



ARLINGTON COUNTY, VIRGINIA

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

SUPPLEMENTAL REPORT

DATE: May 3, 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 19th 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 19th 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

PLA-4660

defined as blocks bounded by 19th 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 19th 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., 19th 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 supplemental report adds the results from the Housing Commission meeting on April 26, 2007, updates the vote and the recommendation of the Transportation Commission from their April 19, 2007, meeting, and updates the staff response to the Planning Commission meeting of April 23, 2007. This supplemental report also updates the General Land Use Plan (GLUP) table in the original report and refines language for several conditions in order to provide additional clarification and consistency, and in response to discussions with the applicant and the Rosslyn BID operator. The refined Conditions are #18, 19, 21, 64, 71, 72, 83, 86, 87, 89, and 98. Conditions #72 and #83 may require further refinements pending continuing discussions with the applicant. Refinements to Conditions #91 and #93 are not included in this report but are expected to be included in an additional supplemental report.

Housing Commission: The Housing Commission met on April 26, 2007, and voted 8-0 to support the staff recommendation for the affordable housing contributions of the Central Place site plan amendment. The Commission found that the affordable housing calculations are consistent with its previous recommendation that any project requesting re-zoning to the “C-O Rosslyn” district provide a contribution based on the full density within the GLUP requested by that project.

Transportation Commission: At its April 19, 2007, meeting, the Transportation Commission voted to recommend approval of the site plan with a vote of 4-2-1, not the 4-1-2 vote cited in the original (April 27, 2007) staff report, and subject to several conditions, including:

- The Metro elevators and connection to the Metro platform must be funded, constructed, and available at the time of site plan project completion.
 - Staff Response: Staff concurs and is working with JBG and WMATA to ensure timely construction of the elevators. (Condition #91)

Planning Commission: At its April 23, 2007, meeting, the Planning Commission voted to recommend approval of the site plan, subject to several recommendations, including the following:

- Revisions to Condition #13 to update the building square footage and #71 to require LEED certification.
 - Staff Response: Staff concurs and has revised Conditions #13 and is developing language for Condition #71.
- Revision to Condition #89 to require a lighting standard.
 - Staff Response: Staff concurs and is working to determine the most appropriate standard to apply has revised Condition #89.

Updated GLUP table

The most recent changes to the site plan increased the size of the plaza to approximately 17,035 s.f. Based on this change, the proposed areas designated for “Public” and “High” Office-Apartment-Hotel on the General Land Use Plan are updated in the table below. In addition, the corresponding maximum development potential figures have also been updated.

	Density Allowed	Maximum Development
EXISTING GLUP		
“Public” (appx. 43,272.5 s.f.)	No limit	No limit
“High” Office-Apartment-Hotel (appx. 43,272.5 s.f.)	Up to 3.8 FAR (office), up to 4.8 FAR (residential), up to 3.8 FAR (hotel); <i>or</i> 10.0 FAR (C-O Rosslyn –all uses)	164,435 s.f. (office) or 207,708 sq. ft (residential) or 164,435 s.f. (hotel); <i>or</i> 432,725 s.f. (C-O Rosslyn - all uses)
PROPOSED GLUP		
“Public” (appx. 14,700 17,035 s.f.)	No limit	No limit
“High” Office-Apartment-Hotel (appx. 71,845 69,510 s.f.)	3.8 FAR (office), up to 4.8 FAR (residential), up to 3.8 FAR (hotel); <i>or</i> 10.0 FAR (C-O Rosslyn –all uses)	273,014 264,138 s.f. (office) or 344,856 333,648 sq. ft (residential) or 273,014 264,138 s.f. (hotel); <i>or</i> 718,450 695,100 s.f. (C-O Rosslyn - all uses)

