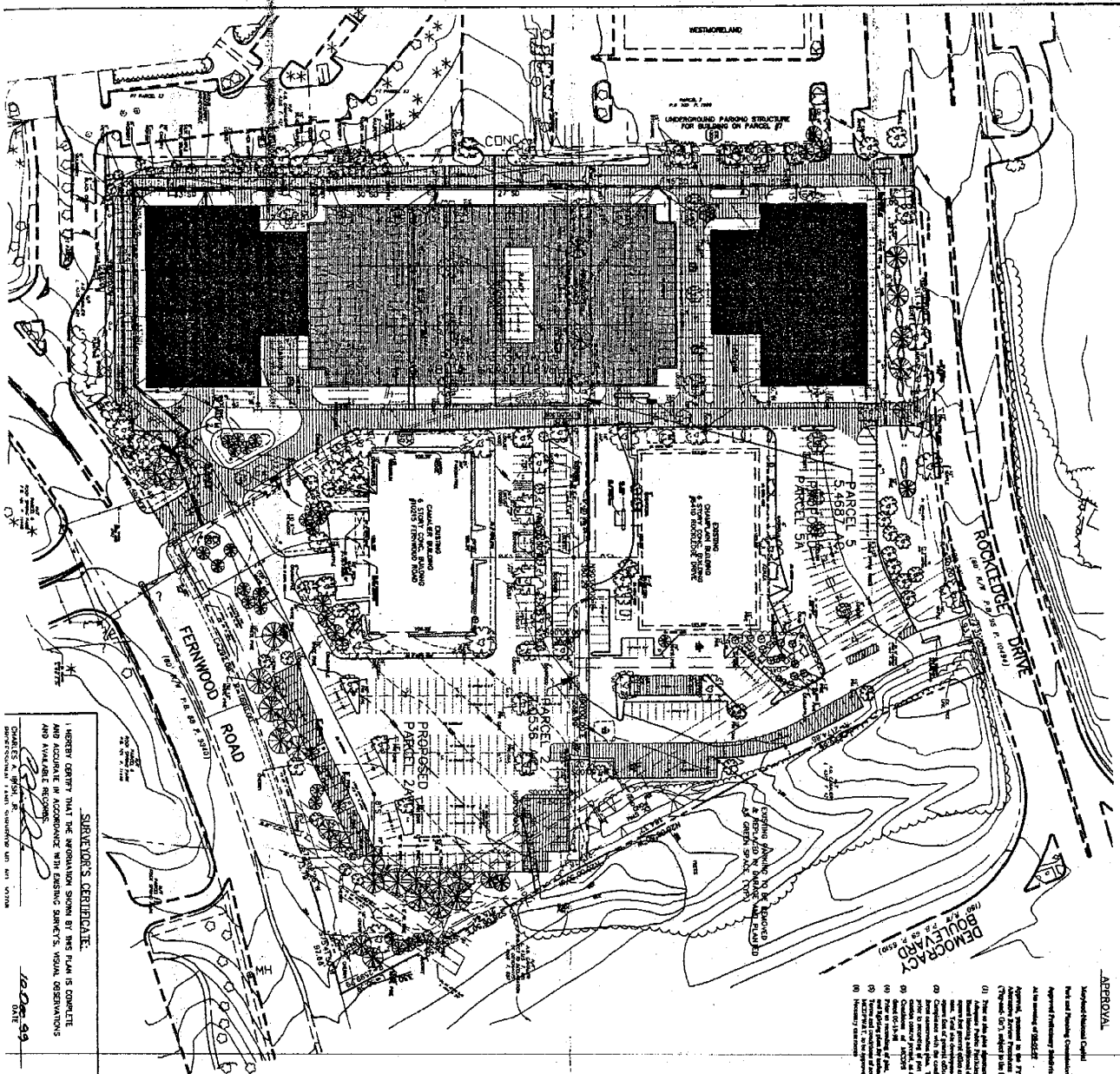
MONTGOMERY COUNTY, MARYLAND

APPROVED: *[Signature]* DIRECTOR

APPROVED: *[Signature]* ASST. SECRETARY - TREASURER

M.N.C.P. & P.C. RECORD FILE NO. 614-30



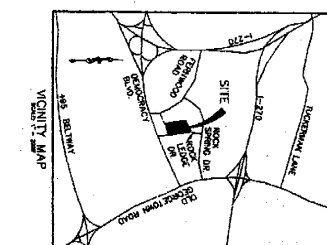


**SUBSECTOR'S CERTIFICATE:**  
 I HEREBY CERTIFY THAT THE IMPROVEMENTS SHOWN BY THIS PLAN IS COMPLETE AND AVAILABLE RECORDS.  
 DATE: 12/08/09  
 NAME: [Signature]

