

ADEQUATE PUBLIC FACILITIES ORDINANCE AGREEMENT

THIS ADEQUATE PUBLIC FACILITIES ORDINANCE AGREEMENT ("Agreement") made this 11th day of MARCH, 1994, by and between CREAMORE, GERMANTOWN ASSOCIATES, a Maryland general partnership (hereinafter "Creamore"), and the MONTGOMERY COUNTY PLANNING BOARD OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION (hereinafter the "Planning Board").

R E C I T A L S:

A. Creamore filed an application for subdivision approval with the Planning Board for 189.9 acres of land located on the west side of I-270, north of MD 118, in the Germantown area of Montgomery County, Maryland (the "Property"), which application was designated as Preliminary Plan 1-88156.

B. The Maryland-National Capital Park and Planning Commission is a body corporate created by the General Assembly of Maryland, and which, pursuant to Article 28, Section 7-111, Annotated Code of Maryland, administers the Montgomery County Subdivision Regulations, Chapter 50, Montgomery County Code, 1984, as amended, through the Planning Board.

C. Pursuant to Section 50-35(k) of the Montgomery County Subdivision Regulations, as of the date of this Agreement, Preliminary Plan 1-88156 required review by the Planning Board of the adequacy of public facilities available to serve the Property.

D. In order to find that Preliminary Plan 1-88156 complied with Section 50-35(k), the Planning Board determined that the size and use of improvements on the Property must be restricted. A copy of the Planning Board's Opinion (mailed March 31, 1992) is attached hereto and made a part hereof as Exhibit "A".

E. Condition No. 1 of the Planning Board Opinion approving Preliminary Plan No. 1-88156 limits development to 1,384,007 square feet of office space and 881 dwelling units to be developed in three phases in accordance with the Transportation Division Memorandum of September 16, 1991 as revised on September 19, 1991 (hereinafter the "Transportation Division Memorandum"). A copy of the Transportation Division Memorandum is attached hereto and incorporated herein as Exhibit "B". Phase I consists of a total of 403,657 square feet of office space; Phase II consists of 881 dwelling units, and Phase III consists of 980,350 square feet of office space.

F. A separate Adequate Public Facility Agreement for the initial 194,500 square feet of office development of Phase I concerning solely Conditions Nos. two (2) through six (6) of the Transportation Division Memorandum, has previously been entered into by and between Creamore and the Planning Board (hereinafter "First APFO Agreement"). Creamore has received a building permit for a portion of this approved development, pursuant to the First APFO Agreement which required Conditions Nos. two (2) through (6) to be under construction prior to Creamore's receipt of the first building permit.

G. By the execution of this Agreement, Creamore intends to create a restriction on the Property necessary to meet an additional condition of subdivision approval, as that condition pertains to the adequacy of public facilities pursuant to Section 50-35(k). The purpose of this restriction is to require Creamore, with respect to development of the remaining 209,157 square feet of office space in Phase I and 881 dwelling units under Phase II on the Property, to construct or participate in construction of road improvements outlined in recommended Conditions No. two (2) through

six (6) (required by First APFO Agreement), eight (8), and ten (10) through thirteen (13) of the Transportation Division Memorandum.

NOW, THEREFORE, in consideration of the mutual promises and stipulations set forth, and in accordance with the approval of the subdivision of the Property, the parties covenant and agree as follows:

1. The Recitals set forth above are incorporated by reference and made part of this Agreement.

2. Creamore shall, with respect to development of the remaining 209,157 square feet of office development in Phase I and Phase II of Preliminary Plan No. 1-88156, construct, or participate in the construction of the Road Improvements required by Conditions No. two (2) through six (6), eight (8), and ten (10) through thirteen (13) of the Transportation Division Memorandum. Creamore may only develop up to a total of 403,657 square feet of office space (i.e., an additional 209,157 square feet of office development over and above the 194,500 square feet permitted by the First APFO Agreement) and 881 dwelling units pursuant to this APFO Agreement ("Permitted Development"). Any development proposed by Creamore that is greater than the Permitted Development may only occur if approved by the Planning Board and determined to be accommodated by adequate public facilities and upon the execution of a further adequate public facilities agreement providing for the additional road improvements as required by the Transportation Division Memorandum. The Road Improvements to accommodate the Permitted Development required by said Conditions No. two (2) through six (6), eight (8), and ten (10) through thirteen (13) for the Permitted Development are as follows:

2. Creamore shall construct a separate right-turn lane on northbound MD 118 to eastbound Middlebrook Road.

3. Creamore shall construct a separate right-turn lane on westbound MD 118 to northbound Crystal Rock Drive, including an acceleration lane.

