



## ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item  
Meeting of May 5, 2007**

### SUPPLEMENTAL REPORT #2

**DATE:** May 4, 2007

**SUBJECTS:** A. GP 308-06-1 GENERAL LAND USE PLAN AMENDMENTS to:

1. Change land use designation from "Public" [Parks (*Local, regional, and federal*). Schools (*Public*). Parkways, major unpaved rights-of-way. Libraries and cultural facilities.] to "High" Office-Apartment-Hotel (up to 3.8 FAR Office Density, up to 4.8 FAR Apartment Density, up to 3.8 FAR Hotel Density) for northern and southern portions of block generally bounded by N. Lynn St., Wilson Blvd., N. Moore St., and 19<sup>th</sup> St. N. while keeping central portion of block "Public";
2. Remove General Location for Open Space symbol currently located on southern portions of aforementioned block; and
3. Remove stipple pattern on northern and central portions of aforementioned block as correction to indicate private ownership of those areas.

B. AMENDMENT TO MASTER TRANSPORTATION PLAN – PEDESTRIAN TRANSPORTATION PLAN to specify changes to Rosslyn Skywalk Network that delete Skywalk bridges across N. Moore St. and N. Lynn St., between Wilson Blvd. and 19<sup>th</sup> St. N.

C. ADOPTION OF RESOLUTION ON URBAN DESIGN PRINCIPLES FOR ROSSLYN CENTRAL PLACE.

D. ORDINANCE TO AMEND, REENACT, AND RECODIFY Section 25B. "C-O Rosslyn" Commercial Office Building, Retail, Hotel and Multiple-Family Dwelling Districts of Arlington County Zoning Ordinance to:

1. Allow additional height (up to maximum of five hundred (500) feet above sea level) for properties within boundaries of Central Place block, which is

County Manager: \_\_\_\_\_

County Attorney: \_\_\_\_\_

Staff: Lorrie Pearson, DCPHD, Planning Division  
Anthony Fusarelli, Jr., DCPHD, Planning Division  
Betts Abel, DCPHD, Housing Division  
Adam Denton, DES, Division of Transportation  
Ritch Viola, DES, Division of Transportation  
Linda Collier, DES, Real Estate Bureau

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defined as blocks bounded by 19<sup>th</sup> St. N., N. Lynn St., Wilson Blvd., and Fort Myer Dr.; or

2. Allow additional height (up to maximum of four hundred seventy (470) feet above sea level) for properties within boundaries of Central Place block, which is defined as blocks bounded by 19<sup>th</sup> St. N., N. Lynn St., Wilson Blvd., and Fort Myer Dr.
- E. Z-2486-02-1 REZONING portion of site designated “C-O” Commercial Office Building, Hotel and Multiple-Family Dwelling Districts to “C-O Rosslyn” Commercial Office Building, Retail, Hotel and Multiple-Family Dwelling Districts within block bounded by Wilson Blvd., N. Moore St., 19<sup>th</sup> St. N., and N. Lynn St., also known as Central Place parcels; 1730 N. Lynn St., 1801 and 1823 N. Moore St., 1213 Wilson Blvd., Lots 1, 2, 3, 4, 5 and Outlots A-3, A-4, A-5 of Block 10, Rosslyn (RPC # 16-038-001, -002, -003, -005, -006, -008, -009, -010, -011, -012, -013).
- F. SP #335 SITE PLAN AMENDMENT: Central Place LLC, construct approx. 354 dwelling units, approx. 600,855 sq ft commercial/retail space, with modification of use regulations for density, storage, mechanical rooms, shafts, observation decks, coverage, parking, loading space and drive aisle requirements; 1213 Wilson Blvd., 1730, 1735 N. Lynn St., 1801 N. Lynn St., 1801, 1823 N. Moore St., Lots 1, 2, 3, 4, 5, and Outlots A-3, A-4 and A-5, Block 10, Rosslyn (RPC #16-038-001, -002, -003, -004, -005, -006, -008, -009, -010, 011, -012, -013; 16-039-005, -018)

**DISCUSSION:** This second supplemental report provides clarifications to the affordable housing calculations shown in the original staff report, although the total contribution has not changed. This report also provides additional refinements to Conditions #64, #72, #83, #89, #91, and #93 based on subsequent discussions with the applicant and WMATA.

Clarifications to Affordable Housing Calculations in original staff report dated April 27, 2007 (page 35):

For Central Place the site area includes that of the Central Place project (71,975 sq. ft.) as well as that of the International Place site plan area (88,119 sq. ft.) for a total of 160,095 sq. ft. The existing GFA is 632,318 sq. ft., which, divided by the site area results in FAR of 3.94. Therefore, the existing approved density is 3.94 and all new density above that amount is charged for affordable housing purposes at a rate of \$4 per sq. ft. for commercial use and \$8 per sq. ft. for residential.

