

STATEMENT OF PROFFERED DEVELOPMENT CONDITIONS
PLAZA AMERICA DEVELOPMENT CORPORATION
PCA 90-C-006-1

DATED: July 12, 1993
Revised: July 20, 1993
July 22, 1993
August 6, 1993
August 23, 1993
September 2, 1993
September 9, 1993
September 20, 1993
September 21, 1993
September 29, 1993
September 30, 1993
October 4, 1993
October 5, 1993
October 8, 1993

Pursuant to Section 15.1-491(a) of the Code of Virginia, 1950, as amended, and Section 18-203 of the Fairfax County Zoning Ordinance, 1978, as amended, Plaza America Development Corporation, the applicant in Application PCA 90-C-006-1, and the owner of the parcels under consideration therein, for itself and its heirs, successors and assigns (collectively, the "Applicant") proffer that the development of the parcels under consideration in Application PCA 90-C-006-1 (collectively, the "Property") will be in accordance with the following terms and conditions if, and only if, the Fairfax County Board of Supervisors approves Application PCA 90-C-006-1 for a proffered condition amendment and conceptual development plan amendment to the PDC District for 1,126,000 square feet of gross floor area for office and other principal and secondary uses (this reflects an overall floor/area ratio (FAR) of 0.9711 as applied to 26.27 acres of the Property and advanced

density credit for 0.35 acres of land previously dedicated to Fairfax County for rights-of-way and approved by the Board of Supervisors on June 6, 1988). If Application PCA 90-C-006-1 is denied or withdrawn, these proffers shall immediately become null, void and of no further force and effect. If accepted, these proffers supersede and take the place of any other proffers, or other development conditions that affect the Property. The Applicant proffers as follows:

I. GENERAL

1. The Property will be developed in accordance with pages 2 through 16, 18 and 19 of the Conceptual Development Plan/Final Development Plan ("CDPA/FDPA") prepared by William H. Gordon Associates, Inc., dated April, 1993, as revised through September 28, 1993, provided, however, that minor modifications from the design depicted on the CDPA/FDPA may be permitted when necessitated by sound engineering practices or final site engineering design provided that such modifications are in substantial conformance with that design. For these purposes, where it can be reasonably calculated, a modification of less than ten (10%) percent from the dimension or location of a feature represented on the CDPA/FDPA shall be deemed to be minor, provided, however, that such modifications may not result in any buildings or parking structures being located closer to any project boundary than that shown on

the CDPA/FDPA. Notwithstanding anything to the contrary set forth in this Paragraph I.1., the Applicant may modify the final architectural treatment of the structures, including the shape of the building footprints, provided, however, that such modifications reasonably conform with the design theme established for the project. Further, nothing herein shall be deemed to prevent the Applicant from seeking and obtaining approval from the Planning Commission and, if necessary or applicable, from the Board of Supervisors, of amendments to the Final Development Plan, or of Special Exception or Special Permit uses, provided, however, that such amendments are in substantial conformance with the Conceptual Development Plan and the provisions of the Zoning Ordinance. Additionally, in the event that, at some future time, the Applicant should only seek to increase the building heights of the buildings or parking structures, such an amendment shall be deemed to require Planning Commission (and Board of Supervisors) approval of a Final Development Plan Amendment only. Notwithstanding anything to the contrary set forth herein, the maximum building height of all buildings and parking structures depicted in the CDPA/FDPA and set forth in the tabulations on page 2 of the CDPA/FDPA labelled "Building Tabulations", shall not be exceeded. If necessary, additional parking levels will be

constructed below grade and any reductions in the minimum required parking may only be implemented by reduction of the number of above grade parking levels to be constructed.

2. All building and parking structure elevations shall be designed with building facade materials which are predominantly either granite, marble, pre-cast concrete, dri-vit, brick, architectural block, stone, glass or a combination thereof. In addition, the design of those portions of the buildings and parking structures which will be visible from the ground level view of adjacent properties, will incorporate materials and design elements consistent with those implemented along the Sunset Hills Road frontage of the Property to maintain a consistently attractive appearance on all sides of the project. Further, the penthouses and other rooftop structures, other than electronic communications equipment, of the buildings will be in architectural conformance with the design of the building on which it is located. Copies of architectural elevations of buildings, parking structures, lighting, materials, color and exterior signage shall be provided to the Reston Association's Planning and Zoning Committee and to the Reston Association Design Review Board for review at the time of submission of a building permit for the subject building. Copies of architectural elevations, a

comprehensive signage plan (pursuant to Paragraph VI.7.), landscape plans and site plans shall be submitted to the Fairfax County Planning Commission for review and approval to ensure that the development respects the architectural guidelines set forth above. The architectural elevations will be submitted to the Planning Commission for its review and recommendation to the Director prior to the issuance of a building permit for the affected building, and the landscape and site plans will be submitted to the Planning Commission for its review and recommendation to the Director prior to final site plan approval for the respective portion of the Property.