CONDITIONS

Final site engineering plan approval by DOT

18. The developer agrees to submit final site engineering plans to the Division of Transportation for each phase of the project. The plans shall include a receipt from the Zoning Office that the landscape plan has been accepted for the phase under development. Staff comments on the final engineering plans will not be provided to the developer without submission of the landscape plan to the Zoning Office. The plans shall be drawn at the scale of 1 inch = 25 feet and be 24 inches by 36 inches in size. The developer agrees to obtain approval by the County Manager of the final site engineering plans prior to issuance of the Excavation/Sheeting and Shoring permit. The final site engineering plans shall agree with the approved final site development and landscape plans and the sequence of construction, which shall be consistent with all site plan approval requirements and all County laws. The developer agrees that the plans shall include CPHD Site Planner review and signature blocks. Upon completion of the construction of a project, prior to the release of the bonds, the developer agrees to submit one (1) set of as-built mylar plans for sanitary, storm sewer and water main construction to the Division of Transportation for recording. Any doubt over whether pavement, curb and gutter must be constructed with a particular phase shall be determined by the County Attorney.

Pavement, Curb and Gutter Along All Frontages

19. The developer agrees to show on the final engineering plans pavement, curb and gutter along all frontages of this site in accordance with the then-current Arlington County Standard for concrete curb and gutter and the then-current standards for pavement and according to the following dimensions. The pavement, curb and gutter shall be constructed prior to issuance of the first Certificate of Occupancy for occupancy of the applicable phase of the project. Any doubt over whether pavement, curb and gutter must be constructed with a particular phase shall be determined by the County Manager.

- a. The developer agrees to construct new curb and gutter along N. Lynn Street, 19th Street N., and Wilson Boulevard in approximately their existing location, as shown on the final engineering plan approved by the County Manager or his designee.
- b. The developer agrees to construct new curb and gutter along N. Moore Street approximately in their existing location from Wilson Boulevard to approximately the southern corner of the residential building and new curb and gutter approximately 8 feet to the west of the existing location from the southern end of the residential building to 19th Street N., as shown on the final engineering plan approved by the County Manager or his designee.
- c. The developer agrees to construct new curb and gutter along the west side of N. Moore Street at the intersection of 19th Street N. approximately 3 feet to the west of its existing location with a 30 foot curb radius. The developer also agrees to relocate

two existing bus shelters, electrical, and signage currently in front of the Virginia Dominion Power substation. There shall be a minimum of 3 feet clear distance, or in accordance with ADA requirements, as measured from the back of curb to the front edge of shelter overhang. There shall be a minimum of 12 feet clear pedestrian zone between the existing stone wall (adjacent to Virginia Power substation) measured from the back edge of bus shelter bench. The southern curb of 19th street shall be relocated approximately 4 feet to the north, for approximately 50 feet to the west, connecting back to the existing curbline as shown on the final engineering plan approved by the County Manager or his designee

At no additional construction expense to the developer beyond that shown in the landscape plan dated April 13, 2007, reviewed and approved by the County Board on May 5, 2007, the developer agrees to modify the curb and sidewalk designs as requested by the County Manager to incorporate recommendations from the Rosslyn Multimodal Transportation Plan, provided those requested revisions are received by the developer prior to the issuance of the final building permit.

- d. The developer agrees to construct a nub at the northwest corner of the intersection of Wilson Boulevard and N. Lynn Street, as shown on the final engineering plan approved by the County Manager, or his designee.
- e. The developer agrees to construct a nub at the northeast corner of the intersection of Wilson Boulevard and N. Moore Street, as shown on the final engineering plan approved by the County Manager, or his designee.
- f. The developer agrees to construct a nub at the southwest corner of the intersection of 19th Street N. and N. Lynn Street, as shown on the final engineering plan approved by the County Manager, or his designee.
- g. The developer agrees to construct nubs along the east and west sides of N. Lynn Street mid-block between the intersections of 19th Street N. and Wilson Boulevard, as shown on the final engineering plan approved by the County Manager, or his designee.
- h. The developer agrees to construct handicap ramps at all four corners of the project including mid-block crossing points along N. Lynn Street and N. Moore Street and across their respective streets off site and crosswalks of materials as approved by the County, built per Arlington County Standards, as shown on the final engineering plan approved by the County Manager.
- i. The developer agrees to construct a mid-block crossing on N. Moore Street at the location of the plaza across from the Rosslyn WMATA station of materials, such as stamped or scored concrete, thermoplasty, or other similar material, as approved by

the County, built per Arlington County Standards, as shown on the final engineering plan approved by the County Manager.

