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CLERK'S OFFICE
MONTGOMERY COUNTY

DECLARATION AND GRANT OF PUBLIC ACCESS EASEMENT

THIS DECLARATION AND GRANT OF PUBLIC ACCESS EASEMENT (the "Easement"), is made this 29th day of March, 2002, by and between 5161 RIVER LIMITED PARTNERSHIP, a Maryland limited partnership (the "Developer") and MONTGOMERY COUNTY, MARYLAND, a body corporate and politic and a political subdivision of the State of Maryland (the "County"), (the Developer and the County together the "Parties").

WHEREAS, Developer owns property located in Bethesda, Maryland known as "Unit 2, Part 1" on a plat of condominium titled "River Road Land Condominium" and recorded in the Land Records of Montgomery County, Maryland (the "Land Records") as Plat No. 7163 and as established pursuant to the Declaration of Condominium for River Road Land Condominium recorded among the Land Records in Liber 14394, folio 233 (the "Property"); and

WHEREAS, by Opinion dated March 23, 1999 (the "Opinion"), the Montgomery County Planning Board approved a Preliminary Plan of Subdivision designated Preliminary Plan No. 1-98045 (the "Preliminary Plan") for the development of 157,457 square feet of office uses and associated parking on the Property (the "Project"). A copy of the Opinion is attached to this Easement as Exhibit "A", and incorporated as if fully set forth; and

WHEREAS, Landy Lane is a public roadway that extends approximately 280 feet in length from its intersection with River Road to its terminus at the western boundary of the Property; and

RECORDING FEE 75.00
IMP FD SURE \$ 5.00
TOTAL 80.00
Rcpt # 16234
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WHEREAS, a former section of Landy Lane extended from the current terminus of Landy Lane along the frontage of the Property, which section was dedicated by record plat recorded in the Land Records of Montgomery County (the "Land Records") in Plat Book 37, Plat No. 2609, and was subsequently abandoned by the County pursuant to Resolution No. 3-1730 recorded in the Land Records at Liber 2247, folio 438 (the "Private Section"); and

WHEREAS, the Private Section is owned by the Developer and provides access to the Project; and

WHEREAS, Condition 3 of the Opinion requires that the record plat for the Property show an easement for future dedication of the Private Section and further requires that prior to release of building permits for the Project, the Montgomery County Department of Public Works and Transportation ("MCDPWT") will determine whether the Private Section will remain a private roadway or be dedicated to the County as a public street; and

WHEREAS, the MCDPWT has determined that the Developer need not rededicate the Private Section to public use provided that the Developer grants a nonexclusive easement to

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Attn: Barbara Sears

Montgomery County allowing continuous public vehicular access through the Private Section and part of the Property, including adequate access for Montgomery County emergency vehicles; and

WHEREAS, the Developer desires to grant this Easement to the County, as hereinafter described and under the following terms and conditions, to fulfil its obligations pursuant to Condition 3 of the Opinion.

NOW, THEREFORE, in consideration of the above recitals, which are hereby incorporated into the Easement, and of the mutual promises and undertakings of the Parties, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, with full authority to do so, do hereby covenant and agree as follows:

1. Developer hereby establishes, declares, grants and conveys to the County a permanent, non-exclusive right, privilege and easement on, over and across that certain area more particularly described on Exhibit "B" and shown on Exhibit "C", attached hereto and incorporated herein, (the "Easement Area"), for purposes of (1) permitting the County and general public to utilize the paved areas of the Easement Area for vehicular turnaround out to Landy Lane; and (2) providing the County emergency response personnel (including, without limitation, police, fire and rescue service personnel) with ingress and egress to the Easement Area. If the Developer proceeds with the Project, the Developer will improve the Easement Area at the Developer's expense in accordance with the Proposed Parking Geometry Plan, Revised May 4, 2001 conditionally approved by the MCDPWT on June 6, 2001, attached hereto and incorporated by reference herein as Exhibit "D". The Developer must complete the improvements shown on the Proposed Parking Geometry Plan prior to the issuance of a use and occupancy permit for the Project.

