



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of October 24, 2009**

DATE: October 7, 2009

SUBJECT: Approval and Acceptance of a Deed of Temporary Easement for Emergency Egress Granted by JBG/Courthouse Metro, L.L.C. and 2050 Wilson Blvd., LLC to the County Board of Arlington County, Virginia to Permit Emergency Egress Across Property Located at 2055 15th Street North and 2050 Wilson Boulevard in Arlington County, Virginia (RPC No. 18001004) From the Emergency Winter Shelter Located at 2049 15th Street North in Arlington County, Virginia (RPC No. 18001003).

C. M. RECOMMENDATIONS:

1. Approve the attached Deed of Temporary Easement for Emergency Egress (“Easement”) Granted by JBG/Courthouse Metro, L.L.C. (“JBG”) and 2050 Wilson Blvd., LLC (“2050 Wilson”) to the County Board of Arlington County, Virginia (“County”) to Permit Emergency Egress Across Property Located at 2055 15th Street North and 2050 Wilson Boulevard in Arlington County, Virginia (RPC No. 18001004) (“JBG Parcel”) From the Emergency Winter Shelter (“Emergency Winter Shelter”) Located at 2049 15th Street North in Arlington County, Virginia (RPC No. 18001003) (“County Parcel”).
2. Authorize the Real Estate Bureau Chief, or his designee, Engineering and Capital Projects Division, Department of Environmental Services, to accept on behalf of the County Board, the Easement and all related documents, subject to approval as to form by the County Attorney.

ISSUES: The Easement is required to comply with the building code requirements for emergency egress from the Emergency Winter Shelter, which requirements arise from the proposed increase in participant capacity at the Emergency Winter Shelter. There are no issues identified with this request.

SUMMARY: In order to comply with building code requirements to increase participant capacity at the Emergency Winter Shelter, the County must obtain the Easement from 2050 Wilson and JBG to permit emergency egress from the Emergency Winter Shelter over, on and through a portion of the JBG Parcel. If the Easement is terminated, the certificate of occupancy for the increased capacity at the Emergency Winter Shelter will no longer be valid.

County Manager: RC/GA

County Attorney: BAH/GAM

Staff: Linda Collier, Real Estate Bureau, DES

BACKGROUND: Arlington Street People’s Assistance Network (“A-SPAN”) operates the Emergency Winter Shelter under contract with the County. The Emergency Winter Shelter is located on a County owned Parcel in a building owned by the County. In order to increase the capacity of shelter participants the building code requires a back door emergency egress. Last year the Emergency Winter Shelter experienced high demand with an average of 53 participants per night. The program will be able to increase capacity to 73 total participants with this Easement to meet this season’s anticipated demand. Due to the surrounding development, the only location possible for the emergency egress is over, on and through the JBG Parcel which parcel abuts the western property line of the County Parcel. The JBG Parcel is currently used by JBG for a parking lot.

DISCUSSION: The proposed Easement (Exhibit A) would provide temporary emergency egress from the Emergency Winter Shelter through the JBG Parcel as set forth on the attached “Plat Showing Temporary Easement for Emergency Egress on Lot 22A Part Block 1 Fort Myer Heights D.B. 862, Pg. 450 Arlington County, Virginia” prepared by Robert L. Franca, Land Surveyor, dated October 2, 2009 and approved by Arlington County Department of Environmental Services, Engineering & Capital Projects Division, October 2, 2009 (“Plat”). See Vicinity Maps Attached as Exhibits B-1 and B-2. The Easement will terminate the earlier of: 1) written notice by the County to JBG that the County no longer needs the Easement; or 2) sixty days after JBG receives 4.1 Site Plan approval for a site that includes the JBG Parcel; or 3) until April 19, 2104 (which is the date that JBG’s ground lease for the JBG Parcel terminates). In addition, the Easement can be terminated by JBG at any time upon 270 days written notice. The Easement also provides the County with certain rights to restripe the existing parking lot, relocate the existing wheel stops and signs and make a cut through the wall between the JBG Parcel and the County Parcel. Because the Easement is temporary, the certificate of occupancy will no longer be valid if the Easement terminates.