3. Any change to the CDPA/FDPA or to these Proffers that requires a CDPA/FDPA Amendment or Proffered Condition Amendment, as well as the initial project design and any changes thereto, will be submitted to the Reston Association Design Review Board for review and comment.
4. The Property may be developed in phases provided, however, that:
 - (a) In the event that the service retail component of the project is developed as the first phase, the Applicant shall, as a minimum, include in such first phase all the improvements lying within the phase line depicted on page 16 of the CDPA/FDPA. The improvements depicted on page 16 of the

CDPA/FDPA shall be substantially completed prior to the issuance of Non-Residential Use Permits for any non-office uses. For purposes of this and other subsequent proffers, the term "substantially completed" means that the road improvements shown will be open for use by the public, but need not have been accepted by VDOT for maintenance nor have been released from bonding, and all other pedestrian and landscaping features depicted, will have been installed, but may not have been released from bonding. Nothing herein shall preclude the Zoning Administrator from making a determination that the Applicant has exercised diligent efforts, but that unforeseen circumstances have prevented the Applicant from completing all the improvements shown on page 16 of the CDPA/FDPA, and allow the issuance of Non-RUPs for the first phase; and,

- (b) The Applicant may, at its sole option, include additional land area in the first phase of development and will be permitted to implement its construction phasing in accordance with standard engineering practices, including the establishment of interim surface parking facilities where permanent parking facilities or travelway areas are depicted on the CDPA/FDPA, provided, however, that,

except as may be permitted pursuant to Paragraph IV.3., the tree save areas depicted on the CDPA/FDPA shall not be disturbed; and,

- (c) Nothing set forth herein shall preclude the Applicant from constructing any of the office buildings as the first phase of development and the Applicant will be permitted to implement its construction phasing in accordance with standard engineering practices, including the establishment of interim surface parking facilities where permanent parking facilities or travelway areas are depicted on the CDPA/FDPA, provided, however, that, except as may be permitted pursuant to Paragraph IV.3., the tree save areas depicted on the CDPA/FDPA shall not be disturbed; and,
- (d) Interim surface parking facilities shall be designed to satisfy all applicable parking lot landscaping requirements set forth in the Zoning Ordinance; and,
- (e) Parking structures which may be constructed in phases will not be required to provide the landscaping shown on the CDPA/FDPA on the top level of the structures until they are completed, at which time they will be required to conform with the landscaping design shown on the CDPA/FDPA.

5. The Applicant will contribute Fifteen Thousand and no/100 (\$15,000.00) Dollars for street lights as set forth in the Reston Street Light Fund. This amount shall be payable to Fairfax County at time of final site plan approval for the first phase of development.
6. A portion of an office building rooftop area, to accommodate communications facilities, will be provided to Fairfax County for a period of twenty five (25) years from the date of the issuance of a Building Shell Non-Residential Use Permit for the first office building, in accordance with the parameters set forth in Exhibit 1, hereto, and pursuant to a license or lease agreement (at the Applicant's discretion), providing all necessary and customary restrictions and regulations regarding, but not limited to, insurance, indemnification (including voluntary or involuntary relocation, repairs and restoration of roof penetrations), installation, and use and access limitations which may be strictly provided and enforced by Applicant, and will be required, prior to their establishment. In the event that the use of these communication facilities should be discontinued for a period exceeding one (1) year, this commitment may, at the sole discretion of the Applicant, expire. The Applicant will provide the County with notice of such expiration. The Applicant will provide the County with a schematic layout of the building rooftop which will

accommodate these facilities as soon as possible after such have been prepared for submission, but not later than at such time as building plans for that building are submitted to Fairfax County for approval. Nothing herein shall be construed as precluding the Applicant from accommodating any other permitted facilities on the roof or penthouse areas of the selected building rooftop. Further, in the event that the County desires to relocate its facilities to a taller building within the Property, the Applicant will allow such relocation, provided it does not incur any relocation expenses.

II. PUBLIC AND MASS TRANSIT

1. The Applicant will assist in the construction or acquisition of public facilities and infrastructure and the acquisition of public buses or other public vehicles to be used for public mass transit services which will directly benefit the Property by contributing the following:

(a) An initial cash payment of Two Hundred Thousand Dollars (\$200,000.00) to be made within thirty (30) days of written notification from the Urban Mass Transportation Administration to Fairfax County which commits the funding for the facility described in this Paragraph II.1 and all conditions precedent thereto have been satisfied. (As of the

date of this Proffer Statement, the Applicant has satisfied this condition.)

(b) One Million Dollars (\$1,000,000.00) in additional cash payments to be made in four (4) equal annual payments of Two Hundred Fifty Thousand Dollars (\$250,000.00), to be paid according to the following schedule:

(1) Two Hundred Fifty Thousand (\$250,000.00) Dollars by not later than September 14, 1993 (As of the date of this Proffer Statement, the Applicant has satisfied this condition.);

(2) Two Hundred Fifty Thousand (\$250,000.00) Dollars by not later than September 14, 1994;

(3) Two Hundred Fifty Thousand Dollars (\$250,000.00) by not later than September 14, 1995;

(4) Two Hundred Fifty Thousand Dollars (\$250,000.00) by not later than September 14, 1996;

2. Further, the Applicant will contribute the sum of approximately Three Million One Hundred Sixty-Eight Thousand Eight Hundred Eighty Dollars (\$3,168,880.00) to be escalated as set forth in II.2.(d) to a fund designated by Fairfax County for the improvement of the transportation network in the "immediate vicinity" of the Property as defined below, or for the implementation or

subsidization of a public mass transit system which directly serves the Property, as follows:

- (a) \$1.50 per gross square foot for each of the first 400,000 square feet of gross floor area.
- (b) \$2.75 per gross square foot for each of the next 400,000 square feet of gross floor area.
- (c) \$4.50 per gross square foot for each of the next 326,000 square feet of gross floor area.
- (d) Commencing January 1, 1996, any outstanding amounts due pursuant to the contribution formula described in (a), (b) and (c) above shall be adjusted annually based on the Virginia Highway Bid Index (the "Index") as published in the Engineering News Record. These contributions will be due upon, and as a prerequisite to, the issuance of Non-RUPs for the respective building gross floor area to be occupied. Said annual adjustment shall be calculated based upon a moving average of the Index for the preceding five year period; provided, however, that in no event shall the annual adjustment exceed six (6.0%) percent of the prior year's amount, and that the excess over six (6.0%) percent shall be carried forward and recaptured in subsequent years when the Index is less than six (6.0%) percent. If, at the time these contributions become due, there is no funding

mechanism in place for these improvements, then the Applicant will deposit the funds with Fairfax County in an interest bearing escrow account for the purposes set forth in this paragraph. However, if the road improvement proffered pursuant to Paragraph III.2.(a) is completed within eighteen (18) months from the date of approval of this proffered condition amendment, the adjustment shall not commence until January 1, 1998.