The affordable housing contribution for the new commercial use is as follows:

- 573,988 sq. ft. @ \$4 = \$2,295,952

The affordable housing contribution attributable to for the residential use is as follows:

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- ~~Contribution~~: 394,022 sq. ft. @ \$8 = \$3,152,176 **or**

Alternatively, the applicant could provide affordable dwelling units based on commercial and residential density of the new project above 1.0 FAR as follows:

- On-site - 5%: 43 units (based on average unit size)
- Off-site nearby - 7.5%: 64 units (based on average unit size)
- Off-site elsewhere – 10%: 86 units (based on average unit size)

If the ~~residential total~~ contribution is a cash contribution rather than units, the total cash contribution will be \$5,448,128. (Condition #97)

#### **AMENDED CONDITIONS:**

64. The developer agrees to provide approximately 44,554 square feet of initial (or base) retail in this final site plan, with approximately 10,979 square feet of initial retail within the ~~residential-office~~ building and approximately 33,575 square feet of initial retail within the ~~office~~ residential building. This retail gross floor area (GFA) shall be used as retail, and any change in the use of the retail space from retail to a non-retail use shall require a site plan amendment unless said change is consistent with past Administrative Approvals of the Zoning Administrator.

#### **Public Use and Access Easements**

##### **72. A. Plaza**

The developer agrees to grant a perpetual, permanent public use and public access easement to the County Board over, across, under and through a portion (hereinafter defined or designated) of RPC #16038005 for public use and access as described in this condition. The developer agrees that the County Board may reserve rights in the assignment to the developer, of the County's rights in RPC # 16038004 (the area known as the "Clover Easement") for public use and access as described in this condition. The easement for the portion of RPC #16038005 and the reservation of rights in the entirety of RPC #16038004 collectively are hereinafter referred to in this condition as the "Public Access Easement." The Public Access Easement shall ~~be~~ permit the County Board, its employees, designees, contractors and agents, and the public at-large, for the purpose of providing public use, including, but not limited to, pedestrian passage through, and public use of, the plaza, comprised of 17,035 square feet, more or less, and as more particularly designated on the "Conceptual Landscape Plan," Sheet L.01, Administrative Regulation 4.1 drawings, dated April 13, 2007 ("Plaza"), reviewed and approved by the County Board on May 5, 2007. The Public Access Easement shall include the access and use, by the County Board and its employees, designees, contractors, and agents, and the public at-large, of the underground storage area located under the Plaza, comprised of 300 square feet, more or less, and as more particularly designated as Plaza Storage on the "N. Lynn Street Ground Floor Plan," Sheet A1.03, Administrative Regulation 4.1 drawings, dated April 13, 2007, reviewed and approved by the County Board on May 5, 2007.

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The developer further agrees that:

- 1) The final location of the Public Access Easement shall be subject to review and approval by the County Manager, consistent with the approved final building plans, the approved final site development plans and the approved final landscape plans.
- 2) The developer, at its sole cost and expense, shall construct and landscape the required Plaza (“Plaza Improvements”) according to final building plans, the final site development plans, the final landscape plans, and the phasing plan required by Condition #69, as approved by the County Manager, and any third parties or governmental entities, as determined by the County Manager.
- 3) The cost to construct the Plaza shall be no less than \$6,749,760.00, exclusive of garage construction and design service fees. Unless otherwise approved by the County Manager, the developer agrees that the \$6,749,760.00 to be spent on the Plaza shall be allocated to the Plaza features and structures in general accordance with the schedule set forth on a document entitled *Plaza Construction Budget* and designated as Attachment 7 attached hereto and made a part hereof. At the completion of construction of the Plaza, developer's contractor shall certify that costs associated with the plaza construction are consistent with the *Plaza Construction Budget* as shown in Attachment 7. If a building permit for the site plan that is the subject of these conditions is not issued within three (3) years of the date of approval of the site plan, then D.C. Metro area CPI-Urban escalation shall be applied to be \$6,749,760.00, to determine the amount to construct the plaza. In the event the amount to construct the plaza is less than \$6,749,760.00 or escalated amount determined by CPI-Urban escalation, then the developer agrees to make payment of the difference to the County.
- 4) The developer agrees that the final design of the Plaza and construction of the Plaza Improvements shall not obstruct access by any emergency and police vehicles, including but not limited to, ~~fire trucks~~, police cars, and ambulances, and that emergency and police vehicles shall be allowed access to the Plaza from N. Moore Street to the Plaza.
- 5) Construction and landscaping of the Plaza Improvements that are part of the Phase I of development, as designated on the drawing entitled “Phase I Site Diagram,” Sheet L.02, Administrative Regulation 4.1 drawings, dated April 13, 2007, and all facilities contained therein, as set forth on the approved plans, shall be completed and approved by the County Manager, and any third parties or governmental entities, as determined by the County Manager, prior to the recordation of the Public Access Easement.
- 6) The Public Access Easement, among other provisions as determined by the County Manager, shall:
  - A) Provide that the County, its contractors and agents, and the public at-large, shall have full and free use of the Public Access Easement for the purposes named, and

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shall have all rights and privileges reasonably necessary to the exercise or the use of the Public Access Easement, including, but not limited to, the right to access to and from the Public Access Easement, and the right to use the adjoining land of the developer where necessary; provided, however, that the right to use the adjoining land shall be exercised only during periods of actual construction, maintenance, removal, repair, reconstruction, replacement and relocation, and further this right shall not be construed to allow the County to erect and building, structure or facility of a permanent nature on such adjoining land unless otherwise provided in such Public Access Easement.