- APPROVAL:**
- (1) The site plan shall be approved by the Planning Commission.
  - (2) The site plan shall be approved by the Board of Public Works.
  - (3) The site plan shall be approved by the Board of Health.
  - (4) The site plan shall be approved by the Board of Education.
  - (5) The site plan shall be approved by the Board of Parks and Recreation.
  - (6) The site plan shall be approved by the Board of Community Development.
  - (7) The site plan shall be approved by the Board of Economic Development.
  - (8) The site plan shall be approved by the Board of Environmental and Planning.
  - (9) The site plan shall be approved by the Board of Finance.
  - (10) The site plan shall be approved by the Board of Information Technology.
  - (11) The site plan shall be approved by the Board of Intergovernmental Affairs.
  - (12) The site plan shall be approved by the Board of Legal Services.
  - (13) The site plan shall be approved by the Board of Management and Administration.
  - (14) The site plan shall be approved by the Board of Public Safety.
  - (15) The site plan shall be approved by the Board of Social Services.
  - (16) The site plan shall be approved by the Board of Transportation.
  - (17) The site plan shall be approved by the Board of Urban and Community Planning.
  - (18) The site plan shall be approved by the Board of Workforce Development.

**GENERAL NOTES AND SITE DATA**

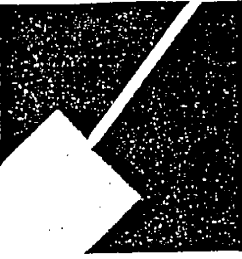
1. THE PLAN SHOWS PROPOSED IMPROVEMENTS TO THE EXISTING SITE.
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DESCRIPTION	PARCEL 2A	PARCEL 5A	TOTAL
EXISTING BLDG AREA	221,308 SF	234,088 SF	455,396 SF
NEW BLDG AREA	517,670 SF	219,973 SF	737,643 SF
EXISTING DRIVEWAY	118,400 SF	128,973 SF	247,373 SF
NEW DRIVEWAY	133,720 SF	80,000 SF	213,720 SF
TOTAL	249,728 SF	219,973 SF	469,701 SF
EXISTING PAVEMENT	416,100 SF	100 FT	416,100 SF
NEW PAVEMENT	80 FT	80 FT	160 FT
EXISTING SIDEWALKS	80 FT	80 FT	160 FT
NEW SIDEWALKS	80 FT	80 FT	160 FT
EXISTING CURBS	80 FT	80 FT	160 FT
NEW CURBS	80 FT	80 FT	160 FT
EXISTING UTILITY	80 FT	80 FT	160 FT
NEW UTILITY	80 FT	80 FT	160 FT
EXISTING SIGNAGE	80 FT	80 FT	160 FT
NEW SIGNAGE	80 FT	80 FT	160 FT
EXISTING FURNITURE	80 FT	80 FT	160 FT
NEW FURNITURE	80 FT	80 FT	160 FT
EXISTING LIGHTING	80 FT	80 FT	160 FT
NEW LIGHTING	80 FT	80 FT	160 FT
EXISTING LANDSCAPE	80 FT	80 FT	160 FT
NEW LANDSCAPE	80 FT	80 FT	160 FT
EXISTING UTILITIES	80 FT	80 FT	160 FT
NEW UTILITIES	80 FT	80 FT	160 FT
EXISTING TOTAL	101,000 SF	68,500 SF	169,500 SF
NEW TOTAL	105,000 SF	73,100 SF	178,100 SF
EXISTING TOTAL	101,000 SF	68,500 SF	169,500 SF
NEW TOTAL	105,000 SF	73,100 SF	178,100 SF