- (e) In the event the Sunset Hills Road improvements are completed pursuant to Paragraph III.2.(a) within eighteen (18) months from the date of approval of this proffered condition amendment, this contribution shall be decreased (the "Offset Credit") as follows: 1.48 times the actual cost of construction of one-half of the full section of Sunset Hills Road, as shown on pages 18 and 19 of the CDPA/FDPA, and for the actual hard and soft costs of construction of the bus shelters and bus pull-off as shown on the CDPA/FDPA, all as evidenced by the payment of invoices (copies of which will be presented to Fairfax County for verification) for all hard and soft costs associated with such construction. (Hard and soft costs shall include, but not be limited to, the following: design, engineering, soil testing and

analysis, acquisition of rights-of-way and off-site easements [if any], permit fees, and actual construction.) This Offset Credit shall be applied to the amount due on the initial square footages until all Offset Credit has been expended. (Example: if the Offset Credit amounts to \$1,000,000.00, then no per square foot contributions will be due until Non-RUPs are issued for more than 545,454 square feet of gross floor area are sought to be occupied, with the next 254,546 square feet of gross floor area being required to pay \$2.75 per gross square foot, and so on.).

- (f) If the road improvement is bonded pursuant to Paragraph III.2.(a)(2) but not constructed by the Applicant within 18 months or the road improvement is bonded but constructed by others pursuant to Paragraph III.2.(a)(2) or III.2.(a)(5), the Offset Credit shall consist of one-half of the amount bonded for the Sunset Hills Road improvements.
- (g) For purposes of this Paragraph II., the term "immediate vicinity" as it relates to proximity to the Property is defined as being within an area bounded by Hunter Mill Road on the east, the Fairfax County Parkway on the west, the Dulles Toll Road on the south, and the area five hundred (500')

feet north of Sunset Hills Road, and, in addition, including the entire segment of Old Reston Avenue north to its intersection with Temporary Road, all of Temporary Road, and the planned underpass of the Dulles Toll Road for the Reston East Park and Ride Facility.

III. TRANSPORTATION

1. The design and construction of all of the following transportation improvements, whether on-site or within existing rights-of-way, shall be, together with the design modifications set forth in the letter included as Exhibit 2, hereto, in accordance with the governing standards of, and subject to, approval by (a) the Virginia Department of Transportation ("VDOT") and/or, as may be applicable, (b) the Fairfax County Department of Environmental Management ("DEM").
2. The Applicant will make best efforts to reach any and all necessary private agreements with the owner/applicant of the Waterbridge Square property (Tax Map Number 17-4 ((1)) Parcels 35A, 35B and 35C [formerly Parcels 5, 5A, 9, and 9A]) (hereinafter the "Waterbridge Square Owner") to facilitate the construction of Sunset Hills Road, along their respective frontages, in accordance with the design shown in the Sunset Hills Road Improvement plan provided as pages 18 and 19 of the CDPA/FDPA.

(a) If the Board of Supervisors has not made the election available to it pursuant to Paragraph III.2 (c) below, or the Board of Supervisors directs the Applicant to proceed to construct the full section of the Sunset Hills Road improvements, the Applicant will then submit a bonafide P.I. plan for the widening of Sunset Hills Road, across the respective frontages of the Property and the "Waterbridge Square" property, to a full 6-lane section, as described on pages 18 and 19 of the CDPA/FDPA, within 120 days of the notice to proceed or 120 days of the expiration of the 60 or 90 day period set forth in Paragraph III.2.(c), whichever shall be applicable. The Applicant shall design and shall construct said road improvement under the following terms:

(1) Subject to Paragraphs III.2.(a) and III.2.(c), the Applicant shall submit P.I. plans to DEM for said improvement no later than 120 days, plus the additional days as may be permitted pursuant to Paragraph III.2.(c), following approval of this Application. In the event that the Applicant has commenced work on the P.I. plans for submission to DEM and the Applicant fails to submit said plans to DEM within the time frame stated herein, the Board

of Supervisors may then elect to (i) take over the use of the P.I. plans (in this event, the Applicant shall turn over to the County the work completed to date on the P.I. plans), and (ii) take assignment of construction and professional contracts (if any) associated with the construction of these improvements. The Board of Supervisors may also elect to have the Applicant proceed to construct the half-section of the 6-lane divided section across the entire frontage of the site as depicted on sheets 18 and 19 of the CDPA/FDPA on demand or prior to the issuance of any Non-RUP for the Application Property, whichever shall first occur. In these events, (i) the Offset Credit, as described in II.2.(e) shall not apply, and (ii) the Index shall commence on January 1, 1996, as set forth in Paragraph II.2(d).