B) State that the developer shall be responsible, at its sole cost and expense, for the continued care and cleaning, maintenance, repair, replacement, installation and removal of the Plaza and any facilities located thereon, therein or there under (except for any facilities owned and operated by the Washington Metropolitan Area Transit Authority (“WMATA”), which facilities WMATA will maintain and repair), including, but not limited to, provision of snow and ice removal, care of any all trees and landscaping contained therein, any all water features, any all benches or fixed seating, any all moveable furniture, any all concrete, bricks, masonry or stone work, underground storage area, any all lighting, any all banners or signage, any all trash receptacles, any all bicycle racks, any all staircases, steps, plaza elevators provided for ADA accessibility, or any all other structural or decorative feature.

C) Provide that developer shall, at all time during the term of the Plaza Access Easement, maintain comprehensive liability insurance for the Plaza, naming the County Board, its elected and appointed officials, officers, employees, agents and contractors, as additional insureds, in the initial coverage amount of not less than 1 million dollars per occurrence and not less than 2 million dollars, annual aggregate. The County Manager, in his sole discretion, can require an increase in the amount of comprehensive liability insurance, by prior written notice to the developer.

D) Provide that the developer shall indemnify and hold harmless the County Board, its elected and appointed officials, officers, employees agents and contractors from all liability, personal injury, death, claims, damages, losses, costs and expenses, of whatsoever nature, concerning or arising out of the design, construction, installation, repair, maintenance, replacement, removal, care and cleaning and regulation or the Plaza or any feature, structure or facility therein by the developer and use thereof by the public at-large, the developer, and others.

E) Provide signs stating that no motorized vehicles, other than emergency vehicles, and no bicycles, skateboards, scooters or similar non-motorized vehicles shall be operated on the Plaza and provide that Uniformed Arlington County Police shall be authorized to enter the Plaza for purposes of enforcing compliance with County ordinances and state laws.

F) Provide that the Plaza shall be open for public access twenty-four hours a day, seven days a week with the exception of storage areas which shall be open during regular business hours or with prior notice to the developer.

G) Provide that temporary vendors, selling items related to a public event on the Plaza, will be permitted to sell or peddle such items only in compliance with all applicable state and local laws, ordinances and regulations and only according to the terms of any permission granted for the vendor by the County Manager. Permanent vendors shall not be allowed to operate on the Plaza. Developer shall not enter into leases with permanent vendors to operate on the Plaza.

H) Provide that, in addition to any other use set forth herein, the Plaza shall be available for public park purposes, public recreation, farmer's markets, concerts, performances, speeches, rallies, public gatherings, public dining and picnicking, display of public art consistent with the Public Art Policy, and any other public use ("Public Uses"), as long as such Public Uses are approved and permitted by the County Manager.

I) Provide that the consumption of alcoholic beverages, consistent with applicable law, shall be permitted on the Plaza, at specified times and for specified events, subject to the obtaining of all required state and local permits, approvals and permissions, and further subject to approval thereof by the County Manager, in his sole discretion.

J) Include the consent of any lender to the Public Access Easement and subordination of the lien of the mortgage or deed of trust to the Public Access Easement and include the consent of all parties and entities having any property interest, with priority, in such portions of RPC #16038004 and RPC #16038005 encumbered by the Public Access Easement.

~~97~~ 97) The name for the Plaza shall be designated according to the *Arlington County Policy for Naming and Renaming of County Facilities and Parks*, adopted on July 10, 1999 or any naming policy in effect at the time the Plaza is initially named and thereafter renamed.

~~108~~ 108) The Public Access Easement for the entire Plaza shall be recorded by the developer among the land records of the Clerk of the Circuit Court of Arlington County, Virginia the earlier of: prior to a) no later than the issuance of the first certificate of occupancy for a retail tenant with access to the Plaza; or b) no later than six months after issuance of the first certificate of occupancy, permitting greater than 50 percent tenant occupancy, of the project that is the subject of these conditions.

149) The Public Access Easement shall be, in substance, acceptable to the County Manager, and, in form, acceptable to the County Attorney. Thereafter, the Public Access Easement may be accepted by the County Manager on behalf of the County.

#### **B. Observation Deck**

The developer agrees to grant to the County Board, or otherwise cause to be granted to the County Board, a perpetual, permanent public use and public access easement, over, across, under and through horizontal and vertical portions of RPC #16038001, RPC #16038002 and RPC#16038003 for public use and access as described in this condition. Such easement is hereinafter referred to in this condition as the "Observation Deck and Access Easement." The Observation Deck and Access Easement shall permit the County Board, and its employees, designees and agents, and the public at-large to use the Observation Deck and Access Easement, for public use, including, but not limited to, pedestrian passage through, and public use of each of the following three areas: (i) the observation deck, the lounge area, the bathrooms, the storage area, the pantry area, and the elevator and emergency stairway area (located on Floor 24 and jointly "Observation Deck"), comprised of a total of 9,555 square feet more or less, and all as more particularly designated on the drawing entitled "Floor Plans Office 24 and 23," Sheet A1.17, Administrative Regulation 4.1 drawings, dated April 13, 2007, reviewed and approved by the County Board on May 5, 2007; (ii) the Observation Deck lobby, two elevators, and emergency stairway to the Observation Deck (located on ground floor and jointly, "Observation Deck Lobby"), comprised of 1,578 square feet, more or less, and all as more particularly designated on the drawing entitled "North Moore Street Ground Floor Plan," Sheet A.1.04, Administrative Regulation 4.1 drawings, dated April 13, 2007, reviewed and approved by the County Board on May 5, 2007; and (iii) the vertical emergency stairwell and elevator shaft serving the Observation Deck (located from B-1 through Floor 24 and jointly "Observation Deck Elevator Shaft"), comprised of a total of 5,832 square feet, more or less, ((i), (ii) and (iii) jointly "Observation Deck"), and all as more particularly designated on the Administrative Regulation 4.1 drawings, dated April 13, 2007, reviewed and approved by the County Board on May 5, 2007.