Date held: September 7, 1999

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK & PLANNING

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

Action: Approved Staff Recommendation  
Motion of Comm. Perdue, seconded by  
Comm. Wellington with a vote of 3-0;  
Comms. Perdue, Wellington and Hussmann,  
voting in favor. Comms. Holmes and  
Bryant absent

MONTGOMERY COUNTY PLANNING BOARD

REVISED OPINION

Preliminary Plan 1-98091  
NAME OF PLAN: ROCK SPRING PARK

On 05-07-98, ELIZABETHAN COURT ASSOCIATES II LP submitted an application for the approval of a preliminary plan of subdivision of property in the I-3 zone. The application proposed to create 2 lots on 1.5 acres of land. The application was designated Preliminary Plan 1-98091. On 08-05-99, Preliminary Plan 1-98091 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form, attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-98091 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-98091.

Approval, pursuant to the FY2000 Annual Growth Policy (AGP) Alternative Review Procedures for Expedited Development Approval ("Pay-and- Go"), subject to the following conditions:

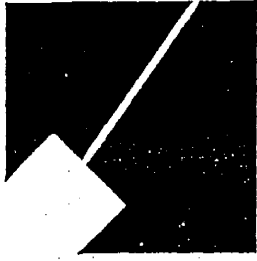
- (1) Prior to site plan signature set approval, applicant to submit an Adequate Public Facilities (APF) agreement with the Planning Board limiting additional development to a maximum of 117,225 square feet general office and 98,500 square feet of medical office uses. Total site development is limited to a maximum of 463,651 square feet of general office and medical office use
- (2) Compliance with the conditions of approval of the preliminary forest conservation plan. The applicant must meet all conditions prior to recording of plat or MCDPS issuance of sediment and erosion control permit, as appropriate
- (3) Conditions of MCDPS stormwater management approval dated 06-19-98
- (4) Prior to recording of plat, applicant to submit final landscaping and lighting plan for technical staff review and approval

Preliminary Plan 1-98091

Page 2 of 2

- (5) Terms and conditions of access and improvements, as required by MCDPW&T, to be approved prior to release of building permits
- (6) Necessary easements
- (7) In accordance with the provisions of the expedited development approval excise tax (EDAET) of the FY99 AGP, this preliminary plan will remain valid until October 7, 2001 (25 months from the date of mailing, which is September 7, 1999). 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 order for the approval to remain valid, all building permits must be issued within two years of the recordation of the associated plat(s).

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760  
MONTGOMERY COUNTY PLANNING BOARD

OPINION

DATE MAILED: September 7, 1999  
SITE PLAN REVIEW: #8-90027A  
PROJECT: Rock Spring Park, Parcels 2A and 5A

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*Action: Approval subject to conditions. Motion was made by Commissioner Perdue, seconded by Commissioner Wellington, with a vote of 3-0, Commissioners Hussmann, Perdue and Wellington voting for. Commissioners Bryant and Holmes were absent.*

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The date of this written opinion is September 7, 1999 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before October 7, 1999 (which is thirty days from the date of this written opinion). If no administrative appeal is timely filed, this site plan shall remain valid for as long as Preliminary Plan #1-98091 is valid, as provided in Section 59-D-3.8. Once the property is recorded, this site plan shall remain valid until the expiration of the project's APFO approval, as provided in Section 59-D-3.8.

On August 5, 1999, Site Plan #8-90027A was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based on the testimony and evidence presented and on the staff report which is made a part hereof, the Montgomery County Planning Board finds:

1. The Site Plan is consistent with the approved development plan or a project plan for the optional method of development, if required;
2. The Site Plan meets all of the requirements of the zone in which it is located;

(12)

3. The locations of the buildings and structures, the open spaces, the landscaping, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient;
4. Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development;
5. The site plan meets all applicable requirements of Chapter 22A regarding forest conservation.