- (2) The Applicant shall obtain bonding for said improvement no later than 300 days following approval of this Application. In the event that the Applicant should fail to obtain the bonding of the P.I. plan within these 300 days, the Board of Supervisors may, thereafter, determine that the Applicant has

not been diligent in its processing of the P.I. plan for approval and bonding. If the Board of Supervisors should consider making such a determination, it shall provide the Applicant an opportunity to address the matter to the Board of Supervisors. In the event that the Board of Supervisors should, thereafter, determine that the Applicant has not been diligent in its processing of the P.I. plan for approval and bonding, the Board of Supervisors may then elect to take over the construction of these improvements or it may elect to have the Applicant proceed to construct the half-section of the six-lane divided section across the entire frontage of the site as depicted on sheets 18 and 19 of the CDPA/FDPA on demand or prior to the issuance of any Non-RUPs for the Application Property, whichever shall first occur. In the event that the Board of Supervisors should take over construction of the improvements, it shall be entitled to (i) possession and use of the P.I. plans, and (ii) the assignment of construction and professional contracts associated with the construction of these improvements. In these events the Offset

Credit, as described in Paragraph II.2.(e), shall not apply, and the Index shall commence on January 1, 1996, as set forth in Paragraph II.2.(d). In addition, the Applicant shall convey all necessary rights-of-way and ancillary easements to the Board of Supervisors, in fee simple, within thirty (30) days of the demand by the County, for construction, by others, of the half-section of a six-lane divided section along the entire frontage of the site as shown on Sheets 18, and 19 of the CDPA/FDPA. In the event that the Applicant has been delayed by unforeseen circumstances, the Board of Supervisors may determine that the Applicant has been diligent and direct the Applicant to proceed, in which case the Applicant shall be entitled to the Offset Credit and the Applicant of the Index as set forth in Paragraph II.2.(d) on January 1, 1998.

- (3) Construction of said road improvements shall be commenced within fourteen (14) months of the approval of this application by the Board of Supervisors. If the Applicant fails to commence construction within fourteen (14) months (a) the Applicant shall convey all

necessary rights-of-way and ancillary easements to the Board of Supervisors, in fee simple, within thirty (30) days of the demand by the County, for construction, by others, of the half-section of a six-lane divided section along the entire frontage of the site as shown on Sheets 18, and 19 of the CDPA/FDPA, or (b) the Board of Supervisors may also elect to have the Applicant proceed to construct the half-section of the six-lane divided section across the entire frontage of the site as depicted on sheets 18 and 19 of the CDPA/FDPA prior to the issuance of any Non-RUPs for the Application Property or upon demand, whichever shall first occur.

Notwithstanding the above, in the event that the Applicant has been delayed by unforeseen circumstances, the Board of Supervisors may determine that the Applicant has been diligent and direct the Applicant to proceed to construct the full section, in which case the Board of Supervisors shall determine whether the application of the Offset Credit is appropriate and whether the Index shall commence as set forth in Paragraph II.2.(d) on January 1, 1996 or January 1, 1998.

Conversely, if the Board of Supervisors determines that the Applicant has not been diligent, then the Applicant shall be entitled to the Offset Credit as defined in Paragraph II.2.(f).

(4) No Non-RUPs shall be issued for any portion of the Property included in this application until the road improvements described in this section are substantially completed as described herein.

(5) If the improvements to Sunset Hills Road referenced pursuant to this paragraph are bonded within 14 months but are not substantially completed as described herein within 18 months (for purposes of this proffer, the term "substantially completed" means that the road improvements shown will be open for use by the public, but need not have been accepted by VDOT for maintenance nor have been released from bonding) of the date of approval of this application:

(i) At the option of the County, the Sunset Hills Road P.I. plans shall be conveyed to the County and the Applicant shall assign all rights and interests in said plans to the County, and such road

improvements may at the option of the County be completed by Fairfax County or, the Board of Supervisors may elect to have the Applicant construct its one half-section or full 6-lane section.

- (ii) The Applicant shall convey all necessary rights-of-way and ancillary easements to the Board of Supervisors, in fee simple, within thirty (30) days of the demand by the County, for construction, by others, of the half-section of a six-lane divided section along the entire frontage of the site as shown on Sheets 18, and 19 of the CDPA/FDPA.
 - (iii) No Non-RUPs shall be issued for any portion of the Property included in this application until the road improvements have been completed.
 - (iv) the Applicant shall receive an Offset Credit in an amount equal to one-half of the amount bonded for the road improvements.
- (b) If a bonafide P.I. plan for the widening of Sunset Hills Road across the respective frontages of the site and the "Waterbridge Square" site to a full six (6)-lane section with a raised median as

described on pages 18 and 19 of the CDPA/FDPA is submitted by others prior to the Applicant's submission of a bonafide P.I. plan for those same improvements, the following terms shall apply:

- (1) Applicant shall convey all necessary rights-of-way and ancillary easements to the Board of Supervisors, in fee simple, within thirty (30) days upon demand of DEM for construction, by others, of the half-section of a six-lane divided section along the entire frontage of the site as shown on sheets 18 and 19 of the CDPA/FDPA.
- (2) Within 30 days of notification by DEM, the Applicant shall deposit funds in an interest bearing account with Fairfax County in an amount estimated to be equivalent to the cost of construction of the half-section of Sunset Hills Road immediately adjacent to the Application Property, as determined by DEM, for the construction, by others, of a full section of Sunset Hills Road. Following submission of actual invoices, as verified by Fairfax County, the Applicant will be entitled to seek reimbursement of any excess monies deposited, including any accrued interest, over the actual total cost of its share of the

cost of improvements, or, within 30 days of notice, shall pay the difference between the amount deposited and the actual cost, whichever may be applicable.

(3) No Non-Residential Use Permits (Non-RUPs) shall be issued until the Sunset Hills Road improvements are substantially completed as defined in these Proffers.