The developer further agrees that:

- 1) The final location and dimensions of the Observation Deck and Access Easement shall be subject to review and approval by the County Manager, consistent with the approved final building plans, the final site development plans, and the final landscape plans.
- 2) The developer, at its sole cost and expense, shall construct the required Observation Deck, Observation Deck Lobby and Observation Deck Elevator Shaft according to final building plans, the final site development plans, and the final landscape plans, as approved by the County Manager.

3) Construction of Observation Deck, ~~Observation Deck Lobby, Observation Deck Elevator Shaft,~~ and all approved and required facilities, fixtures and furnishings contained therein, as set forth on the approved final building plans, and the final site development plans, shall be completed and shall be subject to approval by the County Manager, prior to the recordation of the Observation Deck and Access Easement.

4) The Observation Deck and Access Easement, among other provisions determined by the County Manager, shall **be drafted consistent with the provisions of Condition #83 and shall include the following:**

A) Provide that the County, its employees, designees and agents, and the public at-large, shall have full and **free unencumbered** use of the Observation Deck and Access Easement for all of the purposes stated in this condition, and shall have all rights and privileges reasonably necessary to the exercise or the use of the Observation Deck and Access Easement, including, but not limited to, the right to access to and from the Observation Deck and Access Easement.

B) State that the developer shall be responsible **to pay, at its sole cost and expense,** for the installation, maintenance, repair, replacement, removal, care, ~~and~~ cleaning **and operation of the interior areas of the** Observation Deck, ~~Observation Deck Lobby, Observation Deck Elevator Shaft, elevators serving the Observation Deck and stairways serving the Observation Deck~~ and all facilities, fixtures or furnishings located thereon, therein or thereunder, including, but not limited to, all benches or fixed seating, all moveable furniture, all concrete, bricks, masonry or stone work, all lighting, all banners or signage, all trash receptacles, bathrooms, kitchen and pantry facilities, storage areas, ~~all staircases, steps, and elevators serving the Observation Deck,~~ and all other structural or decorative features.

**C) State that developer shall be solely responsible for all maintenance, repair, replacement, removal and care of all of the structures, structural components, roof, elevators, stairways, steps, heating, ventilation and air conditioning system and all other mechanical, electrical, plumbing and life safety equipment and systems (“Structures and Systems”) of i) that portion of the building of which the Observation Deck is a part; and ii) those Systems, as outlined above, that serve the Observation Deck, as necessary to maintain the building’s status as an “A-Class” office building in the Washington, D.C. metropolitan area commercial office market, as such standard shall change from time to time for buildings of comparable age.**

**CD)** Provide that developer shall, at all time during the term of the Observation Deck and Access Easement, maintain comprehensive liability insurance for the Observation Deck, ~~Observation Lobby and Observation Deck Elevator Shaft,~~ naming the County Board, its elected and appointed officials, officers, employees, agents and contractors, as additional insureds, in the initial coverage amount of not less than 1 million dollars per occurrence and not less than 2 million dollars, annual aggregate. The County

Manager, in his sole discretion, can require an increase in the amount of comprehensive liability insurance, by prior written notice to the developer.

~~DE~~ Provide that the developer shall indemnify and hold harmless the County Board, its elected and appointed officials, officers, employees, agents and contractors from all liability, personal injury, death, claims, damages, losses, costs and expenses, of whatsoever nature, concerning or arising out of the design, construction, installation, maintenance, repair, replacement, removal, care, cleaning and regulation of the Observation Deck, ~~Observation Lobby or Observation Deck Elevator Shaft~~ or any feature, structure or facility therein by the developer and use thereof by the public at-large, the developer, and others.

~~EF~~ Provide that Observation Deck, ~~Observation Lobby and Observation Deck Elevator Shaft~~ shall be open for public access six days a week, including weekends, and for the hours as determined in the management and programming plan provided for in Condition #83 and approved, in writing, by the County Manager.

~~EG~~ Provide that only temporary vendors, selling items related to an event in Observation Deck ~~or the Observation Lobby~~, or vendors selling Observation Deck related materials, will be permitted to sell or peddle such items in the Observation Deck ~~and the Observation Lobby~~ and such vendors will be permitted only in compliance with all applicable state and local laws, ordinances and regulations and according to the terms of any permission granted by the County Manager.

~~GH~~ Provide that the County and the developer may temporarily restrict access to the Observation Deck, ~~Observation Lobby and Observation Deck Elevator Shaft~~ in accordance with the management and programming plan provided for in Condition #83 and with the written consent of the County Manager.

