

USE AGREEMENT

THIS USE AGREEMENT is made this ____ day of _____, 2008, by and between **THE CITY OF HYATTSVILLE**, a municipal corporation of the State of Maryland, hereinafter referred to as the “City,” and **Nguyen Phu Thanh, et al.**, hereinafter referred to as the “Owner.”

RECITALS

WHEREAS, The City is desirous to expedite the rehabilitation of the property through a building construction project at the property known as 4633 Arundel Place (the Project), and

WHEREAS, a building construction project shall be done by Keller Construction Management (Keller),

WHEREAS, Owner is willing to assist the City in its goal for this property by making property available on a limited and temporary basis to the City, and

WHEREAS, this Agreement, effective on the above date, between the City and the Owner, is entered into for the limited and temporary use of the “property” known as 4629 Baltimore Avenue for a fee of Three Thousand Dollars per month and other valuable consideration.

TERMS

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein and other good and valuable consideration, the sufficiency of which is hereby mutually acknowledged, the City and Owner agree as follows

ARTICLE 1. RIGHT OF ACCESS

Owner hereby agrees to allow access to the City and its contractor to access, ingress, and egress to, and use of, the property known as 4629 Baltimore Avenue as a parking lot and staging area for the Project including employee parking, pick up and drop off of equipment and other material storage and material management and activities as may be related to the Project. The City will have use of parking areas, any and all permanent and temporary structures, and all other parts of the property. It is anticipated this activity will take 12 months. This Right of Access shall be in effect until completion of the project.

ARTICLE 2. CITY’S RESPONSIBILITY

1. The City’s Project Manager, will monitor activities on behalf of the City relating to the management of the City’s contractors. The Project Manager’s point of contact will be Hal Metzler (240)832-6959.

2. The City will require that the employees and contractors will conduct their staging operations in a workmanlike manner.
3. The City will provide documentation of insurance and that the contractors assume all liability and responsibility for the maintenance of the Parking Lot's present condition, and if necessary, repair of the Parking Lot to its pre-Use Agreement condition.
4. The City will require that Owner is held harmless by the contractor from all liability relating to the contractor's construction staging activity upon the Parking Lot.
5. The City will set aside and withhold a fixed percentage of the contractor's fees, as a method to secure compliance with the preceding provision, Article 2 (4).

ARTICLE 3. NOTICE

1. The contract with Owner shall be through Nguyen Phu Thanh, owner.
2. The parties anticipate that there will be no damage to Owner's property. In the event there is damage, Owner agrees to notify in writing the City's Project Manager within ten (10) business days of such damage. If no written notice detailing the damage is delivered to the City's Project Manager within ten (10) business days of the completion of the new building construction, the parties agree that any claim for damage is thereby waived.

ARTICLE 4. APPLICABLE LAW

This Agreement shall be governed by the laws of the State of Maryland, excluding conflicts of law rules, as if this agreement were made and performed entirely within the State of Maryland. Any suit to enforce the terms hereof or for damages or other relief as a consequence of the breach or alleged breach hereof shall be brought exclusively in the courts of the State of Maryland in Prince George's County, and the parties expressly consent to the jurisdiction thereof and waive any right which they have or may have to bring such elsewhere.

ARTICLE 5. SUCCESSORS AND ASSIGNS

The parties each binds itself, its partners, successors, assigns and legal representatives to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither party shall assign, sublet or transfer his interest, including but not limited to the proceeds thereof, in this Agreement, without the written consent of the other party.

ARTICLE 6. MISCELLANEOUS

- A. The person executing this Agreement on behalf of Owner hereby covenants, represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of Owner.
- B. All representations, warranties, covenants, conditions and agreements contained herein which either are expressed as surviving the expiration and termination of this Agreement or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.
- C. This Agreement is entered into as of the day and year first written above and is the entire agreement of these parties.
- D. Any modification of this Use Agreement shall be in writing and signed by both parties.
- E. The recitals above are hereby incorporated into this Agreement.

Tracey Douglas
City Administrator
City of Hyattsville
4310 Gallatin Street
Hyattsville, MD 20781

Nguyen Phu Thanh

Owner
4629 Baltimore Avenue
Hyattsville, MD 20781

Date

Date