

REVISED SITE PLAN ENFORCEMENT AGREEMENT

THIS REVISED AGREEMENT, made this 2<sup>nd</sup> day of October, 1990, by and between TRI EQUITY GROUP, INC., and the MONTGOMERY COUNTY PLANNING BOARD OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION (hereinafter the "Planning Board").

WHEREAS, Text Amendment No. 50025, approved July 21, 1981, effective October 15, 1981, amended Section 59-D-3.3 of the Montgomery County Code to require as a part of the site plan review process that applicants enter into a formal agreement with the Planning Board requiring the applicant to execute all features of the approved site plan in accordance with the Development Program required by Section 59-D-3.23(m) of the Montgomery County Code, 1972 (as amended); and

WHEREAS, pursuant to Section 59-D-3 of the Montgomery County Code, 1972 (as amended), Tri Equity Group, Inc. has filed with the Planning Board an application for approval of a site plan, denominated Site Plan Application No. 8-87068, attached hereto as Exhibit "A"; and

WHEREAS, the property which is the subject of Site Plan Application No. 8-87068 (hereinafter the "Subject Property") consists of 11.11 acres located at the Northwest Corner of the intersection of Great Seneca Highway and Wisteria Drive; and

WHEREAS, the parties hereto desire to set forth herein their respective requirements and obligations pursuant to Section 59-D-3.3 of the Montgomery County Code 1972 (as amended).

NOW, THEREFORE, in consideration of the mutual promises and stipulations set forth herein and pursuant to the requirements of Section 59-D-3.3 of the Montgomery County Code, 1972 (as amended), the parties hereto agree as follows:

1. In accordance with approval by the Planning Board of Site Plan Review Application No. 8-87068, Tri Equity Group, Inc. agrees that, when it commences construction as set forth in the Development Program attached hereto as Exhibit "B", it will execute and maintain all the features of the site plan required by Section 59-D-3.23 which are applicable to the approval granting Site Plan

DESIGN DIVISION  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION  
**RECEIVED**  
OCT 8 1992  
**RESOLVED**

Application No. 8-87068, and any subsequent amendments approved by the Planning Board. Tri Equity Group, Inc. agrees to install and construct all features of the site plan in a good and workmanlike manner.

2. Tri Equity Group, Inc. agrees that construction of the Subject Property will progress in accordance with the Development Program as set forth in Exhibit "B", or any amendments thereto.

3. Representatives or designees of the Planning Board may enter upon the Subject Property from time to time for the purpose of inspection and enforcement of the terms, conditions and restrictions of this Agreement. Whenever possible, a representative of Tri Equity Group, Inc. shall be present at said inspection. In the event that the representative or designee determines on the basis of said inspection that construction is not progressing in accordance with Site Plan Application No. 8-87068 or the Development Program, the representative or designee shall promptly advise Tri Equity Group, Inc. concerning the problem.

4. The Planning Board shall recommend for issuance within a reasonable time any permits sought by Tri Equity Group, Inc. when the Planning Board determines that said permit requests are consistent with the approved site plans and any amendments thereto. Such approval shall not be unreasonably withheld.

5. In the event any party deems there has been a breach of the terms, conditions and restrictions of this Agreement, an aggrieved party may pursue all remedies provided by Maryland law.

6. Wherever any portion of this Agreement or the Development Program submitted herewith as Exhibit "B", or any amendments thereto are in conflict with agreements pertaining to the Subject Property entered into between Tri Equity Group, Inc. and any federal, state and county agency, Tri Equity Group, Inc. shall promptly notify the Planning Board concerning such conflict. The Planning Board or its designee will cooperate in attempts to resolve the conflict. Should an unreasonable delay ensue due to the failure to resolve said conflict, Tri Equity Group, Inc. shall have the right to seek in a timely manner judicial determination of the rights and obligations of all parties, and the Planning

Board, for its part, agrees to cooperate in expediting said judicial determination.