~~HI~~ Provide that the consumption of alcoholic beverages, consistent with applicable law, shall be permitted in the Observation Deck, Observation Lobby and Observation Deck Elevator Shaft, at specified times and for specified events, subject to the obtaining of all required state and local permits, approvals and permissions, and further subject to approval thereof by the County Manager, in his sole discretion.

**J) Provide that Uniformed Arlington County Police shall be authorized to enter the Observation Deck for purposes of enforcing compliance with County ordinances and state laws.**

~~HK~~ Include the consent to the Observation Deck and Access Easement of any lender and subordination of the lien of the mortgage or deed of trust to the Observation Deck Access Easement and include the consent to the Observation Deck and Access Easement of all parties and entities having any property interest, with

priority, in such portions of RPC #16038001, RPC #16038002, RPC#16038003 and RPC #16038004 encumbered by the Observation Deck and Access Easement.

**K) Be drafted consistent with the provisions of Condition #83.**

5) The Observation Deck and Access Easement shall be recorded by the developer among the land records of the Clerk of the Circuit Court of Arlington County, Virginia **the earlier of: a) no later than six (6) months after** ~~prior to~~ the issuance of the first certificate of occupancy; ~~permitting tenant occupancy, of any portion of~~ **or b) no later than issuance of the master certificate of occupancy** the project that is the subject of these conditions.

6) The Observation Deck and Access Easement shall be, in substance, acceptable to the County Manager, and, in form, acceptable to the County Attorney. Thereafter, the Observation Deck and Easement may be accepted by the County Manager on behalf of the County.

**Observation Deck**

83. The ~~applicant~~ **developer** agrees to **operate the Observation Deck as a non-profit facility and to** make the Observation Deck ~~generally~~ available to the public six days a week, including weekends. The enclosed portion of the Observation Deck may ~~have~~ **include** a restaurant/bar/coffee shop, subject to approval by the County Manager **as being consistent with and incidental to the purpose of the Observation Deck for general public use and observation of surrounding areas.** The Observation Deck shall also include kitchenette-type facilities **for use during events at the Observation Deck** to include, at a minimum, a refrigerator, sink, food preparation area, **icemaker**, and a microwave oven. The ~~applicant~~ **developer** ~~has agreed to pay~~ ~~fund the first~~ \$500,000 **(which amount shall be adjusted for inflation in accordance with** ~~by~~ **the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index for Urban Consumers (CPI-U) Inflation Calculator if not contributed by May 5, 2008 2010), which \$500,000 shall pay for the in** initial Operating Costs (as subsequently defined herein) for the Observation Deck, ~~until such time as the \$500,000 is expended~~ of operating expenses for the Observation Deck **The period before Operating Costs of \$500,000 are expended shall be referred to as the (Initial Operating pPeriod).** ~~The developer may use~~ \$100,000 of the \$500,000 to pay for programming and/or marketing costs. After the Initial Operating Period, the ~~applicant~~ **developer** may impose an admission fee, **which, in addition to other fees collected by the applicant for the use and/or rental of the Observation Deck, shall be used by the applicant to defray the Operating Costs, in accordance with the provisions for the Management and Programming Plan, to cover operating costs.** Operating costs ~~will~~ **shall** be defined by the County Manager to include ~~all operating costs, which shall include but not be limited to~~ security costs, utilities, personnel, **routine** space maintenance and **routine** repair, management fee, pro-rata share of real estate taxes, and any other applicable license and operating taxes, insurance, accounting and other professional costs, ~~and other building operating costs, capital~~

~~reserves,~~ programming and marketing, all related to the observation deck and/or lobby (“Operating Costs”). Operating Costs shall also include the cost, whether funded through a reserve or on a pay-as-you-go basis, for the repair and replacement of the elevator systems mechanical, electrical and plumbing systems, dedicated solely to the Observation Deck and or the Observation Deck Lobby. If insufficient funds are available for repair or replacement of these systems, the developer shall be responsible for providing the funds necessary for such repair or replacement and may apply for future reimbursement from the operating budget of the Observation Deck. If any admission fees or other fees collected by the developer for the use and/or rental of the Observation Deck remain at the end of a yearly budget cycle (as such cycle is described in the Management and Programming Plan), in excess of the Operating Costs budgeted (as approved by the County Manager) and/or experienced during the corresponding budget cycle such funds will be carried over to the following year. The ~~applicant~~ developer will operate and manage the Observation Deck in a commercially reasonable manner and may reserve the right to hire an outside vendor(s) to manage the Observation Deck.