The developer agrees that all improvements to curb, gutter, sidewalks and streets for pedestrian and/or vehicular access or circulation shall be in full compliance with the Americans with Disabilities Act (ADA) except where it is not possible due to existing conditions and any regulations adopted thereunder, as well as any other applicable laws and regulations as determined by the County Manager. The developer further agrees that all improvements to curb, gutter, sidewalks, crosswalks, and streets for pedestrian and/or vehicular access or circulation shall be as determined by the County Manager on the final Site Development and Landscape Plan and on the final Site Engineering Plan, in accordance with the Rosslyn-Ballston Corridor Streetscape Standards or other applicable urban design standards in effect at the time of final Site Engineering Plan Approval for each phase of the project; provided, however, that the provision of such improvements shall not increase the projected cost anticipated for such improvements as shown on the site plan drawings dated April 13, 2007, unless the County provides additional funding to offset such increased cost.

Sidewalk Design and Improvements

21. The developer agrees that the final sidewalk pattern/design and final selection of materials and colors to be used shall be as determined by the County Manager on the final site development and landscape plan and final engineering plan, in accordance with the Rosslyn-Ballston Streetscape Standards or other applicable urban design standards approved by the County Board and in effect at the time of the final landscape plan approval. The developer further agrees to construct the sidewalk improvements detailed below prior to the issuance of the first Certificate of Occupancy for occupancy of the applicable phase of the project. The developer agrees that sidewalk ~~along the street frontages of this development shall be paved with brick or an interlocking concrete paver~~ clear zones along the street frontages of this development shall be consistent with the County's R-B Corridor Streetscape Standards and made of a poured-in place "decorative" concrete design consistent with design specs: #02610, #02615 or approved alternate. Such sidewalk must comply with ADA standards of a vibration free surface texture and a limit of 1/4 inch or less rise not more than every 30 inches and shall be placed on a properly-engineered base approved as such by the Division of Transportation. The developer further agrees that the sidewalk treatments shall continue across all driveway aprons for loading and garage entrances along all frontages of the site plan, and there shall be no barriers to impede the flow of pedestrian traffic. The developer agrees that only emergency exit doors, not doors used for daily operations, shall be permitted to open out into the 12-foot clear sidewalk zone. The sidewalks shall contain street trees placed in either tree pits, tree grates or planting strips, consistent with the *Standards for Planting and Preservation of Trees in Site Plan Projects*, and as specified below. Placement, planting and root enhancement options shall be consistent with the *Standards for Planting and Preservation of Trees in Site Plan Projects*, and as specified below. Street trees shall not be placed within the vision obstruction area. All public walkways shall be

constructed to County Standard. The developer agrees to maintain and replace the street trees and sidewalks for the life of the site plan. The developer agrees that the sidewalk sections and street tree species shall be as follows:

Applicable throughout project:

The developer agrees to pay for and install up to (2) multi space meters of style and location of the Central Place project as determined by the County Manager.

North Moore Street - a minimum 15-foot wide sidewalk measured from the back of curb maintaining a 12-foot wide clear sidewalk from the intersection of Wilson Boulevard to the plaza. From the plaza to 19th Street N. a sidewalk that varies in width from 14-foot to 17-feet, 8-inches, measured from the back of curb maintaining a 12-foot wide clear sidewalk, including 5 feet by 12 feet tree pits with tree grates, planted with 4 ½ inch caliper Willow Oak street trees, or an alternate species approved by the County Manager, placed 27 feet on center and a minimum of eight (8) inches back from the back of curb.

At no additional construction expense to the developer beyond that shown in the landscape plan dated April 13, 2007, reviewed and approved by the County Board on May 5, 2007, the developer agrees to modify the curb and sidewalk designs as requested by the County Manager to incorporate recommendations from the Rosslyn Multimodal Transportation Plan, provided those requested revisions are received by the developer prior to the issuance of the final building permit.