(c) At the sole election of the Board of Supervisors, if the Board of Supervisors, or the County entity that it may officially designate, provides written notice of such to the Applicant within sixty (60) days of the date of approval of this application, or in the event that the Board of Supervisors hearing for the Waterbridge Square property's rezoning should be delayed beyond December 13, 1993, within ninety (90) days, or if the Applicant fails to proceed with its requirements in III.2.(a) and III.2(b) the County, at its option, may direct the following:

(1) The Applicant to dedicate right-of-way, in fee simple, and construct the half-section of the six-lane divided section across the entire frontage of the site as depicted on sheets 18 and 19 of the CDPA/FDPA prior to the issuance of any Non-RUP for the Application Property or

upon demand of Fairfax County, whichever first occurs, or

- (2) The Applicant to proceed to construct the road improvements pursuant to Paragraph III.2.(a).
- (3) Notwithstanding anything to the contrary set forth above, the amount of time for the Board of Supervisors to provide the Applicant with the notice described in Paragraph III.2.(c), shall be added onto the deadlines for the Applicant's performance requirements with regard to the Sunset Hills Road improvements as set forth in Paragraphs III.2.(a)(1), III.2.(a)(2), III.2.(a)(3), and III.2.(a)(5).

3. At such time as a public road or non-exclusive public access, at the intersection of Old Reston Avenue and Sunset Hills Road, is provided with acceptable (direct and unimpeded) site access and directional signage for the Property through the Reston Land property which lies immediately to the west of the Property (Tax Map 17-4 ((1)), parcel 7), if requested by Fairfax County and/or VDOT, the Applicant will not construct, or if constructed will close, and landscape as shown on page 4 of the CDPA/FDPA, the westernmost entrance for the Property. In the event that the Applicant is requested to close this entrance, the Applicant will submit the necessary plans for approval by Fairfax County within three (3) months of

the date of its receipt of such notification, and will construct such closure and provide such landscaping within six (6) months thereafter, provided, however, that notwithstanding anything to the contrary contained herein, the commencement of construction of the closure of this entrance shall not be required to begin any sooner than the date that the interparcel access is completed and open for public use. Interparcel access shall be provided within the location shown on page 3 of the CDPA/FDPA, labeled "Future Interparcel Access". The Applicant will join in the execution of any such reasonably required plats of dedication or deeds of easement as are necessary to accomplish same. Such non-exclusive public access shall meet Virginia Department of Transportation driveway standards.

4. (a) At such time following the issuance of any building permit, if VDOT requires or the Applicant desires, with VDOT approval, to install traffic signalization for the two central entrances to the Property from Sunset Hills Road then:
 - (1) with regard to the signalization of the westcentral entrance intersection, the Applicant will fully fund the design, acquisition and construction of traffic signalization for the westcentral entrance to the Property from Sunset Hills Road; and,

- (2) with regard to the signalization of the eastcentral entrance intersection, the Applicant will either (i) fully fund the design, acquisition and construction of traffic signalization for the eastcentral entrance to the Property from Sunset Hills Road, or (ii) in the event that the owner/applicant for the Waterbridge Square property (Tax Map Number 17-4 ((1)) Parcels 35, 35A, and 35C) has committed, through proffers, to the entire cost of installation of this entire traffic signal, and has completed such installation of the signal at the eastcentral entrance, the Applicant shall deposit into the fund described in Paragraph II.2., hereto, an amount equal to one-half (1/2), of the total cost of this improvement.
- (b) At the time signalization is provided at the eastcentral entrance, the Applicant will provide an at-grade pedestrian crossing of Sunset Hills Road and pedestrian signalhead at the eastcentral entrance to the Property, subject to VDOT approval. In addition, at such time as a sidewalk, trail, or equivalent pedestrian connection is provided by others along the north side of Sunset Hills Road, the Applicant will provide a similar pedestrian

crossing facility at the westcentral entrance,
subject to VDOT approval.

5. The Plaza America Transportation Systems Management Program.

(A) The Applicant will work with the Fairfax County Office of Transportation and will implement the following Transportation Systems Management Program (the "TSM Program"). The objective of this TSM Program is to achieve at a minimum, at the time of project build-out, a twenty (20%) percent reduction from the non-TSM traffic projections of peak-hour, single-occupant vehicle traffic demands generated from the development of the Property calculated as set forth by per the Institute of Transportation Engineers Trip Generation Manual (Fourth Edition) formula for office buildings, as attached hereto (Exhibit 3). Among the incentives to be implemented as a part of the TSM Program will be an encouragement of the use of public transportation, ridesharing opportunities, and staggered work hours. The program will have three general components which are:

(1) The funding, by the Applicant, using TSM fund proceeds, of a designated transportation coordinator (the "TSM Coordinator") who will have authority to implement the incentives of the Applicant's TSM Program. The

responsibilities of the TSM Coordinator will be assigned prior to the issuance of the first Non-Residential Use Permit for the second office building constructed on the Property. At all times thereafter, the Applicant will assure the responsibilities of the TSM Coordinator are fully discharged until such time as the Fairfax County Office of Transportation (or its successor in authority) determines that this TSM Coordinator is no longer necessary.

- (2) Ongoing coordination by the TSM Coordinator with a designated Fairfax County Office of Transportation agent or staff (the "County Coordinator"), on a quarterly basis, to provide opportunities for adjustments to the TSM Program in accordance with "state-of-the-art" transportation strategies and recommendations. The TSM Coordinator shall also work closely with other private transportation coordinators designated for the vicinity, including LINK, the Reston Transportation Management program. If requested to do so by Fairfax County, the TSM Coordinator will provide an annual report to the Planning Commission describing the TSM

strategies implemented at Plaza America and their observed effects.