The Montgomery County Planning Board APPROVES Site Plan Review #8-90027A which consists of 215,725 gross square feet of commercial office subject to the following conditions:

1. Limit the preliminary plan and site plan based on the adequate public facilities finding (APF) of the Transportation Planning Division memorandum dated July 29, 1999, (see attached), as follows:
  - a. On Parcel 2a, a second building of 117,225 gross square feet of general office use.
  - b. On Parcel 5a, a second building of 98,500 gross square feet of medical office use.
2. The applicant shall enter into a Traffic Mitigation Agreement with the Planning Board and the Montgomery County Department of Public Works (MCDPWT) to join and participate in the North Bethesda Transportation Management Organization (TMO) to both:
  - a. Assist in achieving and maintaining the 39% non-driver traffic mitigation goal of the North Bethesda Transportation Management District (TMD). Traffic mitigation is recommended in the *Bethesda/Garrett Park Master Plan* for all new developments. Traffic Mitigation Agreement including a Trip Reduction Plan is to be negotiated with the applicants for subdivision to assist the North Bethesda TMO in meeting the mode share goal established in the master plan.
  - b. Achieve and maintain the 10% trip reduction goal which is required for development in the I-3 zone which can be done by joining and participating in the North Bethesda TMD.

Both goals may be concurrently achieved and maintained.

1. The following Standard Conditions of Approval were approved by the Planning Board on October 10, 1995, and apply to the subject site:
  - A. Submit a Site Plan Enforcement Agreement and Development Program for review and approval prior to approval of the signature set as follows:
    - 1) Development Program to include a phasing schedule as follows:



- a. Landscaping associated with each parking lot and building shall be completed as construction of each facility is completed.
- b. Pedestrian pathways and seating areas associated with each facility shall be completed as construction of each facility is completed.
- c. Clearing and grading to correspond to the construction phasing, to minimize soil erosion;
- d. Coordination of each section of the development and roads;
- e. Phasing of dedications, stormwater management, sediment/erosion control, recreation, forestation, community paths, trip mitigation or other features.

2) Site Plan Enforcement Agreement to delineate transportation management program, park maintenance agreement or other requirement of a condition of approval or staff correspondence dated July 29, 1999 (Axler to Shaneman and Komes).

B. Signature set of site, landscape/lighting, forest conservation and sediment and erosion control plans to include for staff review prior to approval by Montgomery County Department of Permitting Services (DPS):

- 1) Limits of disturbance;
- 2) Methods and location of tree protection;
- 3) Conditions of DPS Stormwater Management Concept waiver letter dated 6/19/98;
- 4) Note stating the M-NCPPC staff must inspect tree-save areas and protection devices prior to clearing and grading;
- 5) The development program inspection schedule.
- 6) Conservation easement boundary
- 7) Street trees 45 feet on center along all public streets;

C. Forest Conservation Plan shall satisfy all conditions of approval prior to recording of plat and DPS issuance of sediment and erosion control permit.

D. No clearing or grading prior to M-NCPPC approval of signature set of plans.

4. Prior to signature set approval the following information shall be provided or the revisions made:

- a. Wherever possible, street trees no further than 45 feet on-center shall be provided along the entire frontage of Fernwood Road and Rockledge Drive.
- b. A lighting distribution plan shall be submitted which demonstrates (1) that all parking lot standards are located within landscape islands, and (2) a variety of appropriate attractive light fixtures, will be utilized to reinforce a high-quality business park image.

- c. The landscape plan shall be revised to add trees to define the axial nature of the central green space and an evergreen shrub hedge to screen views of parked cars. Design details including special paving and banding, planting, seating, lighting and the provision of focal point place-making features such as fountains and/or public art shall be added to the plans.
- d. Continuous lead-in walks, a minimum of five-feet-wide shall be provided along both sides of the entry drive off of Fernwood Road.
- e. A strong streetscape/entry planting shall be provided along the internal access drive.
- f. Details illustrating how the loading areas associated with the proposed building will be screened from view will be added to the plans.
- g. Tree protection fencing and details shall be added to the plans to ensure that the existing mature trees to be preserved will be protected throughout construction.
- h. An arborists report shall be submitted outlining the special protection/preservation methods necessary to ensure survival of the specimen trees to be preserved. This shall include a construction/tree preservation sequencing plan, details for root pruning, fertilization, the use of mycorrhizae, etc.
- i. Additional green area shall be provided at the base of each building. In no case shall there be no green area provided or an area so small as to not permit the planting of small trees and shrub masses to soften building mass, except at the building or parking entrance.
- j. Additional area shall be provided between the proposed four-story building on Parcel 5 and the proposed parking structure to permit the planting of street trees.
- k. A note shall be added to the plans which state that all roof mounted mechanical equipment shall be screened from view.

