



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of May 17, 2008**

DATE: May 1, 2008

SUBJECT: Approval of an Easement for Public Sidewalk and Utilities Purposes granted by the County and Arlington Hotel Associates, LLC to the County for an area located on the periphery of Lot 6, Courthouse Plaza, and adjacent to Clarendon Boulevard, North Adams Street and 14th Street North, RPC No. 18005042.

C. M. RECOMMENDATIONS:

1. Approve the attached Deed of Easement for Public Sidewalk and Utilities Purposes granted by the County and Arlington Hotel Associates, LLC to the County for an area located on the periphery of Lot 6, Courthouse Plaza, and adjacent to Clarendon Boulevard, North Adams Street and 14th Street North, RPC No. 18005042.
2. Authorize the Real Estate Bureau Chief, Engineering and Capital Projects Division, Department of Environmental Services, to execute, on behalf of the County Board, the Deed of Easement, subject to approval as to form by the County Attorney.

ISSUES: The Deed of Easement is required to comply with conditions of the Site Plan #231. There are no issues identified with this request.

SUMMARY: Arlington Hotel Associates LLC, who is the ground lessee of Courthouse Plaza, Lot 6 and the developer of the hotel that is being constructed on the property, has requested that the County, as owner and ground lessor of the property, join as grantor in granting a Deed of Easement to the County conveying an Easement for Sidewalk and Utilities Purposes ("Easement"), attached hereto as Exhibit A.

BACKGROUND: The underlying property that is the subject of the Easement is located at the southeast corner of North Adams Street and Clarendon Boulevard ("Property") (see Vicinity Map attached hereto as Exhibit C). In conjunction with plans for redevelopment of the Property, the Applicant filed a request to amend Site Plan #231 to allow construction of a hotel, which was approved by the County Board on February 25, 2006. Site Plan Condition #32 requires the developer, Arlington Hotel Associates LLC ("Developer"), to submit all required public deeds of easement and deeds of dedication prior to the issuance of the Excavation/Sheeting and Shoring Permit for the project and be approved and recorded before the issuance of the Final Building

County Manager: _____

County Attorney: _____

Staff: Linda Collier, Real Estate Bureau, DES

Permit. In addition, Site Plan Condition #73 states that, "Subject to the approval of the County Board, the County shall provide the applicant with necessary easements over that portion of the County property not subject to ground lease to other entities, provided that such easements are acceptable to the County Manager or his designee, in his sole discretion."

DISCUSSION: The Easement is a standard Street and Utilities Easement required to be granted to the County by the Developer according to the approved plans and the County's standard practices. The physical location of the Easement is depicted on sheet 2 of 2 of the "Plat Showing Easement for Public Sidewalk and Utilities Purposes, Lot 6, Courthouse Plaza, Deed Book 2319, Page 483, Arlington County, Virginia," dated November 1, 2007 and revised March 18, 2008, prepared by VIKA Incorporated and attached hereto as Exhibit B. Because the County owns the underlying fee interest in the Property upon which the Easement is located, the County Board must join in the grant of the Easement as a Grantor. Furthermore, because the grant is a grant of a County property interest and due to the language of the site plan conditions, approval of the grant of the Easement must be considered by the Board.

Public Notice: Public notice of the proposal to grant the Easement was given in accordance with the Code of Virginia. Notices were placed in the April 22, 2008 and the April 29, 2008 issues of the Washington Times for the County Board meeting of May 17, 2008.

FISCAL IMPACT: None.

CONCLUSION: It is recommended that the County Board approve the Deed of Easement for Public Sidewalk and Utilities Purposes granted by the County and Arlington Hotel Associates, LLC to the County for an area located on the periphery of Lot 6, Courthouse Plaza, and adjacent to Clarendon Boulevard, North Adams Street and 14th Street North, RPC No. 18005042 and authorize the Real Estate Bureau Chief, Engineering and Capital Projects Division, Department of Environmental Services, to execute, on behalf of the County Board, the Deed of Easement, subject to approval as to form by the County Attorney.

RPC #: 18005042

DEED OF EASEMENT

THIS Deed of Easement (the "Deed") is made this ____ day of _____, 2008, by and among **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body corporate and politic, Grantor (also called "County") and **ARLINGTON HOTEL ASSOCIATES LLC**, a Virginia limited liability company, Grantor (also called "Lessee") (collectively called "Grantors"); **CAPMARK BANK**, a Utah industrial bank, Lender; **CHRISTOPHER J. HART, ESQ.**, a resident of Alexandria, Virginia, Trustee; and **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body corporate and politic, Grantee.