(3) Incentive traffic mitigation programs to be implemented by the TSM Coordinator may include the following:

(a) A Designated Transportation Coordinator;

(b) Parking Management Program;

- Preferential Parking for Ride Sharers;

- Paid Parking with Progressively Reduced Fees Favoring HOV;

- Shared Parking;

- Structured Parking;

- On-Street Parking Prohibition;

(c) Participation in the Fairfax County Ride Share Program;

- Computerized Matching Services;

- Ridesharing Information Kits for New Employees;

- Ridesharing Display Maps and Forms in Each Office Building;

(d) Promotion of Transit Services;

- Transit Subsidies;

- Transit Information Center;

- Shuttle Service to Facilitate Transfer Between Local and Regional Service;
 - Shuttle Service;
 - (e) Provision for Bus Stops and Shelters throughout Plaza America;
 - (f) Sidewalk System Designed to Facilitate Pedestrian Circulation and Emphasizing Covered Access;
 - (g) Promotion of Staggered Work Hours Program and Flex-Time;
 - (h) Lease Rate Incentives to Encourage Participation in Selected Programs;
 - (i) Provision for Adequate Bicycle Storage.
- (B) An annual sum of eleven and 853/100 cents (\$0.11853) per square foot of occupied gross floor area in Buildings 1, 2, 3 and 4, applied to a maximum of 950,000 gross square feet, will be contributed by the Applicant to a designated TSM fund ("TSM Fund") to be used by the TSM Coordinator for the implementation of this TSM Program. Said funding shall continue for a period of fifty (50) years from date of issuance of the building permit for each square foot of gross floor area, or until such time as the Fairfax County Board of Supervisors determines that the need for the TSM

Fund no longer warrants its expense. The expenditure of these sums will be subject to audits, as deemed necessary, by the Fairfax County Office of Transportation; to the extent funds are available, the cost of such audit may be recovered by the Fairfax County Office of Transportation from the TSM fund. These contributions may, at the discretion of the Applicant, be accelerated and credited on a net present value basis using the CCI for the appreciation rate to be applied. The on-site incentive program will be developed by the TSM Coordinator relying, in part, upon the recommendations of the County Coordinator and other appropriate TSM coordinators designated for projects in the vicinity of the Property. The TSM Program will include provisions in tenant leases which will encourage or require cooperation with the TSM Coordinator in the implementation of the TSM Program, including cooperation in conducting surveys of employees and the distribution of transportation management information and regulations to employees.

- (C) Upon achieving an occupancy level of 250,000 gross square feet of office uses (as evidenced by the issuance of Non-RUPs), the TSM Coordinator will conduct a survey designed to determine the

transportation characteristics of the building tenants and employees. This survey will be the basis for improving the effectiveness of the elements of the TSM Program. Based on the survey data and in coordination with the County Coordinator, the TSM Coordinator will allocate monies from the TSM fund for implementation of the TSM Program. Subject to the availability, and budgeting priorities, of such monies, the elements for the TSM Program may include, but not be limited to, the following:

- (1) Reservation of and subsidy of parking spaces for car pools and staggered work hour participants.
- (2) Monitoring of the effectiveness of the TSM Program, including biennial traffic studies as further set forth in these proffers.
- (3) Prior to the occupancy of 381,000 square feet of gross floor area of office uses, as evidenced by the issuance of Non-RUP's, unless a comparable service is provided by others, the Applicant will commence, or cause to be commenced, or contribute a portion of these TSM funds to the subsidy of, the operation of van service to provide transit service to

designated retail, service use destinations and public transit transfer points.

(4) Finally, the Applicant will, through project design, provide for food and business services establishments throughout the Property in order to reduce the need for individual building occupants to utilize an automobile.

See Paragraphs VI.1., 2., and 3.

(D) Upon achieving an occupancy level of 470,105 square feet of gross floor area of office uses (as evidenced by the issuance of Non-RUPs), and on a biennial basis thereafter, or less frequently if permitted by the Fairfax County Office of Transportation, the Applicant shall cause a traffic study to be undertaken to verify the accuracy of the total peak-hour vehicle trip generation projections for the Property (the "Projections"), based upon the ITE Trip Rates used to generate estimated volume counts contained in Exhibit 3. If the biennial traffic study indicates that a fifteen percent (15%) reduction in the non-TSM program projections forecast has not occurred, then, until such time as a follow-up traffic study verifies that the Projections have been met, an additional five cents (\$0.05) per square foot of occupied gross floor area per year will be contributed to

the TSM Fund for use by the TSM Coordinator or by a federal, state or local transportation authority for the purpose of mitigating traffic impacts in the immediate vicinity of the Property.

- (E) Building shell Non-RUPs for more than 705,157 square feet of gross floor area of office uses permitted by the zoning of the Property shall not be issued until either (i) a traffic study verifies that the actual traffic generation of the Property is at least fifteen percent (15%) lower than the non-TSM Program projections set forth in Exhibit 3, or (ii) the Applicant makes annual contributions to the Fairfax County Board of Supervisors, for the improvement of the transportation network in the close vicinity of the Property, in the amount of Fifty Thousand Dollars (\$50,000.00) per year for each year it fails to achieve the herein described fifteen percent (15%) reduction, with an aggregate maximum contribution not to exceed Four Hundred Thousand Dollars (\$400,000.00). This contribution shall be in addition to those set forth in Paragraphs (B) and (D) above. In order to assure Fairfax County that these payments will be made, the Applicant will post at the time of building permit issuance a revolving Letter of Credit, in favor of Fairfax County, to be replenished annually

in the amount still due under this commitment. Any costs and attorney fees expended by Fairfax County for enforcement of the Letter of Credit will be reimbursed by the Applicant.

(F) The Applicant shall be relieved of the requirements of its TSM Program at such time as the County of Fairfax implements a mandatory TSM Program affecting the Property and having substantially the same or greater goals and performance standards as those set forth in this TSM Program. Further, the Applicant shall be relieved of obligations for funding its TSM Program if the County initiates such a mandatory TSM Program.