TRAFFIC MITIGATION AGREEMENT

This TRAFFIC MITIGATION AGREEMENT ("Agreement") is made on this 10<sup>th</sup> day of MAY, 2001, by and between Elizabethean Court Associates I Limited Partnership and Elizabethean Court Associates II Limited Partnership, (jointly the "Applicants" or "Owners"), The Montgomery County Planning Board of the Maryland National Capital Park and Planning Commission (the "Planning Board"), and Montgomery County Department of Public Works and Transportation, a Maryland municipal corporation (the "County" or "DPWT").

RECITALS

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

A. The Owners are the fee simple owners of a certain tract of land, portions of Parcel 14, recorded at Plat No. 21681 in the Land Records of Montgomery County, Maryland, previously known as Parcels 2A and 5A, Rock Spring Park, containing approximately 5.5 acres of land, located in the I-3 zone in North Bethesda, Montgomery County, Maryland, more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property").

RECORDING FEE 75.00  
TRAFFIC MIT. FEE 5.00  
TOTAL 80.00  
Rest. NO. 811  
Acpt # 26229  
Blk # 948  
04/04 PM

B. By opinion dated September 7, 1999, the Planning Board approved Site Plan # 90027A (the "Site Plan") to allow construction of 215,725 gross square feet of commercial office use (the "Project") on the Property. Attached hereto as Exhibit "B" is the opinion of the Planning Board (the "Opinion").

C. Section 59-C-5.436 of the Montgomery County Zoning Ordinance contains "Special Trip Reduction Guidelines" (the "Guidelines") applicable to properties in the I-3 Zone.

D. As an express condition of its written opinion approving the Site Plan, the Planning Board required the Applicants to enter into this Agreement with the Planning Board and DPWT to participate in the North Bethesda Transportation Management Organization (TMO) and to assist the North Bethesda Transportation Management District (TMD) in achieving and maintaining its 39% non-driver traffic mitigation goal; and to achieve and maintain the 10% trip reduction goal which is required for development in the I-3 zone, which can be done by joining and participating in the North Bethesda TMD. The components of the Traffic Mitigation Program are set forth on Exhibit "C" hereto, entitled Traffic Mitigation Program Attachment ("Program Attachment"), which is incorporated and expressly made a part of this Agreement.

FILED  
MONTGOMERY COUNTY  
CLERK'S OFFICE  
2002 JUN -3 P 3:59 P

NOW THEREFORE, in consideration of the mutual promises and stipulations set forth herein, including the foregoing recitals which are expressly made a part of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, their successors and assigns hereby agree to all of the following terms, conditions, requirements, and limitations.

Return to: Linowes & Blocher Box  
Attn: Emily Varas

Exhibit "E"

SECTION 1 - DEFINITIONS.

The terms listed below are utilized throughout this Agreement. A general definition of each term and/or an indication of the location, within this Agreement, that the term is defined in its context, follows:

“DPWT” - The Montgomery County Department of Public Works and Transportation

“Policy Area” - The County is currently divided into 22 policy areas, plus rural areas, to measure transportation capacity. The policy area boundaries are based on physical features such as rivers, parks, and freeways and on the similarity of their transportation characteristics. The transportation capacity test looks at both the upstream and downstream traffic impacts of existing development plus approved but unbuilt new development. An average level of service (LOS) standard is assigned to each policy area. The standard permits greater traffic congestion in areas where more transit is available as an alternative to the automobile. The transportation LOS test is used to determine whether there is sufficient capacity to accommodate any new development in the policy area.

“Program Attachment” - An attachment to this Agreement that indicates various binding details concerning the Traffic Mitigation Program, which are incorporated into the Agreement.

“Property” - That certain tract of land described on Exhibit “A”, owed by the Applicants, that is the subject of a certain application for Site Plan.

“Term” - The time frame during which the Program is to be in effect and enforceable against the Applicants, is more particularly described in Subsection 4.01 of this Agreement.

“Traffic Mitigation Program” or “Program” - A program consisting of on-site and/or off-site traffic mitigation measures developed, implemented and operated by the Applicants which is designed to offset the impact created by a certain number of single-occupancy vehicle trips operated during the peak hour.