4. Creamore shall provide for three southbound lanes on Aircraft Drive at MD 118 to be redesignated as one exclusive right turn lane, one through/left turn lane, and one exclusive left lane.

5. Creamore shall extend the left-turn lane from MD 118 to northbound Crystal Rock Drive.

6. Creamore shall redesignate the southbound approach of Crystal Rock Drive to MD 118 as two exclusive double left-turn lanes and one through/right lane combination, with the timing at the discretion of the Montgomery County Department of Transportation.

8. Creamore shall participate in the construction of Father Hurley Boulevard to four lanes divided from Observation Drive to MD 27, and six lanes divided from Observation Drive to the I-270 interchange.

10. Creamore shall construct Cloverleaf Drive to six lanes divided from Crystal Rock Drive to Century Boulevard including construction of one left-turn, one through lane, and a double-right-turn lane on the Cloverleaf Drive westbound approach, unless it is determined at site plan that it is not necessary to have a separate left-turn lane.

11. Creamore shall construct double left-turn lanes from southbound Crystal Rock Drive to eastbound Cloverleaf Drive.

12. Creamore shall construct a channelized right-turn lane from southbound Century Boulevard to westbound Cloverleaf Drive.

13. Creamore shall participate in the project cost of Middlebrook Road based on its percentage of traffic use in accordance with MCDOT's requirement as described in their letter of June 19, 1991, attached hereto as Exhibit "C".

3. Building permits for the remaining 209,157 square feet of office development in Phase I and Phase II shall be released when the Road Improvements required by said Conditions of the Transportation Division Memorandum Nos. two (2) through six (6) and ten (10) through twelve (12) are under construction (i.e., all ROW acquired by public, contracts let and notice to proceed issued); the participation agreement required by Condition No. thirteen (13) has been executed, and when an executed agreement evidencing participation in the improvement required by Condition No. eight (8) has been submitted.

4. Creamore shall notify the Planning Board of all applications for building permits for the Property. Creamore shall not seek or receive a building permit for a structure on the Property that violates the restrictions contained in this APFO Agreement. In the event that a building permit for a structure which violates the restrictions contained in this APFO Agreement is sought, the Planning Board need not recommend issuance of any such permit, and Montgomery County, Maryland, may withhold issuance of any such permit.

5. Representatives or designees of the Planning Board may enter upon the Property from time to time for the purpose of inspection and enforcement of the terms, conditions or restrictions contained in this APFO Agreement. Whenever possible, a representative of Creamore shall be present at inspection. In the event that the representative or designee of the Planning Board determines on the basis of an inspection that the restrictions contained in this APFO Agreement are being violated, the representative or designee shall promptly advise Creamore concerning the problem. Creamore shall have a reasonable time to rectify the problem.

6. The Planning Board shall have the right to bring an action for any legal or equitable relief necessary to enforce the restrictions and covenants contained in this APFO Agreement. Upon the request of Creamore, the Planning Board shall release the Property from the restrictions contained in this APFO Agreement if it finds that public facilities are adequate pursuant to Section 50-35(k) for additional development on the Property. Such a review shall include the public facilities impact of any existing building or use to remain on the Property, as well as that of the proposed additional development.

7. This APFO Agreement shall bind and inure to Creamore and its successors and assigns. Whenever this APFO Agreement refers to the Planning Board, it shall also refer to any successor agency, if any, which will administer Section 50-35(k). This Agreement shall be referenced on the Record Plat for the Property.

8. Creamore, at the time of this Agreement's execution, is a Maryland general partnership. Each partner of such general partnership shall have such liability as provided for by Maryland law.

9. Upon acceptance of this Agreement by the Planning Board, said Agreement shall be legally binding upon the parties hereto, their successors, heirs and assigns.

10. This Agreement may only be modified in writing, signed by the parties, their successors or assigns.

IN WITNESS WHEREOF, this Agreement has been executed by the parties on the day and year indicated above.

ATTEST:

CREAMORE GERMANTOWN ASSOCIATES,
a Maryland general partnership

By: MOREFAIR LIMITED PARTNERSHIP,
a Maryland limited partnership

By: RA and FM, Inc.,
a Maryland corporation

Kay M. Mayo

By: *[Signature]*
Richard Alter

ATTEST:

MONTGOMERY COUNTY PLANNING BOARD

Louise G. Lewis
3/11/94

By: *[Signature]*
Charles Loehr

APPROVED AS TO LEGAL SUFFICIENCY

[Signature]
M-NCPPC Legal Department

Date 3/10/94