2. The Developer, and/or its successors, transferees, and assigns, hereby reserves a non-exclusive right to use the Easement Area for the conduct of all development, construction, marketing, sales, leasing and related activities as may be deemed necessary or desirable by the Developer and not in conflict with the public's easement to use the Easement Area for ingress, egress, and vehicular turnaround (1) to implement the Preliminary Plan and/or (2) to comply with applicable laws, regulations and requirements imposed by the County or any governmental or quasi-governmental agency or authority having regulatory jurisdiction over the Property.

3. The County may install appropriate signage on the Property and in the Easement Area notifying the public of the access to the Easement Area for the purpose of vehicular turnaround. Prior to installation, the Developer and Montgomery County shall mutually agree on the location of such sign(s). Thereafter, the County may access the Property during normal business hours to maintain the sign(s), and may access the Easement Area at any time to maintain the sign(s).

4. Neither the Developer nor the County shall erect any walls, fences, barriers or other obstructions in the Easement Area or allow any walls, fences, barriers, or other obstructions to

remain in the Easement Area as to interfere with the free flow of vehicular traffic therein. The Developer has the duty to maintain the Easement Area, at the Developer's sole cost and expense, free of obstructions, barriers, trash, debris, and road hazards. The County may enter the Easement Area and remove any obstructions, barriers, trash, debris, or road hazards impeding the public's access if the Developer fails to do so within 10 days after the County sends written notice to the Developer to remove any obstruction, barrier, trash, debris, or road hazard. The County may exercise this right to remove an obstruction immediately and without prior written notice to the Developer any time the County determines, in its sole and absolute discretion, that any obstruction, barrier, trash, debris, or road hazard constitutes a threat to the public health, safety, or welfare, including the public's right to full time access to the Easement Area for ingress, egress, and vehicular turnaround. The Developer must promptly reimburse the County for any costs and expenses borne by the County in keeping the Easement Area free of any obstruction, barrier, trash, debris, or road hazard, including all costs and expenses associated with any litigation concerning recovery by the County of any costs and expenses for keeping the Easement Area clear and open for public use.

5. The Developer must maintain the paving and markings on the Easement Area in good repair at the Developer's sole cost and expense. All pavement markings must be approved in advance by the County.

6. All provisions of this Easement, including the benefits and burdens, shall touch, concern and run with the land and be binding upon and inure to the benefit of the Developer and the County, and/or their successors, transferees and assigns.

7. The Developer and the County shall be liable for their own negligence in connection with the exercise of the rights granted pursuant to this Easement. This is not intended to be an indemnification given by the County to the Developer. Any indemnification given by the County is limited by the provisions of the Local Government Torts Claim Act, Md. Cts. & Jud. Proc. §§5-301 *et seq.* (1999 Repl. Vol.), as amended from time to time. This is not intended to create any rights in any third parties.

8. Developer warrants specially the Easement and will execute such further assurances as may be required by the County.

9. No restriction, condition, obligation or provision of this Easement shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

10. This Easement shall not be modified or amended except by an instrument duly executed by the Developer and the County which instrument shall be recorded among the Land Records of Montgomery County, Maryland. The Developer may terminate this Easement by recording among the Land Records for Montgomery County, Maryland, an appropriate instrument signed by both Parties only after the Developer, at the Developer's sole cost and expense, constructs and dedicates a cul-de-sac turnaround in the public right of way on Landy Lane, which is accepted for public use by the County. Said turnaround shall be constructed in accordance with the applicable laws, regulations and construction standards of the County, and according to plans approved in advance by MCDPWT and any governmental permitting entity with authority to issue permits for construction in the public right of way.

11. The terms and provisions of this Easement are severable and in the event that any term or provision of this Easement is invalid or unenforceable for any reason, the remaining terms and provisions hereof shall remain in full force and effect.

12. This Easement shall be construed and enforced in accordance with the laws of the State of Maryland, and shall be effective upon recordation in the Land Records.