Legal Description of the Property: The JBG Parcel is owned by 2050 Wilson by virtue of a Deed recorded among the Arlington County Land Records (“Land Records”) in Deed Book 2894 at Page 2134. JBG entered into a Deed of Lease dated as of April 20, 2005 with 2050 Wilson (“Lease”), which Lease term is for ninety-nine (99) years, expiring on April 19, 2014. A Memorandum of Lease pertaining to the Lease was recorded among the Land Records in Deed Book 3830 at Page 1856.

FISCAL IMPACT: None. The County is not being charged for the Easement.

CONCLUSION: It is recommended that the County Board approve the Deed of Temporary Easement for Emergency Egress (“Easement”) Granted by JBG/Courthouse Metro, L.L.C. (“JBG”) and 2050 Wilson Blvd., LLC (“2050 Wilson”) to the County Board of Arlington County, Virginia (“County”) to Permit Emergency Egress Across Property Located at 2055 15th Street North and 2050 Wilson Boulevard in Arlington County, Virginia (RPC No. 18001004) (“JBG Parcel”) From the Emergency Winter Shelter (“Emergency Winter Shelter”) Located at 2049 15th Street North in Arlington County, Virginia (RPC No. 18001003) (“County Parcel”) and authorize the Real Estate Bureau Chief, or his designee, to accept on behalf of the County

Approval of Deed of Temporary Easement for Emergency Egress
For Homeless Shelter Located at 2049 15th Street North

Board, the Deed of Easement and all related documents, subject to approval as to form by the County Attorney.

Approval of Deed of Temporary Easement for Emergency Egress
For Homeless Shelter Located at 2049 15th Street North

Grantee: County Board of Arlington County, Virginia Return to: Real Estate Bureau Chief

2100 Clarendon Boulevard
Suite 900
Arlington, Virginia 22201
Attn: Real Estate Bureau Chief

2100 Clarendon Boulevard
Suite 900
Arlington, Virginia 22201

RPC Nos. : 18001003, 18001004

This instrument is exempt from recordation tax pursuant to §58.1-811 A.3. of the Code of Virginia

DEED OF TEMPORARY EASEMENT FOR EMERGENCY EGRESS

THIS DEED OF TEMPORARY EASEMENT FOR EMERGENCY EGRESS (the “Deed”) is made this ____ day of _____, 200_, by and between **JBG/COURTHOUSE METRO, L.L.C.**, a Delaware limited liability company, Grantor (“JBG”), **2050 WILSON BLVD., LLC**, a Virginia limited liability company (“2050 Wilson”) (JBG and 2050 jointly, “Grantors”) and **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body corporate and politic, Grantee, (the “County”).

RECITALS

- R-1 By virtue of a Deed recorded in Deed Book 1441 at Page 623 among the land records of Arlington County, Virginia (“Land Records”), County is the owner, in fee simple, of a parcel of real estate, with improvements thereon, located at 2049 15th Street North in Arlington County, Virginia, and more particularly described in the legal description attached hereto as “Exhibit C,” RPC No. 18001003 (“County Parcel”); and
- R-2 The County has funded and owns a homeless shelter located upon the County Parcel (“Homeless Shelter”), which Homeless Shelter is operated by Arlington Street People’s Assistance Network, Inc. (“A-SPAN” or “Operator”); and
- R-3 By virtue of a Deed recorded among the Land Records in Deed Book 2894 at Page 2134, 2050 Wilson is the owner of a parcel of real estate, with improvements thereon, located at

2055 15th Street North and 2050 Wilson Boulevard in Arlington County, Virginia, and more particularly described in the legal description attached hereto as “Exhibit D,” RPC No. 18001004 (“JBG Parcel”); and

