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ADEQUATE PUBLIC FACILITIES ORDINANCE AGREEMENT

THIS ADEQUATE PUBLIC FACILITIES ORDINANCE AGREEMENT ("Agreement") made this \_\_\_\_\_ day of \_\_\_\_\_, 1992, by and between CREAMORE GERMANTOWN ASSOCIATES, a Maryland general partnership ("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 divides development of the Property into three phases. Phase I includes 403,657 square feet of office space. This Agreement applies solely to the construction of the initial 194,500 square feet of Phase I, as described more fully in Paragraph F herein.

F. By the execution of this Agreement, Creamore intends to create a restriction on the Property necessary to meet a 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 to construct, with respect to development of the initial 194,500 square feet of Phase I on the Property, road improvements outlined in recommended Conditions No. two (2) through six (6) of the Transportation Division Memorandum, dated September 16, 1991 and revised September 19, 1991 (the "Road Improvements"), a copy of which is attached hereto and incorporated by reference into this Agreement as Exhibit "B" (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 initial 194,500 square feet of office space approved as a portion of Phase I of Preliminary Plan No. 1-88156, construct the Road Improvements required by Conditions No. two (2) through six (6) of the Transportation Planning Division Memorandum. Creamore may only develop up to 194,500 square feet of office space pursuant to this APFO Agreement ("Permitted Development"). Any development proposed by Creamore that is greater than the Permitted Development may only

occur 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 required by said Conditions No. two (2) through six (6) for the Permitted Development are as follows:

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

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

c) 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 lane, and one exclusive left lane.

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

e) 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.

3. Creamore shall notify the Planning Board of all applications for building permits for the Property. Creamore shall not seek 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.

4. 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.

5. 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.

6. 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.

7. Creamore shall not receive any building permits for the Property until the Road Improvements are under construction.

8. Creamore, at the time of this Agreement's execution, is a Maryland general partnership. No partner of such general

partnership, as it may be constituted now or in the future, will have any personal liability hereunder.

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.

[SIGNATURE PAGE FOLLOWS]

ATTEST:

CREAMORE GERMANTOWN ASSOCIATES, a  
Maryland general partnership

By: MOREFAIR LIMITED PARTNERSHIP, a  
Maryland limited partnership

By: RA and FM, Inc.  
a Maryland corporation

*Bonnie Gottlieb*

By: *[Signature]*  
Richard Alter

ATTEST:

MONTGOMERY COUNTY PLANNING BOARD

*Louise & Lewis*  
6/2/93

By: *Charles Loehr*  
Charles Loehr

APPROVED AS TO LEGAL SUFFICIENCY

*[Signature]*  
M-NCPPC Legal Department

Date 6/1