“Traffic Mitigation Program Components” - Traffic mitigation measures, comprised of on-site measures and off-site measures that the Applicants will implement and operate to achieve and maintain the traffic mitigation goal.

“Unacceptable Peak-Hour Levels of Service” - A condition where the ability of existing public transportation facilities intended to serve area traffic is unacceptable due to excessive traffic congestion.

SECTION 2 - THE TRAFFIC MITIGATION GOAL.

2.01 Definition of Traffic Mitigation Goal. The fundamental purpose of the Program, as required as a condition of the Site Plan, is to create a mechanism that helps to achieve the traffic mitigation goal of the North Bethesda Traffic Mitigation District. The traffic mitigation

goal or other performance requirement, as identified in the Program Attachment, shall serve as a performance goal which is to be achieved by participation in the Traffic Mitigation Program.

2.02 Achievement of the Traffic Mitigation Goal. Achievement of the Traffic Mitigation Goal is determined by the Applicants' implementation of the items listed in the Program Attachment.

SECTION 3 - COMPONENTS OF THE TRAFFIC MITIGATION PROGRAM.

3.01 Aspects of the Program. The Applicants will cooperate with DPWT's Commuter Services Section to implement the items contained in the Program Attachment.

SECTION 4 - TERM OF THE TRAFFIC MITIGATION PROGRAM.

4.01 Establishing the Term of the Program. The Program shall be effective as of the date of this Agreement and shall continue in perpetuity or until a determination by the Planning Board that continuation of the Program is no longer appropriate or necessary to reduce vehicular trips in the North Bethesda Policy area. Once this Agreement is terminated, the Applicants will no longer be bound by any conditions hereunder.

SECTION 5 - ANNEXATION AND INCORPORATION.

The incorporation or annexation, at the request of the Owners, of all or a portion of the Property, within any municipality, including a municipality having planning, zoning, and subdivision authority over the Property, shall not relieve Applicants of any obligation under this Agreement to participate in the Traffic Mitigation Program. All of the benefits and rights of the Planning Board and County hereunder shall survive such annexation. Applicants, prior to any public hearing on an annexation petition for the Property or portion thereof must advise the Municipality of the existence of this Agreement and this survivability provision. Applicants' obligations under this Agreement should be in addition to any obligations imposed by the Municipality at the time of annexation; however, it is not the intent of this provision that the Applicants be required to duplicate or double their obligations hereunder.

SECTION 6 - OWNERS' REPRESENTATIONS AND WARRANTIES.

6.01 Authority to Act. If Owners are a corporation, limited partnership, or general partnership, they each certify as follows:

- (a) Owners are respectively a duly formed corporation or partnership, organized and validly existing, in good standing, under the laws of the

State of Maryland, and if not a Maryland corporation or partnership, are qualified to do business in Maryland.

- (b) Owners have full power and authority, under the terms of the documents creating it and other applicable laws and regulations, to have submitted the Property to the Planning Board for Site Plan Review and to enter into this Traffic Mitigation Agreement.
- (c) Owners, with respect to this Agreement, have full authority to execute and deliver the Agreement and to incur and perform the obligations provided for therein, the consummation of this transaction having been duly authorized by all proper and necessary actions under the respective corporate or partnership documents.
- (d) Owners are not currently engaged in any litigation or dispute which could lead to litigation before any court or administrative body that could materially and adversely affect the ability of the Owners to perform their obligations under the Agreement or affect the ability of the Planning Board or County to enforce the Agreement as provided herein.

6.02 Ownership of Property. Owners at the time of the execution and delivery of this Agreement are the absolute and lawful fee simple owners of the Property, having legal, equitable, and beneficial title to, and are lawfully seized and possessed of, the Property.

6.03 Annexation. Owners, as of the date of this Agreement, are not actively pursuing the initiation of a Petition for Annexation of all or a portion of the Property into any Municipality and are not aware of any proposal by any Municipality to annex all or a portion of the Property.

SECTION 7 - MISCELLANEOUS PROVISIONS.

7.01 Recordation of the Agreement. This Agreement shall be recorded among the Land Records of Montgomery County, Maryland.