****WITNESSETH****

WHEREAS, County is the owner of certain real property located and situate in Arlington County, Virginia, by virtue of a Deed of Quitclaim, Vacation, Rededication and Resubdivision, dated February 19, 1988 and recorded on March 25, 1988 in Deed Book 2319 at page 483 (the "Property"), among the land records of Arlington County, Virginia (the "Land Records"); and

WHEREAS, Lessee is the ground tenant of the Property as evidenced by a Memorandum of Lease, dated September 5, 2007 and recorded on September 7, 2007 in Deed Book 4133 at page 820 among the Land Records; and

WHEREAS, by Leasehold Deed of Trust, Assignment of Leases and Profits, Security Agreement and Fixture Filing, dated September 18, 2007 and recorded on {A0139671.DOC / 1 Deed of Easement w/Co. Comments 4-14-08 000020 000027}

September 18, 2007 in Deed Book 4135 at page 1295 among the Land Records, the Property was conveyed into trust by Lessee to Trustee to secure an indebtedness to Lender; and

WHEREAS, on February 25, 2006, the County Board of Arlington County, Virginia enacted "An Ordinance Pursuant to Application SP# 231 to Grant an Amendment to a Special Exception for a Site Plan on a Certain Parcel of Land Known as 1425 North Adams Street, Also Known as Lot 6, Courthouse Plaza (RPC #18-005-042; Donohoe Development Company, Applicant", to grant an amendment to a special exception for a site plan on the Property (the "Ordinance"); and

WHEREAS, the Ordinance contained several conditions, including condition number 32, that required, among other things, all required public deeds of easement and deeds of dedication shall be submitted to the Division of Transportation prior to the issuance of the Excavation/Sheeting and Shoring Permit, and be approved and recorded among the Land Records by Lessee before the issuance of the Final Building Permit; and

WHEREAS, the Ordinance also contained a condition that, subject to the approval of the County Board, the County provide Lessee with necessary easements over the Property, provided that such easements are acceptable to the County Manager or his designee; and

WHEREAS, on _____, 2008, the County Board approved and authorized the Real Estate Bureau Chief to execute the Easement for Public Sidewalk and Utilities Purposes ("Easement"), as hereinafter set forth, and as described

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and shown on a plat attached hereto and made a part hereof, entitled "**Plat Showing Easement for Public Sidewalk and Utilities Purposes, Lot 6 Courthouse Plaza, D.B. 2319, PG. 483, Arlington County, Virginia,**" prepared by VIKA Incorporated, dated November 1, 2007, revised March 18, 2008, and approved by the Arlington County Department of Environmental Services Division of Transportation on April 3, 2008, (the "Plat"); and

WHEREAS, it is the desire of both of the Grantors to dedicate, grant and convey unto the County the Easement as set forth on the Plat.

EASEMENT FOR PUBLIC SIDEWALK AND UTILITIES PURPOSES

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantors, with the consent and approval of the Lender and Trustee, do hereby dedicate, create, grant and convey unto the Grantee, its successors and assigns, an Easement for Public Sidewalk and Utilities Purposes, over, under, across and through the Property, in the location and dimensions shown on the Plat and designated "Easement for Public Sidewalk and Utilities Purposes (Hereby Granted) 5,238 Sq. Ft., ("Easement Area")" for the purposes of construction, location, maintenance, removal, repair, reconstruction, replacement and relocation of present or future public sidewalks and utilities within the said Easement Area. The aforesaid Easement is subject to the following terms and conditions:

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1. The Grantee and its agents shall have full and free use of the Easement for the purposes named, and shall have all rights and privileges reasonably necessary to exercise the use of the Easement, including the right of access to and from the Easement, and the right to use the adjoining land of the Lessee where necessary; provided, however, that this right to use adjoining land shall be exercised only during periods of actual construction, location, maintenance, removal, repair, reconstruction, replacement and relocation, of any sidewalk or utility and further, this right shall not be construed to allow the Grantee to erect any building, structure or facility of a permanent nature on such adjoining land.
2. The Grantee shall have the right to trim, cut and remove trees, shrubbery, fences, structures or other obstructions or facilities in or reasonably near the Easement; provided, however, that the Grantee at its own expense shall restore, as nearly as practicable, the premises to their original condition, such restoration to include the backfilling of trenches, the replacement of shrubbery and the reseeding or resodding of lawns, but not the replacement of structures, trees or obstructions.
3. The Grantors reserve the right to use the Easement Area in any manner which is not inconsistent with the rights herein conveyed, or does not interfere with the use of the Easement for the purposes named.
4. The Grantors covenant that they are seized of and have the right to convey the Easement, and that the Grantors shall make no use of the Easement Area which is inconsistent with the easement rights hereby granted.