The ~~applicant~~ developer agrees that it will coordinate with the County Manager, Rosslyn Renaissance and Rosslyn BID operator, the Parks and Recreation Commission, and representatives from the Rosslyn North and Radnor-Fort Myer Heights civic associations to develop a ~~management and programming plan~~ Management and Programming Plan (“MPP”) for the Observation Deck. The developer agrees to submit the plan for review by, and obtain the approval for the MPP from, ~~shall be reviewed and approved by~~ the County Manager as being consistent with this site plan approval prior to the issuance of the final building permit. The developer further agrees that the MPP, ~~to will and shall~~ include provisions regulating the availability and management of space, including hours of operation, an overall budget (funded through admission and other collected fees), fee structures for admission and space rental, provisions regulating educational and/or historical programming, uses permitted, and lobby operations. After consultation with ~~the County Manager,~~ Rosslyn Renaissance and Rosslyn BID operator, and with the approval of the County Manager, which approval shall not be unreasonably withheld, the operating budget and admission fee will be reviewed and adjusted as needed to continue the Observation Deck as a reasonably-maintained public facility during the first year of operations, and annually thereafter. As part of the ~~management and programming plan~~ Management and Programming Plan, the ~~applicant~~ developer agrees to include a requirement for biannual audits conducted by a third party accounting firm, which shall include confirmation of the non-profit status, to be submitted and reviewed by the County Manager, the County Attorney, and the Rosslyn BID operator.

The ~~applicant~~ developer may close the Observation Deck for general or specific threats/risks and capital repairs/maintenance for a reasonable amount of time and in consultation with the County Manager. The ~~applicant~~ developer shall have the right to close the Observation Deck up to 20 afternoons/evenings per year (but not including the 4<sup>th</sup> of July (including every other 4<sup>th</sup> of July) without that no charge to applicant

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**developer incurring any charge for such closure, and consistent with the provisions of the Management and Programming Plan. The developer agrees to give the County Manager at least thirty (30) days advance notice of any such closure. In the event the developer is unable to provide thirty (30) days advance notice, the County Manager may consider a closure with reasonable advance notice.** At other times, all or portions of the Observation Deck may be closed for private functions, **which may require a commercially reasonable use fee**, proceeds from which **will shall** be used to assist in the funding of annual operating expenses of the Observation Deck. The rules for outside use of the space will be consistent with the ~~management and programming plan~~ **Management and Programming Plan**.

The ~~applicant developer~~ **applicant developer** agrees that the public will be permitted access to the observation deck during the operating hours listed in the ~~management plan~~ **Management and Programming Plan**, except those times restricted above, for the life of the building. The applicant agrees that every other Saturday or Sunday, for a minimum period of 5 hours, the day and hours to be set forth in the ~~management and programming plan~~ **Management and Programming Plan**, the Observation Deck will be open to the public without any charge.

89. The developer agrees that the lighting design for the office and residential building tops shall conceal all views of direct lamp sources and will keep all light directed onto architectural surfaces within the confines of the building envelope. No direct light will leave the building envelope and be allowed into the night sky. The amount of lighting of public spaces in the upper floors and penthouse areas that is seen directly or indirectly (the illumination of interior surfaces perceived from a distance (for example from the Kennedy Center Roof Terrace) shall not exceed .9 times the luminance (measured in candelas/square meters with a meter using an acceptance angle of 1 degree) of the Monuments within the Federal Triangle as viewed and measured from the same location.

The developer agrees to participate in the LIGHT UP ROSSLYN program. Lighting shall be consistent with the existing lighting standards utilized by all other buildings within Rosslyn **and with all applicable laws and ordinances**. Lighting shall be installed on each building in **up to** two locations, subject to ~~review and approval by~~ **consultation with Rosslyn Renaissance or the Rosslyn BID operator and** the County Manager: 1) at the highest point possible and practicable; and ~~or~~ 2) at a lower level for pedestrian viewing.

~~WMATA Elevators, Construction and Easements~~  
~~Rosslyn Station Access Improvements~~

91. ~~Developer agrees that to negotiate in good faith and enter into an agreement that is satisfactory to the County (which may, at its own option, obtain WMATA's agreement) that will govern the developer's participation and cooperation with~~

~~projects for WMATA facilities that will be undertaken by the County. Such agreement will contain, at a minimum:~~

~~• The developer agrees that to the extent that areas of the property necessary for the WMATA facilities listed herein, are controlled, in whole or in part by, the developer, as of the date of approval of this site plan and in the future, the developer agrees to grant and convey all necessary temporary easements, permanent easements, license, or if applicable, agree to a reservation of rights in the assignment of the County's rights in RPC # 16038804 to WMATA and Arlington County, its contractors, subcontractors, agents and assigns.~~

~~• For use by the public at large, for the sum of One Dollar (\$1.00), for new WMATA station facilities consisting of, but not limited to: three high speed, high capacity elevators, an emergency stairway, air shaft(s), underground station mezzanine and passageway connection with finishes, all appurtenant facilities and systems, including but not limited to electrical, communications, fare collection, and mechanical equipment, and any other facilities agreed to by WMATA, County and Developer (collectively called "WMATA Facilities Easements").~~

~~• WMATA Facilities Easements shall be upon, under, over and across portions of the Plaza, or other or other necessary areas that are part of the development that is the subject of these conditions, to construct, operate, maintain, repair, replace, remove, relocated within the boundaries of the easement, and access three passenger elevators, an emergency stairway, air shaft(s), underground station mezzanine, and passageway connection, and all appurtenant facilities, including electrical and mechanical equipment and any other facilities serving the Rosslyn Metrorail Station. Such WMATA Facilities Easements shall be granted to WMATA and Arlington County and have priority over all other liens and encumbrances on the property relating to the area of the easements. The WMATA Facilities Easements shall be subject to the Public Access Easement for the Plaza set forth in Condition # 72(a) hereto. The final location, width, dimensions and the rights associated with the WMATA Facilities Easements shall be incorporated into an instrument of conveyance, the substance and form of which shall be approved by WMATA and Arlington County prior to the issuance of the demolition permit.~~