7.02 Entire Agreement. This Agreement, including all exhibits hereto, constitutes the entire agreement among the parties and no party is liable to the other or bound in any manner with respect to the subject matter of this Agreement by express or implied warranties, guarantees, promises, statements or representations other than those expressly and specifically set forth in this Agreement.

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

7.04 Amendments/Modifications. This Agreement may only be modified if agreed to by the parties or their designee hereunder, reduced to a mutually acceptable signed written document, and recorded among the aforesaid land records. Amendments which are deemed by

the parties to materially alter the agreement and are inconsistent with its terms must be approved by the Director of DPWT and the Planning Board.

7.05 Governing Law. All questions with respect to the construction of this Agreement and the rights, remedies and liabilities of the parties shall be determined in accordance with the laws of the State of Maryland. Any and all suits for any and every breach of this Agreement shall be instituted and maintained in a court of competent jurisdiction in Montgomery County, Maryland.

7.06 Severability/Partial Invalidity Superseded by Subsequent Laws or Judicial Action. If any term, covenant or condition of this Agreement or its application to any person or circumstances shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected, and each term shall be valid and enforceable to the fullest extent permitted by law, unless by such application of the affected term, compliance with the material purposes of this Agreement may no longer be fulfilled.

7.07 INTENTIONALLY LEFT BLANK

7.08 Interpretation. The provisions of this Agreement and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties hereunder. The captions preceding the text of each Article, Section and subsection hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa. If any date upon which action is required under this Agreement shall be a Saturday, Sunday or legal holiday, the date for such action shall be extended to the first regular business day after such date which is not a Saturday, Sunday or legal holiday.

7.09 Assignments and Transfers. Owners may assign or transfer any of their rights or interests under this Agreement with respect to the Property or any portion thereof without the consent of either the Planning Board or County. At such time as Owners cease to hold an interest in the Property, the obligations and liabilities thereafter accruing (but not any accrued and unperformed obligations and liabilities) shall be the obligations of their respective successors and/or assigns. For informational purposes only, Owners shall notify the Planning Board and County, in accordance with Section 7.11 below, of any assignment or transfer of their rights or interests under this Agreement or any portion thereof; however, failure to provide such notice shall not in any manner affect the validity of any such transfer or assignment, nor shall it be considered a breach of this Agreement.

7.10 Binding Effect on Successors and Assigns. All of the terms, conditions, stipulations, warranties, representations, obligations, and covenants contained in this Agreement shall apply to and be binding upon, and shall inure to the benefit of the parties and each of their respective heirs, personal representatives, administrators, successors and assigns.

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

(a) If to Owners:

Charles A. Camalier, III, Esquire  
Elizabethan Court Associates I and II Limited Partnerships  
6500 Rock Spring Drive  
Bethesda, MD 20817

With copies to:

Emily J. Vaias, Esquire  
Linowes and Blocher  
1010 Wayne Avenue, Suite 1000  
Silver Spring, Maryland 20910

(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 courtesy copies to:

The Office of the General Counsel and to  
The Transportation Planning Division at the same address.

(c) If to DPWT to:

Director, Montgomery County Department of Public Works and  
Transportation  
Executive Office Building  
101 Monroe Street, 10th Floor  
Rockville, Maryland 20850

with a courtesy copy to the office of the County Attorney at the  
same address.

(d) Any public hearing called for in this Agreement shall be held by the Planning Board in the course of its regularly scheduled agenda at M-NCPPC Auditorium, 8787 Georgia Avenue, Silver Spring, MD 20910. Notice of a public hearing shall be mailed by Planning Board Staff at least ten days in advance of the public hearing, unless the parties agree in writing to a shorter period of time.



7.12 Conflict Between Agreement and Program Attachment. In the event that a conflict arises in the interpretation of any term or provision establishing any obligation, right, or duty as set forth in the Agreement and the Program Attachment which are clearly inconsistent in meaning and application, then the meaning of the term as set forth in the Program Attachment shall be given effect. In such instances the balance of the term or provision set forth in the Agreement, to the extent it is not in conflict with the Program Attachment, shall continue to be given full force and effect.