North Lynn Street - a minimum of 15-foot, 10-inch wide sidewalk as measured from back of curb and maintaining a 12 foot wide clear sidewalk from Wilson Boulevard to a point approximately 100 feet North and a 17-foot, 8-inch wide sidewalk measured from the back of curb maintaining a 12-foot wide clear sidewalk for the remainder of N. Lynn Street, including 5 feet by 12 feet tree pits with tree grates, planted with 4 ½ inch caliper Willow Oak street trees, or an alternate species approved by the County Manager, placed 27 feet on center and a minimum of eight (8) inches back from the back of curb.

At no additional expense to the developer beyond that shown in the landscape plan dated April 13, 2007, reviewed and approved by the County Board on May 5, 2007, the sidewalk design and pattern shall be coordinated with the Rosslyn Esplanade Project, provided the design and pattern details have been finalized prior to the application for the first building permit, not including permits for demolition or site clearing and/or grading. If approved by the County Manager, funds maybe drawn from the public art contribution from this development project to fund the art components of the streetscape as specified by the Rosslyn Esplanade project.

19th Street North – a minimum 17-foot, 8-inch wide sidewalk measured from the back of curb maintaining a 12-foot wide clear sidewalk with the exception of nine linear feet at the corner of N. Moore St. where the sidewalk may be 10-feet clear to the back of the

ADA ramp, including 5 feet by 12 feet tree pits with tree grates, planted with 4 ½ inch caliper Willow Oak street trees, or an alternate species approved by the County Manager, placed 27 feet on center and a minimum of eight (8) inches back from the back of curb.

Wilson Boulevard - a minimum 17-foot, 8-inch wide sidewalk measured from the back of curb maintaining a 12-foot wide clear sidewalk, including 5 feet by 12 feet tree pits with tree grates, planted with 4 ½ inch caliper Willow Oak street trees, or an alternate species approved by the County Manager, placed 27 feet on center and a minimum of eight (8) inches back from the back of curb.

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 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.

The developer agrees to develop and implement a retail attraction and marketing plan for the approximately 44,554 square feet of retail space located on the first two floors of the office and residential buildings. The plan, which shall be submitted for the retail that is associated with each phase, shall identify the types of retail desired, the marketing strategy to attract the retail, and strategies to retain the retail, and slab-to-slab heights, consistent with sheets A1.03 and A1.04 of the plans dated April 13, 2007. The retail attraction and marketing plan shall be in accordance with the approved Retail Action Plan for the Rosslyn-Ballston Corridor, dated January 2001. The retail attraction and marketing plan shall be reviewed and approved by the Department of Economic Development before being submitted to the Zoning Administrator. The above-grade building permit shall not be issued until documentation has been provided to the Zoning Administrator assuring that the plan has been approved by the Department of Economic Development for each phase. Banks will only be permitted if they install an exterior ATM located on the building façade. Any change in the use of the retail space from retail to office or other non-retail use shall require a site plan amendment.

The retail spaces shall be designed and constructed to include interior and exterior improvements necessary to ensure that they are functional and attractive to prospective retailers and that they animate the street frontage. These elements shall include, but are not limited to: approximately ___ foot floor to floor slab-to-slab heights, as shown on sheets A1.03 and A1.04 of the plans dated April 13, 2007; access to the service corridor/areas as shown on the architectural plans dated April 13, 2007; direct street frontage or plaza frontage and access; rough-in of utilities, i.e., sprinkler heads, plumbing, electrical wiring, and stubs for extensions; provision for any venting systems required for any food preparation or restaurant use; and sufficient transparency of the building facade to achieve adequate street exposure.

The developer agrees to require retailers to provide ADA access to the retail space proposed in the office and residential building space as generally depicted on the site plans dated April 13, 2007.