13. This Easement is granted subject to all easements, covenants, conditions, restrictions and other matters of record with respect to the Easement Area, including, without limitation that certain Declaration of Condominium for River Road Land Condominium recorded among the Land Records in Liber 14394, folio 233 to the extent applicable.

14. Every notice or communication required by this Easement shall be directed to the Parties as follows:

To County at:

Montgomery County, Maryland
 Montgomery County Department of Public Works and Transportation
 Executive Office Building, 10th Floor
 101 Monroe Street
 Rockville, Maryland 20850
 Attn: Director

With a copy (that will not constitute notice) to the County Attorney at:

Montgomery County County Attorney's Office
 Executive Office Building, 3rd Floor
 101 Monroe Street
 Rockville, Maryland 20850
 Attn: County Attorney

To Developer at:

Willco Construction Company, Inc.
 7811 Montrose Road, Suite 500
 Potomac, Maryland 20854
 Attn: Richard Cohen

With a copy to:

Linowes and Blocher LLP
 1010 Wayne Avenue, Suite 1000
 Silver Spring, Maryland 20910
 Attn: Barbara A. Sears, Esquire

15. Each party shall be responsible for notifying the other Parties, pursuant to the provisions of Paragraph 14 of this Easement, of any change of address.

16. The person executing this Easement on behalf of the Developer has all right, power and authority to so bind the Developer.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Easement as of the day and year first above written.

WITNESS:

5161 RIVER LIMITED PARTERSHIP, a Maryland limited partnership

[Handwritten Signature]

BY: [Handwritten Signature]
Name: Richard S. Cohen
Title: General Partner

WITNESS:

MONTGOMERY COUNTY, MARYLAND, a body corporate and politic and a political subdivision of the State of Maryland

[Handwritten Signature]

BY: [Handwritten Signature]
Douglas M. Duncan
County Executive

Approved as to form and legality.
Office of County Attorney

By: [Handwritten Signature]
Title: 3/20/2002

Recommend Approval:

Department of Public Works and Transportation

[Handwritten Signature]
By: [Handwritten Signature]
Albert J. Genetti, Jr.,

Title: Director
Date: 25 March 2002

STATE OF Maryland
COUNTY OF Howard

*
* to wit: _____
*

I HEREBY CERTIFY that on the 19 day of March, 2002, before the subscriber, a Notary Public in and for the above jurisdiction, personally appeared Richard S. Cohen, satisfactorily proven to be the person whose name is subscribed to this written instrument, who acknowledged himself to be the General Partner of 5161 River Limited Partnership, a Maryland limited partnership and that said Richard S. Cohen, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

GIVEN under my hand and seal this 19 day of March, 2002.

Rachel Waterstradt
Notary Public

My Commission Expires: _____

RACHEL M. WATERSTRADT
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires October 30, 2002

[NOTARIAL SEAL]

STATE OF Maryland
COUNTY OF Montgomery

*
* to wit: _____
*

I HEREBY CERTIFY that on the 27th day of March, 2002, before the subscriber, a Notary Public in and for the above jurisdiction, personally appeared Douglas M. Duncan, personally known to me or satisfactorily proven to be the person whose name is subscribed to this written instrument, who acknowledged himself to be the County Executive of Montgomery County, Maryland a body corporate and politic and a political subdivision of the State of Maryland, and that said Douglas M. Duncan, being authorized so to do, executed the foregoing instrument in his capacity as County Executive for the purposes therein contained.

GIVEN under my hand and seal this 27th day of March, 2002.

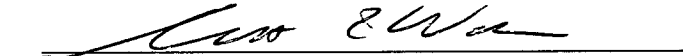
Jo Anne Poore
Notary Public

My Commission Expires: June 1, 2002

[NOTARIAL SEAL]

ATTORNEY'S CERTIFICATION

I HEREBY CERTIFY that the foregoing document was prepared by or under the supervision of the undersigned, an attorney duly licensed to practice before the Court of Appeals of Maryland.



Scott C. Wallace