7.13 Relationship of Parties. It is understood that the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contractor. It is further understood that none of the terms or provisions of this Agreement are intended to or shall be deemed to create a partnership, joint venture or joint enterprise between the parties hereto.

7.14 Signature Pages. For convenience, the signatures of the parties to this Agreement may be executed and acknowledged on separate pages which, when attached to this Agreement, shall constitute this as one complete Agreement.

7.15 Time of the Essence. Time is of the essence in the performance of each and every term and condition of this Agreement.

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SIGNATURES FOLLOW ON SUBSEQUENT PAGES

7.12 Conflict Between Agreement and Program Attachment. In the event that a conflict arises in the interpretation of any term or provision establishing any obligation, right, or duty as set forth in the Agreement and the Program Attachment which are clearly inconsistent in meaning and application, then the meaning of the term as set forth in the Program Attachment shall be given effect. In such instances the balance of the term or provision set forth in the Agreement, to the extent it is not in conflict with the Program Attachment, shall continue to be given full force and effect.

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7.15 Time of the Essence. Time is of the essence in the performance of each and every term and condition of this Agreement.

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SIGNATURES FOLLOW ON SUBSEQUENT PAGES

Approved for Legal Sufficiency;  
Office of the General Counsel,  
M-NCPPC

By: T. EVBABA

Date: 3/7/02

WITNESS/ATTEST

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

Quinn Springs

By: Joseph R. Davis  
Joseph R. Davis, Chief  
Development Review Division

STATE OF MARYLAND )  
                          *Prince Georges* ) to wit:  
COUNTY OF MONTGOMERY )

I HEREBY CERTIFY that on this 19<sup>th</sup> day of March, 200~~1~~<sup>2</sup>, before me, a Notary Public in and for the State and County aforesaid, personally appeared Joseph R. Davis, known to me (or satisfactorily proven) to be the Chief, Development Review Division of the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, a Maryland public body corporate, and that such Chief, being authorized to do so, executed the foregoing and annexed instrument for the purposes herein contained by signing the name of the Montgomery County Planning Board.

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

Deborah J. Flanagan  
Notary Public

My Commission Expires: 11-01-03



WITNESS/ATTEST

APPLICANTS/OWNERS:

ELIZABETHEAN COURT ASSOCIATES  
I LIMITED PARTNERSHIP, a Maryland  
limited partnership

By: Belmart Corporation, a Maryland  
corporation, its General Partner

*Felicia M. [Signature]*

By: *[Signature]*  
Name: Charles A. Comaker IV  
Title: Vice President

The District  
STATE OF MARYLAND )  
OF COLUMBIA ) to wit:  
COUNTY OF MONTGOMERY )

I HEREBY CERTIFY that on this 28<sup>th</sup> day of November, 2001, before me, a Notary  
Public in and for the State and County aforesaid, personally appeared  
Charles A. Comaker IV known to me (or satisfactorily proven) to be  
the Vice President and that as such, being authorized to  
do so, executed the foregoing and annexed instrument for the purposes therein contained by  
signing the name of the Applicants.

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

*Krystine M. Harrison*  
Notary Public

My Commission Expires: March 31, 2003 Krystine M. Harrison  
Notary Public, District of Columbia  
My Commission Expires, March 31, 2003

WITNESS/ATTEST

ELIZABETHEAN COURT ASSOCIATES  
II LIMITED PARTNERSHIP, a Maryland  
limited partnership

By: Champlain Corporation, a Maryland  
corporation, its General Partner

*Julissa M. [Signature]*

By: *[Signature]*  
Name: Charles A. Camelier II  
Title: Vice President

The District  
STATE OF MARYLAND )  
of Columbia ) to wit:  
COUNTY OF MONTGOMERY )

I HEREBY CERTIFY that on this 28<sup>th</sup> day of November, 2001, before me, a Notary  
Public in and for the State and County aforesaid, personally appeared  
Charles A. Camelier II known to me (or satisfactorily proven) to be  
the Vice President and that as such, being authorized to  
do so, executed the foregoing and annexed instrument for the purposes therein contained by  
signing the name of the Applicants.

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

*Krystine M. Harrison*  
Notary Public

My Commission Expires: March 31, 2003  
Krystine M. Harrison  
Notary Public, District of Columbia  
My Commission Expires, March 31, 2003