LEED Credits and Sustainable Design Elements

71. The developer agrees to hire a LEED certified consultant as a member of the design and construction team. The consultant shall work with the team to incorporate sustainable design elements and innovative technologies into the project so that numerous building components may earn the developer points under the U.S. Green Building Council's system for LEED certification. Specifically, the developer agrees to include sustainable elements in design and construction that are sufficient to meet the requirements for seven (7) LEED Prerequisites and include at least 28 LEED Core and Shell credits for the office building (LEED-CS Silver), and 26 LEED for New Construction credits for the residential building (LEED-NC certified). ~~The developer agrees to use commercially reasonable efforts to achieve additional LEED credits which would qualify the building for certified levels.~~ The developer agrees to register the project with the USGBC as assurance that the project will seek LEED certification. The developer agrees to provide documentation of this registration to the County Manager or his designee prior to the issuance of the excavation, sheeting, and shoring permit.

For residential development, the developer agrees that all of the following types of appliances, fixtures, and/or building components used in the project shall have earned the U.S. EPA's Energy Star label: clothes washers, dishwashers, refrigerators, ceiling fans, ventilation fans (including kitchen and bathroom fans), light fixtures (halls and common areas), and exit signs. To further enhance energy efficiency, the developer shall choose two of the types of components listed and all of those two types of components installed or used in the project shall be Energy Star qualified: programmable thermostats (in residential units); residential light fixtures; windows and doors; and HVAC systems. The developer shall submit to the County Manager a statement listing all Energy Star qualified components prior to issuance of the Core and Shell Certificate of Occupancy for each phase of the project.

The developer further agrees to submit, to the Department of Environmental Services (DES) and to the Zoning Office, a report prepared by the LEED consultant and documentation upon request to substantiate the report. Such reports will be submitted prior to issuance of the following permits or certificates of occupancy for construction of each phase of the project and will summarize the efforts to date of the inclusion of the sustainable elements within the project:

- Demolition Permit
- Excavation, Sheeting and Shoring Permit
- Footing to Grade Permit
- First Above Grade Building Permit

- Final Building Permit
- Shell and Core Certificate of Occupancy
- Certificate of Occupancy for occupancy of the last floor of space
- Master Certificate of Occupancy

In addition, prior to issuance of the first Certificate of Occupancy after the Shell and Core Permit, the developer will have its LEED consultant submit a certification to the County Manager that the elements to earn the above specified numbers of points have been included in the buildings.

Within ninety (90) days after the issuance of the first certification of occupancy for any part of the last floor of residential floors 1 through 24 of the residential building and the first certification of occupancy for any part of the last floor of office floors 1 through 23 of the office building, the applicant agrees to provide a certification by a LEED-accredited professional. The certification shall state that all of the Green Elements, as set forth above in the reporting mechanisms and including all of the LEED Prerequisites, have been incorporated into the project and that, in the professional's opinion, the project will qualify for a LEED Score of 28 points or higher for the office building and 26 points or higher for the residential building. The developer also agrees to submit all appropriate documentation to the USGBC for review and evaluation for LEED certification.

Prior to the issuance of the first certificate of occupancy for office space in Phase I and residential space in Phase II, the developer agrees to provide to the County financial security (in the form of a bond or letter of credit or other form approved by the County Attorney) for each phase in the amount of \$442,636 (\$1 per square foot x 442,636 s.f. of residential and retail) for the residential building and \$581,528 (\$1 per square foot x 581,528 s.f. of office and retail) for the office building, guaranteeing that, within eighteen months from the date of the issuance of the first certificate of occupancy for any part of the last floor of residential floors 1 through 24 for the residential building and first certification of occupancy for any part of the last floor of office floors 1 through 23 for the office building, the developer will have received is LEED-NC "Certified" certification (26 or more credits) for the residential building and the LEED-CS "Silver" certification (28 or more credits) for the office building from the United States Green Building Council. Should the developer fail to obtain the USGBC's rating within the eighteen month period, plus a 9 month cure period and unless due to delay related solely to the USGBC, the developer shall automatically forfeit the security, which shall be immediately paid to the County.