R-4 By virtue of a Deed of Lease dated as of April 20, 2005 (“Lease”), JBG entered into a lease with 2050 Wilson for the JBG Parcel, which Lease term is for ninety-nine (99) years, commencing on April 20, 2005 and expiring on April 19, 2104. A Memorandum of Lease pertaining to the Lease of the JBG Parcel is recorded among the Land Records in Deed Book 3830 at Page 1856; and

R-5 The JBG Parcel abuts the County Parcel; and

R-6 The County and Operator desire to obtain, and Grantors desire to grant to the County, a temporary easement, as described herein, over a portion of the JBG Parcel for pedestrian emergency egress from the County Parcel to the 15th Street right-of-way, which emergencies include, among other things, fire, law enforcement and medical emergencies.

TEMPORARY EASEMENT FOR EMERGENCY EGRESS

NOW, THEREFORE, in consideration of these premises, and for the sum of One Dollar (\$1.00), cash in hand paid, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantors do hereby grant and convey to the County, its successors and assigns, and to the public at large, a Temporary Easement for Emergency Egress (“Emergency Egress Easement”), for pedestrian emergency egress from the County Parcel over, on and through the JBG Parcel in the locations and dimensions shown and described on the plat attached hereto as “Temporary Easement for Emergency Egress Area = 364 S.F.”, said plat entitled “Plat Showing Temporary Easement for Emergency Egress on Lot 22A Part Block 1 Fort Myers Heights D.B. 862, Pg. 450 Arlington County, Virginia”, dated October 2, 2009 , and prepared by Robert L. Franca, Land Surveyor, and approved by Arlington County Department of Environmental Services, Engineering & Capital Projects Division, October 2,

2009 (“Easement Area”). The Emergency Egress Easement is subject to the following terms and conditions:

1. The Emergency Egress Easement shall be for pedestrian egress from the County Parcel, by the County and by the public at large, over, across, and through the JBG Parcel in the Easement Area, as more completely set forth herein. The County and the public at large shall have full and free use of the Easement Area for the purposes named herein and all rights and privileges necessary to the exercise of the Emergency Egress Easement, including the right of access to and from the Easement Area to the 15th Street right-of-way.

2. The Emergency Egress Easement shall be used by the County and the public at large only for egress from the County Parcel in connection with emergencies pertaining to the County Parcel, such emergencies to include, among other things, fire, law enforcement and medical emergencies. The rights granted to the County by this Emergency Egress Easement do not include the right for the public at large to use the Easement Area for non-emergency vehicular or pedestrian travel.

3. The Grantors shall maintain, and require others to maintain, the Easement Area free and clear of all obstructions at all times.

4. The Emergency Egress Easement shall commence on the date that the last party to this Emergency Egress Easement signs the Emergency Egress Easement (“Easement Date”) and shall continue until the earlier to occur of: A) such time as the County gives written notice to JBG that the County no longer requires emergency egress from the County Parcel over, across and through the JBG Parcel; or B) sixty (60) days after JBG receives 4.1 Site Plan approval for a site that includes 2050 Wilson Boulevard or C) until April 19, 2104 (“Easement Term”). Ninety days before the end of the Easement Term, the Grantors shall give written notice (as provided below) to the County’s Building Official that the Emergency Egress Easement will terminate in ninety days. Notwithstanding the foregoing, JBG shall have the right to terminate the Emergency Egress Easement granted herein at any time upon two hundred and seventy (270) days notice to the County.

5. The County shall have the right, among other things, to restripe, at the County’s expense, the parking spaces located on the JBG Parcel parking lot in the manner set forth on Exhibit B and to relocate, at the County’s expense, the existing parking signage and concrete

wheel stops to accurately reflect the restriped parking spaces (collectively, the “Restriping Work”).

6. The County shall have the right, among other things, to locate, maintain, install, repair, replace, relocate and remove signage and/or striping on, across and through the JBG Parcel to identify the Easement Area during the Easement Term (the collectively, the “Identification Work”).