6. In the event that County condemnation is necessary for any of the road construction proffered herein, the Applicant will fund right-of-way acquisition expenses. The Applicant will use best efforts to acquire right-of-way by agreement with the respective landowners. In the event the Applicant is unable to do so, the Applicant shall request that the County acquire the right-of-way by means of its condemnation powers. It is understood that the County shall be no obligation to do so. It is further understood that the Applicant's request will not be considered until it is forwarded, in writing, to the Director of Property Management accompanied by: (1) plans and profiles showing the necessary right-of-way or

easements to be acquired; (2) an independent appraisal of the value of the right-of-way or easements to be acquired by an appraiser who is not an employee of the County; (3) a sixty (60) year title search certificate of the right-of-way or easements to be acquired; and (4) a Letter of Credit in an amount equal to the appraised value of the right-of-way or easements to be acquired which can be drawn upon by the County. It is also understood that in the event the Property owner of the right-of-way property to be acquired is awarded more than the appraised value of the Property in a condemnation suit, the amount of the award in excess of the Letter of Credit amount shall be paid to the County by the Applicant within five (5) days of said award. It is further understood that all other costs incurred by the County in acquiring the right-of-way shall be paid to the County by the Applicant on demand. Notwithstanding anything to the contrary set forth herein, the Applicant's obligation to construct Sunset Hills Road, as set forth in Paragraph III.2., hereto, shall be contingent upon the County providing such right-of-way acquisition assistance.

IV. ENVIRONMENTAL

1. During construction, the Applicant shall install sediment basins within the development boundaries to ensure an eighty percent (80%) efficiency for erosion and sediment

control.

2. The Applicant shall submit a pedestrian circulation plan to DEM, at the time of preliminary subdivision plat application, that provides for sidewalks linking the buildings on the Property and a sidewalk along Sunset Hills Road. This circulation plan shall be implemented in phases consistent with approved site plans. The Applicant shall provide canopies, bus shelters or similar pedestrian structures on-site at public bus stops where such stops have been approved by either the Fairfax County Office of Transportation or the Washington Metropolitan Area Transit Authority ("WMATA"). Park benches and similar amenities will be incorporated within the development boundaries as shown on the individual site plans for office, retail, or infrastructure (roads and streets) improvements.
3. The Applicant shall submit to the Fairfax County Urban Forester, for review and approval at the time of site plan review, a tree preservation and landscape plan, in accordance with the provisions of Article 12 of the Fairfax County Public Facilities Manual and Article 13 of the Fairfax County Zoning Ordinance, that is in substantial conformance with the CDPA/FDPA, and to ensure the preservation and/or planting of trees on-site which will provide a minimum of ten percent (10%) tree cover over the life of the development. In those areas

designated as "tree save areas" on the CDPA/FDPA, the existing, healthy trees shall be preserved to the extent practicable, as determined by the Fairfax County Urban Forester, provided the trees do not conflict with the development of the Property in accordance with the CDPA/FDPA and provided the trees do not interfere with the location of utilities or any road widening or road improvements which may be necessary. To the extent permitted by sound engineering practices, replacement trees will be provided in those tree save areas where tree removal is necessitated as set forth above. The quantity, location, and type of such trees will be reasonably determined by the Urban Forester in accordance with sound forestry practices.

4. Stormwater detention for the development shall be provided in BMP storage facilities shown on the CDPA/FDPA, and in accordance with applicable Chesapeake Bay Ordinances and regulations. As an added water quality protection measure, subject to approval by the Fairfax County Department of Public Works and DEM, runoff from all levels of the proposed parking facilities will be directed to flow to the proposed stormwater detention facilities.
5. The following noise attenuation measures shall be provided:
 - (A) In areas within Three Hundred Eight (380) feet of

the centerline of the Dulles Airport Access Road that experience noise levels of 70 to 75 dBA Ldn, the Applicant will construct the principal structures (excluding attached parking garages) to achieve a maximum interior noise level of 50 dBA Ldn utilizing the following noise mitigation measures:

1. Exterior walls shall have a laboratory sound transmission class ("STC") rating of at least 39.
2. Doors and windows shall have a laboratory STC rating of at least 28. If windows function as walls (as determined by DEM), they should have the same laboratory STC rating as walls.
3. Measures to seal and caulk between surfaces should follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

(B) In areas within Three Hundred Thirty (330) feet of the centerline of the Dulles Airport Access Road that experience noise levels in excess of 75 dBA Ldn, the Applicant will construct the principal structures (excluding attached parking garages) to achieve maximum interior noise level of 50 dBA Ldn utilizing the following noise mitigation measures:

1. Exterior walls shall have a laboratory sound

transmission class ("STC") rating of at least 45.

2. Doors and windows shall have a laboratory STC rating of at least 37. If windows function as walls (as determined by the DEM), they should have the same laboratory STC rating as walls.
 3. Measures to seal and caulk between surfaces should follow methods approved by the American Society for Testing and Materials to minimize sound transmission.
6. The Applicant shall preserve as open space those areas so indicated on the CDPA/FDPA, and BMP storage facilities will be preserved and maintained as an open space amenity.

V. COMMUNITY SERVICES

1. The Applicant will make available, at a time prior to the issuance of Non-RUP's for more than 250,000 square feet of gross floor area of office uses, five thousand (5,000) square feet of rentable space for a child care center with an outdoor play area, (measuring not less than the product of 100 square feet, in area, per child for every four (4) children) (Example: $150 \text{ children} / 4 \times 100 = 3250$ square feet of minimum area of outdoor play area), in the vicinity of the building. These outdoor activity areas may be located within designated open space areas

immediately adjacent to the building within which the child care center is accommodated. The maximum daily enrollment for the child care facility shall not exceed 150 students. If the child care center is operated by a nonprofit community service organization, the rental rate shall not exceed seventy-five percent (75%) of the market rate then prevailing in Reston for comparable space. Nothing herein shall require the Applicant to lease such space for less than seventy-five percent (75%) of that market rate. In the event that no non-profit organization chooses to locate in the building prior to or within three (3) months subsequent to issuance of a non-RUP for the building, the Applicant will make the space available to a for-profit child care facility at a rental rate no higher than the market rate then prevailing in Reston for comparable space. Upon commencement of construction, the Applicant will notify the District Supervisor's office and the Office of Children that such space will be available.