The developer agrees to permit the County Manager or his designee to access the USGBC records for the project, and to provide the County Manager with such authorization as may be necessary to allow such access. Should there be a dispute between the County and the developer as to whether any sustainable element has properly been included in the development so as to qualify for the applicable number of LEED rating system points, the County and the developer will select a mutually agreeable third-

~~party LEED-certified individual, or other person with substantial experience in the LEED system if approved by the County Manager, and accept the determination of that individual as to whether the developer has qualified for those points. If the third party person determines that the sustainable element has properly been included, the County will issue the permit. Such a determination shall in no way relieve the developer of the obligation to achieve the level of certification called for in this condition.~~

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.

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 he \$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 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~~) 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~~) 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 prior to the issuance of the first certificate of occupancy, permitting tenant occupancy, of the project that is the subject of these conditions.

~~119~~) 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 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 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 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:
 - 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.

ED) 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.

~~G~~H) 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.

~~H~~I) 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.

~~I~~J) 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 prior to the issuance of the first certificate of occupancy, permitting tenant occupancy, of any portion of 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 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. The Observation Deck shall also include kitchenette-type facilities to include, at a minimum, a refrigerator, sink, food preparation area, and a microwave oven. The ~~applicant~~ developer ~~has~~ agrees 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 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 (Initial Operating period). 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 for the Observation Deck. The plan shall be reviewed and approved by the County Manager prior to the issuance of the final building permit, to 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, the operating budget and admission fee will be reviewed and adjusted as needed 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 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 (including every other 4th of July) at no charge to applicant developer, and consistent with the provisions of the Management and Programming Plan. 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 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.

Final Plaza Design

86. The developer agrees to work with the community to develop a final design for the plaza, based on the conceptual plaza design included in the Plans. Final plaza design shall be generally consistent with the plans dated April 13, 2007, and reviewed and approved by the County Board on May 5, 2007, in terms of the elevation above sea level and the general location of all proposed elevators, but shall establish details such as specific features design, materials, style and placement of furniture, and landscaping according to the schedule outlined below. Within one month of County Board approval of the site plan amendment (June 5, 2007), the applicant agrees to meet with Rosslyn Renaissance and the County Manager to discuss plaza programming and design expectations. The applicant further agrees to facilitate ongoing discussions with the County Manager, the Parks and Recreation Commission, and Rosslyn Renaissance and the Urban Design Committee of Rosslyn Renaissance, including representatives from the Rosslyn North and Radnor-Fort Myer Heights civic associations, during a design period of two (2) months after approval by the County Board (July 5, 2007). At this end of this design period, on or before August 31, 2007, the developer will submit the proposed final plaza design to the Urban Design Committee of Rosslyn Renaissance, the Parks and Recreation Commission, and the County Manager. County staff and Rosslyn Renaissance shall submit any comments or suggestions regarding the final plaza design to developer within two (2) months (October 31, 2007) from submission. Developer will respond promptly and incorporate into final plaza design the suggestions consistent with the intent of the

4.1 site plan approval. The developer agrees to submit the final plaza plan and for review and approval of the County Manager prior to issuance of the sheeting/shoring permits.

The plaza will include a permanent storage area of approximately 300 square feet, over which an easement is required by Condition #72, for storage of movable furniture to be used on the Plaza. The Rosslyn BID operator or a successor organization will be given access to the storage area for set up and removal of the furniture. The development of the plaza will also include the initial purchase by the developer of 120 movable chairs and 10 movable tables for use on the plaza.

Prior to recordation of the easement for the plaza required by Condition #72, the developer shall enter into a maintenance agreement for the plaza with Arlington County and ~~other parties~~ the Rosslyn BID operator if requested and if deemed necessary by the County Manager.

Bus Pass-Through

87. The developer agrees to construct, at its sole cost and expense, a pass-through through the office tower to accommodate buses for WMATA, and to grant an easement to WMATA and Arlington County and their successors and assigns, for its use, as shown on the final engineering plan and in consultation with WMATA, for the life of the building or until an alternative bus routing is agreed upon by WMATA and the County. Final design of the pass-through, including height, slope, dimensions, ventilation, and lighting shall be coordinated with WMATA and Arlington County. The design shall comply with WMATA criteria and local codes to permit operation of all current and planned bus types for geometry and fuel technology.