SUBORDINATION

The Trustee, by and with the consent of the Lender, as evidenced by the Lender's signature affixed to this Deed, does hereby acknowledge, agree, and consent

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that the lien of the Deed of Trust be, and the same is, subordinated to the above described Easement and all rights granted by this Deed to the Grantee.

COVENANTS REAL

The Grantors, with the consent and approval of the Lender and Trustee, declare that the agreements and covenants stated in this Deed are not covenants personal to the Grantors, but are covenants real, running with the land. This Deed shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

FREE CONSENT

This Deed is made with the free consent and in accordance with the desire of the undersigned Grantors, and with Lender and Trustee executing in their consent capacity as holders of a security interest in the Property, and is in accordance with the Statutes of Virginia and the ordinances in force in Arlington County governing the platting and subdivision of land, and is approved by the proper authorities as is evidenced by their endorsements on said Plat attached hereto.

The Recitals are incorporated into this Deed.

WITNESS the following signatures and seals:

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

GRANTOR:

**THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA**, a body corporate and
politic

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA
COUNTY/CITY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of
_____, 2008, by _____, the
_____ of THE COUNTY BOARD OF ARLINGTON COUNTY,
VIRGINIA, a body corporate and politic.

Notary Public

My Commission Expires: _____

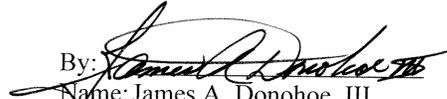
GRANTOR:

ARLINGTON HOTEL ASSOCIATES LLC, a Virginia limited liability company

By: Donohoe/Arlington LLC, a Virginia limited liability company, its managing member

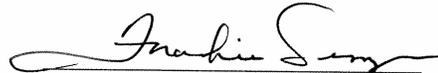
By: Donohoe Investment Management Company, LLC, a Maryland limited liability company, its managing member

By: TDC Real Estate Corp., a Delaware corporation (formerly known as The Donohoe Companies, Inc.), its manager

By: 
Name: James A. Donohoe, III
Title: President

District of Columbia
COMMONWEALTH OF VIRGINIA
COUNTY/CITY OF _____, to-wit:

The foregoing instrument was acknowledged before me this 22nd day of April, 2008, by James A. Donohoe III, the President of TDC Real Estate Corp, a Delaware corporation (formerly known as The Donohoe Companies, Inc.), manager of Donohoe Investment Management Company, LLC, a Maryland limited liability company, managing member of Donohoe/Arlington LLC, a Virginia limited liability company, managing member of Arlington Hotel Associates LLC, a Virginia limited liability company.


Notary Public

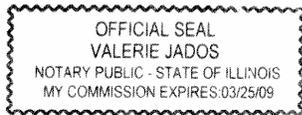
My Commission Expires: January 1, 2011

CAPMARK BANK, a Utah industrial bank

By: *Denise M. Koprowski*
Name: Denise M. Koprowski
Its: Vice President

STATE OF ILLINOIS
COMMONWEALTH OF VIRGINIA
COUNTY/CITY OF COOK, to-wit:

The foregoing instrument was acknowledged before me this 28th day of April, 2008, by Denise M. Koprowski, the A Vice President of CAPMARK BANK, a Utah industrial bank.



Valerie Jados
Notary Public

My Commission Expires: _____

TRUSTEE:

Christopher J. Hart, Esq.
Christopher J. Hart, Esq.

DISTRICT OF COLUMBIA
COMMONWEALTH OF VIRGINIA
COUNTY/CITY OF _____, to-wit:

The foregoing instrument was acknowledged before me this 27th day of April, 2008, by Christopher J. Hart, Esq., Trustee.

John I. Huscha
Notary Public

My Commission Expires: _____

John I. Huscha
Notary Public, District of Columbia
My Commission Expires 4/14/2012

APPROVED AS TO FORM:

COUNTY ATTORNEY

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

Accepted this _____ day of _____, 2008, on behalf of The county Board of Arlington County, Virginia, pursuant to a Resolution of said Board adopted on February 24, 2001.