7. The County shall have the right to remove, alter, repair, relocate, and replace a portion of the wall located on the JBG Parcel and in the area of the common property line between the JBG Parcel and the County Parcel abutting the Easement Area to create an opening so that persons can access fully the Emergency Egress Easement and the Easement Area from the County Parcel (the alteration of such wall, together with the Restriping Work and the Identification Work, the “Work”).

8. During its performance of the Work, the County shall have the right to place construction material(s) and equipment on the JBG Parcel for such time as is necessary to complete the Work and accomplish the items described in paragraphs 5., 6. and 7. above as long as the County coordinates the Work with JBG to reasonably minimize the interruption of the use of the JBG Parcel and to attempt to perform the Work before or after general weekday work hours or on weekends.

9. Arlington County carries a broad form property insurance policy (Policy Number KTK-CMB-6149N99-3-09) written by Travelers Indemnity Company. The first \$1,000,000.00 general and automobile liability exposure is covered under a formal self-insurance program enacted by resolution of the Arlington County Board pursuant to Code of Virginia, Section 15.1-7.3.1. Additionally, Arlington County carries a \$ 10,000,000.00 Umbrella Liability policy provided through VACo Risk Management Programs, Inc., Policy Number VA-AR-006-10. All purchased insurance policies carry a policy term of July 1, 2009 to July 1, 2010. These policies are reviewed and renewed on an annual basis. Within twenty (20) business days of the Easement Date, the County shall furnish to JBG, certificates of insurance evidencing that all insurance which has been purchased by the County as specified in this paragraph 9 is in force. Any such certificates of insurance for insurance which has been purchased by the County as specified in paragraph 9 shall specify that JBG, JBG Properties, Inc. and JBG/Development Group, L.L.C. have been added as additional insureds, and all such certificates of insurance for insurance which

EXHIBIT A

has been purchased by the County as specified in paragraph 9 shall provide for notice to JBG in the event of cancellation or non-renewal of said coverage.

10. Operator joins in this Deed to acknowledge and agree that it will benefit from the grant of the Emergency Egress Easement. Accordingly, Operator understands and agrees that it shall be responsible for any and all expenses, costs, death, injury, loss or damage arising, directly or indirectly, in whole or in part, out of the use of the Emergency Egress Easement and/or the Easement Area, or any portion thereof, and shall be responsible for all claims, liability, damages, costs, losses or expenses, including attorneys' fees, arising out of such death, injury, loss or damage. Operator shall indemnify, defend and hold harmless the Grantors, and their respective officers, directors, members, principals, affiliates, agents and employees (the collectively, "Indemnified Parties") from any and all liability, damages, losses, and costs, including but not limited to reasonable attorneys' fees (together, "Claims") that arise from or in connection with the use or access of the Emergency Egress Easement and/or the Easement Area, or any portion thereof. This provision shall survive the expiration or earlier termination of this Deed.

11. The Grantors reserve the right to make such use of the Easement Area which is not inconsistent with the Emergency Egress Easement rights and the construction rights conveyed herein.

12. All notices or other communications hereunder shall be in writing and shall be either hand delivered, sent by commercial courier (such as Federal Express) or sent by United States registered or certified mail, return receipt requested, at the following addresses or such other address hereafter provided by notice to the other party:

If to County:

Arlington County
Department of Environmental Services
Division of Engineering & Capital Projects
Real Estate Bureau
2100 Clarendon Boulevard, Suite 800
Arlington, VA 22201
Attn: Real Estate Bureau Chief

Arlington County
CPHD
Inspection Services Division
2100 Clarendon Boulevard, Suite 1000
Arlington, VA 22201
Attn: Building Official

EXHIBIT A

If to JBG: JBG/Courthouse Metro, L.L.C.
c/o The JBG Companies
4445 Willard Avenue, Suite 400
Chevy Chase, Maryland 20815
Attn: Kathleen Webb

with a copy to: JBG/Courthouse Metro, L.L.C.
c/o The JBG Companies
4445 Willard Avenue, Suite 400
Chevy Chase, Maryland 20815
Attn: Legal Department

If to 2050 Wilson: c/o The Jenco Group
1832 Jefferson Place, N.W.
Washington, D.C. 20036
Attn: Marvin R. Jawer

with a copy to: Grossberg, Yochelson, Fox & Beyda LLP
2000 L Street, N.W., Suite 675
Washington, D.C. 20036
Attn: Richard F. Levin, Esq.