2. In addition, at a time prior to the issuance of Non-RUP's for more than 250,000 square feet of gross floor area of office uses, and also upon the request of Fairfax County, the Applicant will make available to a user, within one or more of the office buildings, a total of one thousand five hundred (1500) square feet of rentable office space,

such space to be used for non-profit community service organization use in a manner consistent with other uses on the Property. The space will be provided for a twenty-year term, and subject to the execution of a standard lease agreement for the building in which the space will be located, at a rental rate which shall not exceed seventy-five percent (75%) of the market rate then prevailing in Reston for comparable space. Nothing herein shall require the Applicant to lease such space for less than seventy-five percent (75%) of that market rate. Notice of availability will be given to the District Supervisor's office upon commencement of construction for each building with notice of acceptance by Fairfax County to occur within ninety days of such notice.

3. The Applicant will locate underground those utilities fronting on the south side of Sunset Hills Road at the front of the Property.

VI. MISCELLANEOUS PROVISIONS

1. The main or lobby level of building 4, as depicted on the CDPA/FDPA, measuring approximately twenty thousand (20,000) square feet in gross floor area, shall not be occupied with office uses, with the exception of office uses which are accessory to, or provide a direct service to the office tenants on the Property, and will be

occupied with, but not be limited to, one, or more, of the following primary and secondary uses: retail sales establishments; stationary stores, flower stores, financial institutions, travel agencies, optician/optometrist shop, laundries/dry cleaning establishments, automated teller machines, copy service establishments, eating establishments, fast food restaurants (no drive-through), health clubs, child care centers, nursery schools, quick service food stores, private clubs and public benefit associations, business service establishments, accessory or accessory service uses as permitted by Article 10 of the Fairfax County Zoning Ordinance. The floor plan depicting the type and location of such secondary uses at the ground floor is incorporated into the CDPA/FDPA, as page 17, is an illustration of how this proffer may be implemented, which is to provide for the integration of these uses as a part, and continuation, of the non-office uses and their plaza design. As shown on the CDPA/FDPA, these uses will incorporate exterior entrances off the plazas and adjacent sidewalks, as well as pedestrian circulation facilities through the structured parking areas.

2. Principal uses permitted include: business service and supply service establishments, establishments for scientific research, development, and training, financial institutions, offices, personal service establishments,

and retail sales establishments.

3. Secondary uses will not exceed sixteen and one-half percent (16.5%) (185,790 gross square feet) of the permitted gross floor area on the Property. Secondary uses permitted include: accessory uses, accessory service uses, bank teller machines, amusement arcades, drive-in banks, fast food restaurants, health clubs, archery ranges, fencing and other similar indoor recreational uses (excluding firing ranges), institutional uses, light public utility uses limited to radio and television broadcasting tower facilities, microwave facilities and satellite earth stations, telecommunication facilities, indoor golf courses, commercial and indoor golf driving ranges, colleges and universities, private clubs and public benefit associations, child care centers and nursery schools which have an enrollment of 100 or more students daily, private schools of general education which have an enrollment of 100 or more students daily, private schools of special education which have an enrollment of 1000 or more students daily, and veterinary hospitals. Parking for such uses will be provided in accordance with the current provisions of Article 11 of the Fairfax County Zoning Ordinance, including any reductions in the minimum parking requirements which may be approved by the Board of Supervisors. Subject to the limitations set forth in

Paragraph VI.1. (for building 4), nothing herein shall preclude the Applicant from establishing any of these primary or secondary uses within buildings 1, 2, 3, and 4 as labelled on the CDPA/FDPA.

4. The fourteen (14) surface parking spaces along the southern boundary of the Property will be permitted provided that vehicles parked thereon are completely screened, from view by occupants in vehicles on the Dulles Toll Road, using either landscaping materials and/or a solid wall (compatible in design and materials with the buildings on the Property), otherwise, these parking spaces will be removed and substituted with landscaping. Except for that portion of the Property designated as a tree save area, the landscaping to be provided along the south boundary of the Property will, as a minimum, include a double row of evergreen trees measuring not less than ten (10') feet in height at time of planting, and supplemented along the boundary of parking spaces by evergreen shrubs, planted in a solid row, measuring not less than thirty (30") inches in diameter at time of planting. The purpose of this proffer is to screen the lower fifteen (15') feet of improvements on the Property as would be viewed by travelers in automobiles driving on the Dulles Toll Road.
5. Not more than twenty thousand (20,000) square feet of cellar space, in the aggregate, shall be permitted to be

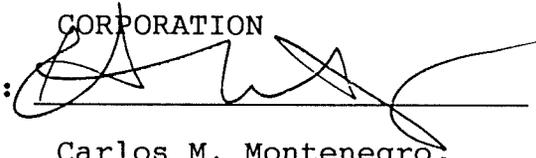
occupied by office uses within the total of the four office buildings shown on the CDPA/FDPA, and the remainder of the cellar space will be limited to occupancy by those uses whose primary function is accessory to the project's tenants.

6. No sodium based lighting of parking lots or common open areas shall be permitted.
7. All signage for the Property, including interparcel directional signage, shall be in accordance with a Comprehensive Signage Plan to be separately submitted for Planning Commission approval.

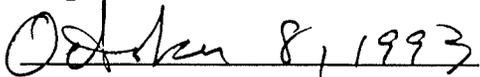
PLAZA AMERICA DEVELOPMENT

CORPORATION

By:


Carlos M. Montenegro,
Attorney in Fact for Plaza
America Development
Corporation

Date:



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