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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- The RSAI shall consist of but not be limited to: three high-speed, high-capacity elevators, an emergency stairway, air shaft(s), underground station mezzanine and passageway connection with finishes, all appurtenant facilities and systems, including but not limited to electrical, communications, fare collection, and mechanical equipment, and any other facilities agreed to by the County and Developer as more fully set forth on Plans dated 4/13/07 and in the Rosslyn Station New Entrance Study Final Report dated March 2007. WMATA will be the owner and operator as part of the facilities constructed as part of the RSAI.

- To the extent that areas of the property covered by the Site Plan are necessary for the RSAI set forth above are controlled, in whole or in part, by the developer, as of the date of approval of this site plan and in the future, the developer agrees to grant and convey all necessary temporary easements, permanent easements, licenses, or, if applicable, a reservation of rights in the assignment of the County's rights in RPC # 16038804, to WMATA and Arlington County, its contractors, subcontractors, agents and assigns (the "RSAI Easements").

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

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

- Developer agrees to coordinate the design and construction of the Central Place development with Arlington County so as not to preclude RSAI and not delay the commencement of construction of Phase 1.

- Developer agrees to maintain service of the existing Metro elevator in its current location until such time that the proposed RSAI are operational. It is expected that the existing WMATA elevator will need to be taken temporarily out-of-service during short periods for Developer's construction operations at which time WMATA shall implement bus bridge operations for the elderly and disabled who normally require elevator service to access transit at Rosslyn Station. The cost of WMATA's bus bridge operations or any modifications to the existing WMATA elevator shall be borne by Developer to the extent that such costs are directly attributable to elevator closings resulting from developer's construction activity. Developer agrees to pay invoices from WMATA within 30 days after receipt. Normal operation and maintenance of this elevator during the course of construction remains the responsibility of WMATA. The developer's responsibility is limited to maintaining the integrity of the elevator shaft during construction and providing safe access to the existing Metro elevator entrance for both the public and WMATA maintenance personnel.

- The developer agrees to remove and demolish the existing Metro elevator above the B-2 slab, or lowest garage level slab constructed by developer as well as to close the shaft at the B-2 slab level, within 180 days of the first day of operation of the new Metro elevators. The developer also agrees to convert the area of the original Metro elevator into a plaza consistent with the final plaza design required by condition #86.

- The developer agrees to remove the skywalks connected to the existing Metro elevator during demolition of the site. The developer agrees to provide WMATA and the County 60 business days advance notice as to when the skywalk demolition will begin. The Developer will be responsible for any modifications necessary due to the changes in operations in the existing Metro elevator from the skywalk removal.

- If, as a result of further design of the RSAI, developer must make changes in the design of the below grade garage or must reduce the number of below grade parking spaces, such changes shall be submitted by the developer for approval by the Zoning Administrator as an administrative site plan change. Any such parking changes shall reduce the required parking ratio approved for the Project.

- The developer agrees to contribute 10% of the cost of the RSAI up to a maximum of $3.5 million (adjusted for inflation by the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index for Urban Consumers (CPI-U), Inflation Calculator. If not contributed in full by May 5, 2012), such payments to be made in three equal payments. If the actual cost of the RSAI is less then $35 million, as determined by the County then developer's payments shall be reduced by 10% of the difference between $35 million and the actual cost. If the amount is reduced, each payment will be reduced proportionately. The first payment in the amount of ($1,166,667) will be paid be paid before issuance of the first certificate of occupancy for Phase II of the project, the residential building. The second payment ($1,166,667) is due one year from the date of the first certificate of occupancy. The third and final payment (($1,166,666) is due two (2) years from the date of issuance of the first certificate of occupancy.

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

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

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

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

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

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

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

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