If, in the future, WMATA, in its sole discretion, determines that a door would be permitted on the entrance and/or exit of the bus pass-through, the developer may submit an administrative change request to add the door(s) to the Zoning Administrator for review, but the pass-through shall be accessible 24 hours a day and seven days a week. The developer will request a letter from WMATA to confirm this permission from WMATA.

If, in the future, WMATA and the County make the determination that the bus pass-through is no longer needed, the developer may convert that area to retail, as shown on sheet L.01 of the Plans labeled "Future Potential Retail up to 2,430 sq. ft." or at a minimum, shall enclose the bus pass-through to create retail facades along N. Moore Street and N. Lynn Street after submission to and approval by the Zoning Administrator of an administrative change request. This converted space shall not count as Gross Floor Area or FAR and shall not require additional parking or loading spaces. This additional retail space shall comply with the TDM measures outlined above and all other site plan conditions. The developer will request a letter from WMATA to confirm that the bus pass-through is no longer needed by WMATA.

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. 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 2) at a lower level for pedestrian viewing.

90. Notwithstanding any condition herein to the contrary, for each of the ordinances of vacation, ordinances of encroachment, conveyances, assignments or grants of County property rights, interests, or permissions required by Condition # 14, including, but not limited to, ordinances of vacation, ordinances of encroachment, conveyances, assignments or grants of County property rights, interests or permissions pertaining to the following, or portions thereof:

(A) Easement for Public Street and Utilities Purposes and Easement for Public Sidewalk recorded in Deed Book 1714, Page 259;

(B) Easement for Public Street and Utilities Purposes recorded in Deed Book 1746, Page 254;

~~(BC)~~ 5' Sanitary Sewer Easement recorded in Deed Book 753, Page 468;

~~(CD)~~ Easement for Public Street and Utilities Purposes recorded in Deed Book 1616, Page 615 and Deed Book 1626, Page 382;

~~(DE)~~ Easement for Public Street and Utilities Purposes and Walkway Easement recorded in Deed Book 2020, Page 1497;

~~(EF)~~ Easement for Public Street and Utilities Purposes recorded in Deed Book 2191, Page 1577;

~~(FG)~~ Easement for Public Street and Utilities Purposes and 10' Storm Sewer Easement recorded in Deed Book 2090, Page 5;

(GH) Easement for Public Street and Utilities Purposes recorded in Deed Book 1968, Page 749;

(HI) Easement for Public Street and Utilities Purposes recorded in Deed Book 1967, Page 1053;

(IJ) Easement for Public Street and Utilities Purposes recorded in Deed Book 2224, Page 750;

(JK) Public Easement for Park Purposes recorded in Deed Book 2289, Page 1087;

(KL) Public Easement for Park Purposes recorded in Deed Book 2052, Page 180 and Deed Book 2089, Page 842;

(LM) Public Easement for Park Purposes recorded in Deed Book 2236, Page 935;

(MN) Encroachment of an electrical vault into County right-of-way along N. Moore Street, adjacent to RPC #16038001, containing ~~143~~ 76 sq. ft. and ~~2,526~~ 1,342 cu. ft.;

(NO) Encroachment of above grade parking into County right-of-way along N. Lynn Street, adjacent to RPC #16038001, containing ~~88~~ 90 sq. ft. and ~~4,180~~ 4,275 cu. ft.;

(OP) Encroachment of below grade parking into County right-of-way along N. Lynn Street, adjacent to RPC #16038001, containing ~~20~~ 26 sq. ft. and ~~470~~ 611 cu. ft.,

(Q) Encroachment of retail at grade building into County right-of-way along N. Lynn Street, adjacent to RPC #16038005, 16038011, 16038012 and 16038013, containing 1,177 sq. ft. and 52,278 cu. ft.;

(R) Encroachment of residential building into County right-of-way along N. Lynn Street, adjacent to RPC #16038011, containing 45 sq. ft. and 8,812 cu. ft.;

(S) Encroachment of electrical vault into County right-of-way along N. Moore Street, adjacent to RPC #16038006, containing 217 sq. ft. and 2,170 cu. ft.;