By: _____ (Seal)

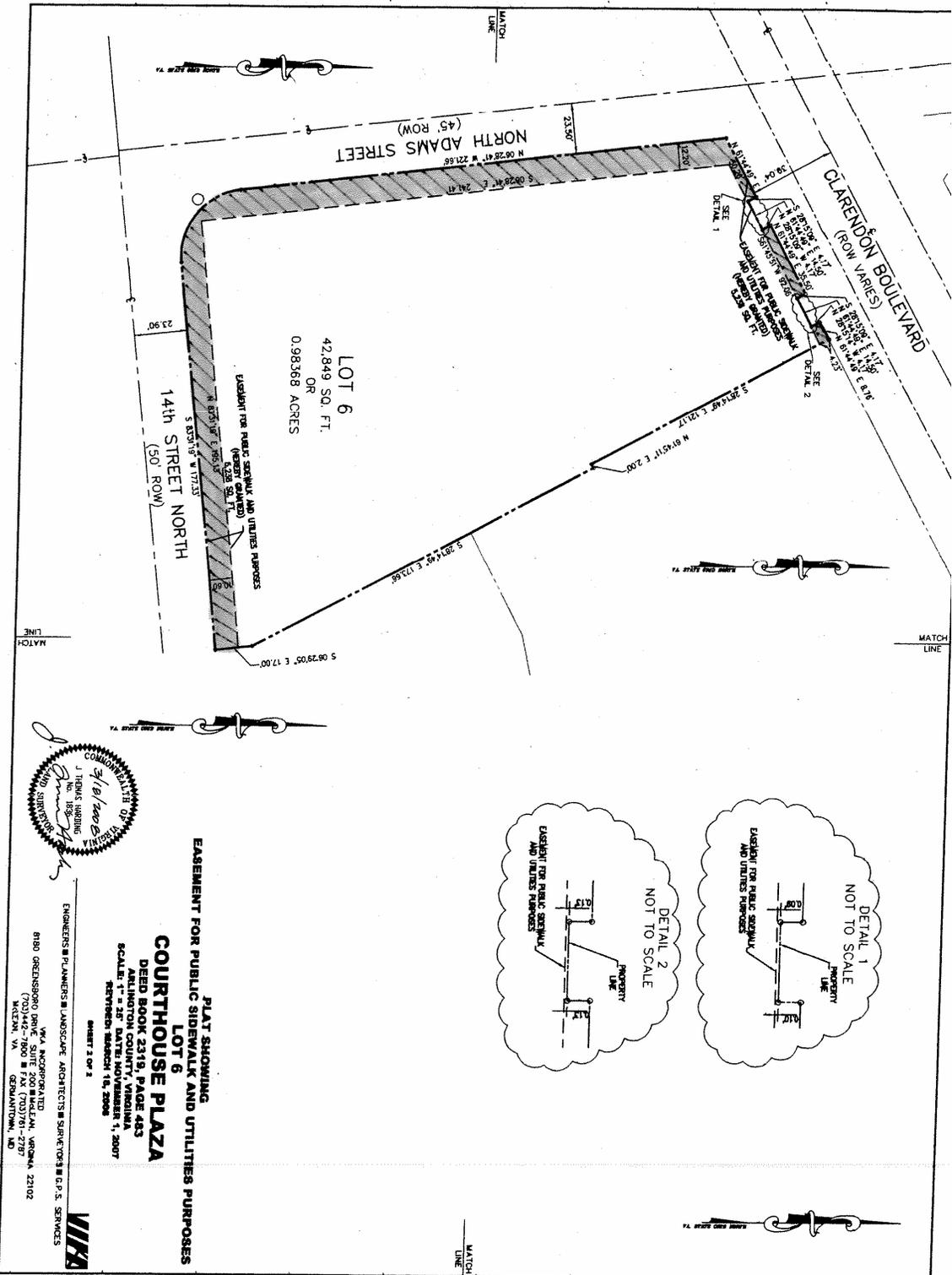
Title: _____

COMMONWEALTH OF VIRGINIA:
COUNTY OF ARLINGTON: to-wit

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by _____, Assistant County Attorney, on behalf of The County Board of Arlington County, Virginia.

Notary Public

My commission Expires: _____



VICINITY MAP
COURTHOUSE PLAZA, LOT 6
RPC NO. 18005042