~~Developer agrees to coordinate the design and construction of the Central Place development with Arlington County and WMATA as not to preclude any new WMATA station facilities associated with the new Metrorail station elevator entrance.~~

Developer agrees that the design and construction of the building, plaza, and underground garage will be done in such a way as to allow for construction of all WMATA facilities without interference from major building systems or imposition of building loads on WMATA facilities. Necessary accommodations shall be provided in the project (Phase I work) for all WMATA facilities, and Developer shall design and construct the project (Phase I work) to allow WMATA facilities to be independently constructed, but integrally to/with the building structure. Separation of the projects is intended to allow the design and construction of each project to proceed independently if necessary. Developer is required to coordinate with WMATA on all design and construction matters including, among other things, project scheduling, site access, design review, and all other design and construction issues that will be detailed in a joint construction letter to be developed and agreed upon between the Developer, Arlington County and WMATA. The developer agrees to work with WMATA to locate available space under the plaza or above the underground mezzanine structure and/or as shown on the plans dated April 13, 2007, and reviewed and approved by the County Board on May 5, 2007, within the development building structure for WMATA service rooms above the underground mezzanine structure. Developer understands that the size and location of each WMATA facility within the building is subject to further change and refinements as the design of both the building and WMATA facilities progress (for example: the width of the emergency stairway may need to increase after analysis of emergency exiting capacity is completed and the results are in agreement with Arlington Fire Code Officials).

Developer agrees to maintain service of the existing Metro elevator in its current location until which time the proposed Metro elevators are operational. It is expected that the existing WMATA elevator will need to be taken temporarily out-of-service during short periods for Developer's construction operations at which time WMATA shall implement bus bridge operations for the elderly and disabled who normally require elevator service to access transit at Rosslyn Station. Bus bridge operations will operate continuously during Metrorail revenue hours, seven days a week, until elevator service is restored. The cost of WMATA's bus bridge operations or any modifications to the WMATA elevator shall be borne by Developer.

The developer shall coordinate with Arlington County and WMATA during the construction of the new, planned Metro elevators to be located in the plaza and to grant to the County or WMATA, all necessary easements for the construction, public access, and maintenance of the WMATA facilities.

The developer agrees to design and construct an isolated vertical shaft for the WMATA elevators through its lowest garage level or as shown on the plans dated April 13, 2007, and reviewed and approved by the County Board on May 5, 2007, which ever is greater. The developer agrees to design and construct a knock out

~~panel in the plaza level slab, if construction of the elevator is not concurrent with phase I of the developer's project.~~

~~The developer agrees to remove the existing Metro elevator within 180 days of the first day of operation of the new Metro elevators. The developer also agrees to convert the area of the original Metro elevator into plaza consistent with the final plaza design required by condition #86.~~

~~The developer agrees to contribute \$3.5 million to the County to be used for WMATA elevators in three equal payments. The first payment (\$1,666,667) is due at the first certificate of occupancy for Phase II of the project, the residential building. The second payment (\$1,666,667) is due one year from the date of the first payment. The third and final payment (\$1,666,666) is due two (2) years from the date of the first payment.~~

A. Prior to its submission of an application for issuance of an excavation permit, Developer agrees to negotiate and enter into an agreement with WMATA and the County, that is satisfactory with Arlington County and WMATA, which may be amended from time to time if agreed by all parties, that will govern the developer's participation and cooperation with projects for facilities for new Rosslyn Station Access Improvements ("RSAI") that will be undertaken by the County (the "Agreement"). The Agreement will provide:

- The RSAI shall consist of but not be limited to: three high-speed, high-capacity elevators, an emergency stairway, air shaft(s), underground station mezzanine and passageway connection with finishes, all appurtenant facilities and systems, including but not limited to electrical, communications, fare collection, and mechanical equipment, and any other facilities agreed to by the County and Developer as more fully set forth on Plans dated 4/13/07 and in the Rosslyn Station New Entrance Study Final Report dated March 2007. WMATA will be the owner and operator as part of the facilities constructed as part of the RSAI.
- To the extent that areas of the property covered by the Site Plan are necessary for the RSAI set forth above are controlled, in whole or in part, by the developer, as of the date of approval of this site plan and in the future, the developer agrees to grant and convey all necessary temporary easements, permanent easements, licenses, or, if applicable, a reservation of rights in the assignment of the County's rights in RPC # 16038804, to WMATA and Arlington County, its contractors, subcontractors, agents and assigns (the "RSAI Easements").

- RSAI Easements shall be upon, under, over and across portions of the Plaza or other necessary areas that are part of the development that is the subject of these conditions that are necessary to construct, operate, maintain, repair, replace, remove, relocate within the boundaries of the easement, and/or access the RSAI. Such RSAI Easements shall be granted to WMATA and Arlington County and have priority over all other liens and encumbrances on the property relating to the area of the easements. The RSAI Easements shall be subject to the Public Access Easement for the Plaza set forth in Condition # 72(a) hereto if applicable. The final location, width, dimensions and the rights associated with the RSAI Easements shall be incorporated into an instrument of conveyance, the substance and form of which shall be approved by WMATA and Arlington County.