If to A-SPAN: Executive Director
A-SPAN
PO Box 100731
Arlington, VA 22210
Attn: Kathleen Sibert

Any party may, by notice given at least five (5) days before such change becomes effective, designate a new address to which such notices shall be sent. Notice shall be deemed effective when delivered.

COVENANTS REAL

13. Grantors, as evidenced by their signatures affixed hereto, declare that the agreements and covenants stated in this Deed are not covenants personal to Grantors, but are covenants real, running with the land.

FREE CONSENT

14. This Deed is made with the free consent and in accordance with the desire of the undersigned owner and lessee of the JBG Parcel, and is in accordance with the statutes of Virginia and the applicable ordinances in force in Arlington County and is approved by the proper authorities as is evidenced by their endorsements hereon.

15. Grantors, as evidenced by their signatures affixed hereto, covenant that they are seized of JBG Parcel as landowner and ground lessee respectively; that Grantors have the right to convey this Deed to the Grantee; and, that no other persons or entities have rights which conflict with, or are inconsistent with, the rights granted to the Grantee by this Deed.

16. This Deed shall be construed, interpreted and applied according to the law of the Commonwealth of Virginia.

17. The Recitals are hereby incorporated into this Deed.

WITNESS the following signature(s) and seal(s):

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

GRANTOR:

JBG/Courthouse Metro, L.L.C.

By: JBG/Company Manager, L.L.C.,
its Managing Member

By: _____
Name: _____
Title: Managing Member

STATE OF MARYLAND
COUNTY/OF MONTGOMERY

The foregoing instrument was acknowledged before me on this ___ day of _____, 2009, by _____, as Managing Member of JBG/Company Manager, L.L.C., the Managing Member of JBG/COURTHOUSE METRO, L.L.C., a Delaware limited liability company.

(SEAL)
My commission expires: _____
My ID No. _____ Notary Public

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

GRANTOR:

2050 WILSON BLVD., LLC, a Virginia limited liability company

By: _____

Its: _____

COMMONWEALTH OF VIRGINIA
COUNTY/CITY OF _____

The foregoing instrument was acknowledged before me on this ___ day of _____, 200__, by _____, as _____ of 2050 WILSON BLVD., LLC, a Virginia limited liability company.

(SEAL)
My commission expires: _____
My ID No. _____ Notary Public

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

Approved as to form:

County Attorney

COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

The Deed of Temporary Easement herein conveyed is accepted this ____ day of _____, 200_ on behalf of The County Board of Arlington County, Virginia, pursuant to Board action dated _____.

(SEAL)

Real Estate Bureau Chief

Department of Environmental Services

ACKNOWLEDGMENT

**COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON, to-wit:**

The foregoing instrument was acknowledged before me this _____ day of _____, 200_, by _____, on behalf of the County Board of Arlington County, Virginia.

Notary Public

My commission expires: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

The undersigned joins unto this Deed solely to confirm its obligations under Section 10 hereof.

OPERATOR:

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA
COUNTY/CITY OF _____

The foregoing instrument was acknowledged before me on this ___ day of _____,
200__, by _____, as _____ of
_____, a _____.

(SEAL)
My commission expires: _____
My ID No. _____ Notary Public

VICINITY MAP
2049 15TH Street North (RPC NO. 18001003)
2055 15TH Street North-2050 Wilson Boulevard (RPC No. 18001004)