(T) Encroachment of below grade building into County right-of-way along N. Moore Street, adjacent to RPC #16038006, containing 217 sq. ft. and 2,604 cu. ft.;

(U) Encroachment of below grade building into County right-of-way along N. Moore Street, adjacent to RPC #16038006, 16038008, 16038009 and 16038010, containing 495 sq. ft. and 4,867 cu. ft.;

(V) Encroachment of above grade parking into County right-of-way along N. Lynn Street, adjacent to RPC # 16038013, 16038012, 16038011, 16038009 and 16038005, containing 1,999 sq. ft. and 57,971 cu. ft.;

(W) Encroachment of above grade parking into County right-of-way along N. Lynn Street, adjacent to RPC #16038009 and 16038010, containing 127 sq. ft. and 3,683 cu. ft.;

(X) Encroachment of below grade parking along N. Moore Street, adjacent to RPC #16038006, 16038008, 16038009 and 16038010, containing 495 sq. ft. and 11,055 cu. ft.;

(Y) Encroachment of below grade parking along N. Lynn Street, adjacent to RPC #16038005, 16038013, 16038012 and 16038011, containing 1,398 sq. ft. and 31,455 cu. ft.;

before issuance of any Clearing and Grading Permit(s), the developer agrees to comply with all other conditions, including but not limited to the payment of compensation, required by the respective ordinances of vacation, ordinances of encroachment, conveyances, assignments or grants of County property rights, interests, or permissions required by Condition # 14 herein.

The developer further agrees that:

- (i) The compensation to be paid by the developer for any vacation, encroachment, conveyance, assignment or grant of County property rights, interests or permissions shall be determined by an independent appraisal by an independent, state certified, general real estate appraiser and shall not be reduced by, or treated as an offset to, any community benefits that are contributed by the developer by any condition of this Ordinance;
- (ii) Before consideration by the County of any ordinance of vacation, ordinance of encroachment, conveyance, assignment or grant of County property rights, interests or permissions, an appraisal of all vacations, encroachments, conveyances, assignments or grants of County property rights, interests or

permissions, shall be prepared by an independent, state certified, general real estate appraiser;

(iii) The developer shall pay for the cost of the appraisal by depositing with the County, payable to the Treasurer of Arlington County, Virginia, a check for such estimated cost as determined by the County Real Estate Bureau (“Appraisal Cost Estimate”) prior to the County retaining the appraiser.

(iv) Any additional appraisal costs in excess of the Appraisal Cost Estimate shall be promptly paid, upon request, to the County by the developer.

95. If ~~an acceptable space for a polling place~~ the Observation Deck or Observation Lobby or space within the residential building is identified ~~as acceptable within either building~~ by the Arlington County Electoral Board, the developer agrees to provide that space for the life of the site plan or until such time as the Electoral Board notifies the developer and the County Manager in writing of its intention to permanently discontinue use of the building for a polling place.

Temporary Construction Easement for WMATA Elevators

98. Developer agrees that, before issuance of the first building permit for any building or structure to which the site plan applies, it will grant and convey, to the County, any permanent and/or temporary easements, and agree to a reserve, in the assignment of the County’s rights in RPC #16038804, for the benefit of the County, WMATA and the public at-large, all rights necessary for the construction, location, public use and public access, maintenance, repair, operation, replacement, relocation within the boundaries of the easement and removal of any improvements, structures, facilities, additions or renovations to the Rosslyn Metro Station, including, but not limited to three passenger elevators, an emergency stairway, airshaft, underground mezzanine, and all appurtenant facilities, including electrical and mechanical equipment. ~~The developer further agrees that it will agree to a reservation, in the assignment of the County’s rights in RPC #16038804, for the benefit of the County, WMATA and the public at-large, of any such rights needed in RPC #16038804.~~ Such permanent and/or temporary easements, or reservations, shall have priority over all other liens or encumbrances on the property relating to the area of the easements and shall be subject to the approval and acceptance of the County Manager, as to substance, and shall be subject to the approval of the County Attorney, as to form.