7. If Tri Equity Group, Inc. determines, following commencement of construction on the Subject Property, that the full Development Program cannot be achieved for any reason, Tri Equity Group, Inc. will submit for approval a restoration schedule to the designee of the Planning Board for purposes of amending the Development Program.

8. Tri Equity Group, Inc. agrees to use its best efforts to cure leases from and provide space for the following types of super market related uses:

	<u>TENANCY</u>	<u>SQUARE FEET</u>
1.	Gourmet Grocery	10,000 - 16,000
2.	Apothecary Drug	8,000 - 16,000
3.	Butcher	1,500 - 3,000
4.	Ice Cream Shop	1,000 - 2,000
5.	Frozen Yogurt	1,000 - 2,000
6.	Produce	3,000 - 5,000
7.	International Foods	1,500 - 3,000
8.	Italian Specialty/Delivery	1,500 - 2,000
9.	Card & Gift	1,500 - 2,000
10.	Delicatessen	1,500 - 3,000
11.	Beer & Wine	3,000 - 5,000
12.	Kitchen Goods & Appliances	2,000 - 3,000
13.	Towels & Linens	1,500 - 3,000
14.	Convenience Food Mart	3,000 - 4,000

Other tenancies that will compliment the suggested supermarket related uses include:

	<u>TENANCY</u>	<u>SQUARE FEET</u>
1.	Bank	2,500 - 5,000
2.	Toys & Hobby	1,500 - 4,000
3.	Dry Cleaning	2,000 - 3,000
4.	Dinner House Restaurant	6,000 - 8,000
5.	Stereo & Electronics	4,000 - 8,000
6.	Home Furnishings & Drapery	3,000 - 5,000

TENANCY	SQUARE FEET
7. Specialty Furniture	6,000 - 10,000
8. Boutique	3,000 - 5,000
9. Haberdashery	4,000 - 6,000
10. Antiques	2,000 - 4,000
11. Jewelry	1,500 - 4,000
12. Optical	2,000 - 3,000
13. Local Realty	2,000 - 4,000

Tenancies for the lower level are service office oriented and include:

TENANCY	SQUARE FEET
1. Optometrist/Eyelab	2,000 - 4,000
2. Hearing Lab	1,000 - 2,000
3. Local Realty	2,000 - 3,000
4. Health Spa	10,000 - 20,000
5. Indoor Miniature Golf and Entertainment Facility	5,000 - 6,000
6. Medical Service	2,000 - 4,000
7. Showroom Retail	2,000 - 4,000
8. Engineering	2,000 - 4,000
9. Professional Office	2,000 - 4,000

9. Tri Equity Group, Inc. agrees not to lease space to fast food establishments. This restriction does not, however, include deli type restaurants or pizzeria style restaurants which may provide carry out service.

10. Tri Equity Group, Inc. will notify the Planning Board, in writing, if it seeks a use which varies from the space and type guidelines set forth herein. Upon notification the planning staff may review the use with Tri Equity Group, Inc. in order to make a determination as to its compatibility with the surrounding community. If Tri Equity Group is not notified of the planning staff's findings within thirty (30) days, they may assume conformance.

11. Approval of a feature of the site plan after inspection shall not constitute a warranty that the feature is free of latent defects. Therefore, if the Planning Board or its designee approves a feature of the site plan which contains a latent defect which

was not readily apparent at the time of inspection upon discovery of said latent defect, the Planning Commission may avail itself of the remedial steps provided for under the terms of the Agreement.

12. This Agreement may only be modified in a writing signed by the parties hereto, their heirs, successors or assigns.

13. This Agreement shall be binding upon the heirs, successors and assigns of all parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set our hands and seals this 7<sup>th</sup> day of October, 1990.

WITNESS:

TRI EQUITY GROUP, INC.

Murray Brazel By: Ed H. Hyman

WITNESS:

MONTGOMERY COUNTY PLANNING BOARD

By: Charles R. Loahr  
Charles Loahr, Designee

APPROVED AS LEGAL SUFFICIENCY

[Signature]  
Montgomery Legal Department  
[Signature]