**B. The following shall apply to both Alternatives 1 and 2 described below:**

- Developer agrees to coordinate the design and construction of the Central Place development with Arlington County so as not to preclude RSAI and not delay the commencement of construction of Phase I.
- Developer agrees to maintain service of the existing Metro elevator in its current location until such time that the proposed RSAI are operational. It is expected that the existing WMATA elevator will need to be taken temporarily out-of-service during short periods for Developer's construction operations at which time WMATA shall implement bus bridge operations for the elderly and disabled who normally require elevator service to access transit at Rosslyn Station. The cost of WMATA's bus bridge operations or any modifications to the existing WMATA elevator shall be borne by Developer to the extent that such costs are directly attributable to elevator closings resulting from developer's construction activity. Developer agrees to pay invoices from WMATA within 30 days after receipt. Normal operation and maintenance of this elevator during the course of construction remains the responsibility of WMATA. The developer's responsibility is limited to maintaining the integrity of the elevator shaft during construction and providing safe access to the existing Metro elevator entrance for both the public and WMATA maintenance personnel.
- The developer agrees to remove and demolish the existing Metro elevator above the B-2 slab, or lowest garage level slab constructed by developer as well as to close the shaft at the B-2 slab level, within 180 days of the first day of operation of the new Metro elevators. The developer also agrees to convert the area of the original Metro elevator into a plaza consistent with the final plaza design required by condition #86.

- The developer agrees to remove the skywalks connected to the existing Metro elevator during demolition of the site. The developer agrees to provide WMATA and the County 60 business days advance notice as to when the skywalk demolition will begin. The Developer will be responsible for any modifications necessary due to the changes in operations in the existing Metro elevator from the skywalk removal.
- If, as a result of further design of the RSAI, developer must make changes in the design of the below grade garage or must reduce the number of below grade parking spaces, such changes shall be submitted by the developer for approval by the Zoning Administrator as an administrative site plan change. Any such parking changes shall reduce the required parking ratio approved for the Project.
- The developer agrees to contribute 10% of the cost of the RSAI up to a maximum of \$3.5 million (adjusted for inflation by the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index for Urban Consumers (CPI-U), Inflation Calculator. If not contributed in full by May 5, 2012), such payments to be made in three equal payments. If the actual cost of the RSAI is less than \$35 million, as determined by the County then developer's payments shall be reduced by 10% of the difference between \$35 million and the actual cost. If the amount is reduced, each payment will be reduced proportionately. The first payment in the amount of (\$1,166,667) will be paid before issuance of the first certificate of occupancy for Phase II of the project, the residential building. The second payment (\$1,166,667) is due one year from the date of the first certificate of occupancy. The third and final payment ((\$1,166,666) is due two (2) years from the date of issuance of the first certificate of occupancy.

C. Recognizing that the timing of the construction of the RSAI will affect the construction of the foundations for Phase 1, developer agrees that either Alternative 1 or Alternative 2 below will apply. Developer intends to proceed with Alternative 2 but agrees, upon receipt, of notification from the County that the County intends to proceed with Alternative 1. The Developer agrees that the County will have until December 31, 2007 to notify the developer.

Alternative 1. To apply if there is concurrent construction of the RSAI and Phase I.

If notified by the County as outlined above, the developer agrees to coordinate and schedule its work with WMATA and the County to allow for concurrent design and construction of Phase I of the developer's project with the design and construction of the RSAI. This coordination will include scheduling, design, construction logistics, and sequencing of the work. In no event shall Certificates

of Occupancy for Phase 1 be delayed as a result of the failure to complete the RSAI.

Alternative 2. To apply if no notice is given to the developer pursuant to Section C above.

Developer agrees that the design and construction of the building, plaza, and underground garage will be done in such a way as to allow for construction of the RSAI without interference from major building systems or imposition of unacceptable building loads on WMATA facilities. Necessary accommodations shall be provided in the project (Phase I work) for the RSAI, and Developer shall design and construct the project (Phase I work) to allow the RSAI to be constructed independently of the building structure. Separation of the projects is intended to allow the design and construction of each project to proceed independently, if necessary. Developer understands that the size and location of each WMATA facility within the building is subject to further change and refinements as the design of both the building and RSAI progress, and that its obligation under this condition shall accommodate such changes.

The developer agrees to design and construct an isolated vertical shaft wall (either block or concrete) from the plaza level slab through to its lowest level slab, through which WMATA will then construct its elevator shaft and wall, as generally indicated on the Plans dated 4/13/07. The developer also agrees to design and construct a knock out panel in the plaza level slab, if construction of the elevator is not concurrent with phase I of the developer's project.

93. Clover Easement placeholder

The developer agrees that, prior to issuance of the excavation/sheeting and shoring permit, the deed of easement referred to in Condition 53 of SP #94, as amended, permitting development of the easement area in accordance with the Rosslyn Station Area Plan Addendum, must have been accepted by the County Board and the aforesaid right to develop under the deed of easement must have been assigned to the developer pursuant to an agreement approved by the County Board.