

**ATTACHMENT – U**

**DEED OF TEMPORARY EASEMENT AND CONSTRUCTION AGREEMENT**

This document is being re-recorded to fill in missing information in the recitals.

PREPARED BY,  
AND WHEN RECORDED RETURN TO:

Real Estate Bureau Chief  
Department of Environmental Services  
Arlington County Government  
2100 Clarendon Boulevard, Suite 800  
Arlington, Virginia 22201



20200100033265  
11/20/2020 11:04:04 AM 1/9  
Doc Type: LRCORRECT  
Arlington County Clerk  
Paul Ferguson, Clerk  
Grantor Tax: \$ .00  
State Tax: \$ .00  
Recording Fee: \$ .00

20200100027489  
10/09/2020 10:25:42 AM 1/9  
Doc Type: LREASEMENT  
Arlington County Clerk  
Paul Ferguson, Clerk  
Grantor Tax: \$ .00  
State Tax: \$ .00  
Recording Fee: \$ .00

Exempt from Recordation Tax  
Per Virginia Code § 58.1-811.A.3

RPC #35-005-029

**DEED OF TEMPORARY EASEMENT  
AND CONSTRUCTION AGREEMENT**

This DEED OF TEMPORARY EASEMENT AND CONSTRUCTION AGREEMENT ("Deed") is made this 03rd day of September, 2020 by FASHION CENTRE MALL, LLC, a Delaware limited liability company registered to do business in the Commonwealth of Virginia ("Grantor"), and THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate and politic ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the fee simple owner of a parcel of real property situated in Arlington County, Virginia, identified as Parcel C-2-B-5, Fashion Centre Associates, being a Vacation, Rededication and Resubdivision of Parcel C-2-B, Part of Property of Pentagon Tract Development Corporation and River House Corporation (the "Property"), as the same is shown on a plat attached to the Deed of Resubdivision dated October 24, 1991, and recorded among the land records of the Circuit Court of Arlington County, Virginia ("Land Records") in Deed Book 2495 at Page 1736, and conveyed to the Grantee by that a Special Warranty Deed dated June 6, 2011, and recorded among the Land Records in Deed Book 4464 at Page 2593;

WHEREAS, a portion of the Property is encumbered by a Permanent Surface Easement granted to the Washington Metropolitan Area Transit Authority, a body corporate and politic ("WMATA"), by that certain Deed of Easement dated November 30, 1977 and recorded among the Land Records in Deed Book 1962 at Page 360 (the "WMATA Easement");

WHEREAS, a portion of the Property is further encumbered by a twenty-five (25) feet wide Storm and Sanitary Sewer Easement granted to the Grantee herein by that certain Deed of Grant dated May 7, 1956 and recorded among the Land Records in Deed Book 1248 at Page 227 (the "County Sewer Easement");

WHEREAS, a portion of the Property is further encumbered by an Additional Easement for Public Street and Utilities Purposes of variable width, and constituting a portion of the South Hayes Street right-of-way, granted to the Grantee herein by that certain

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Deed of Easement dated January 31, 1989 and recorded among the Land Records in Deed Book 2389 at Page 397 (the "County Street and Utilities Easement");

WHEREAS, a portion of the Property is further encumbered by a permanent easement for the construction, location, operation, maintenance, repair, and replacement of a passenger elevator granted to WMATA by that certain Deed of Easement dated September 30, 2020 and recorded among the Land Records as Instrument Number 20200100026324 (the "WMATA Elevator Easement");

WHEREAS, Grantee is acting as an agent of WMATA for the construction of a second elevator entrance to WMATA's underground Metro station (the "Elevator Project"), which elevator is to be constructed on a portion of the Property encumbered by the WMATA Easement, County Sewer Easement, County Street and Utilities Easement, and the WMATA Elevator Easement, in accordance with the construction plans entitled "Pentagon City Station Elevator Project" dated 11/20/20 - and approved by WMATA on 11/20/20 (the "Construction Plans"); and

WHEREAS, the construction of the Elevator Project requires a temporary construction easement on a portion of the Property adjacent to and abutting the WMATA Easement, the County Sewer Easement, County Street and Utilities Easement, and the WMATA Elevator Easement areas.

NOW, THEREFORE, for and in consideration of the sum of FiGreen Thousand Nine Hundred Dollars (\$ 15,900.00), the mutual benefits to be derived by the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant and convey unto the Grantee a temporary easement for the use of a portion of Grantor's property (the "Temporary Easement"), more specifically described as an area of real estate containing approximately One Hundred and One square feet (101 SQ. FT.) of land situated in Arlington County, Virginia, as shown on the plat attached hereto as Exhibit A and made a part hereof, entitled "Plat Showing Temporary Construction Easement on Property of Fashion Centre Mall LLC, DB 2495 PG 1736, Arlington County, Virginia", which plat is dated August 6, 2019.

Grantee shall have the right to use the Temporary Easement for the purposes of construction, maintenance, repair, reconstruction, relocation, replacement and/or removal of public facilities, including accessories and appurtenances thereto, adjacent to the Temporary Easement, as further shown on the Construction Plans, and for such other purposes as are incidental and related thereto.

Grantee and its agents shall have full and free use of the Temporary Easement for the purposes named, and shall have all rights and privileges reasonably necessary to exercise the use of the Temporary Easement, including the right of access across the Property to and from the Temporary Easement.

Excluding an emergency situation, Grantee shall make a reasonable effort in the exercise of its rights herein, to minimize any material interference with the business operations of Grantee and its lessees upon Grantor's Property, but nothing herein contained

shall prevent or prohibit Grantee from exercising any of its rights during normal and customarily daylight business hours. Additionally, construction activities shall be limited between November 15 – January 15 to minimize disruption during the peak holiday shopping season (“Minimized Construction Activities”). Major excavation, foundation and structure installation activities requiring heavy equipment, crane and/or laydown within the Limits of Disturbance (LOD) that interrupt access to the Pentagon City Mall shall not be allowed during the time period of Minimized Construction Activities and in no case shall any access lane to the Pentagon City Mall be blocked.

Grantor covenants that Grantor is seized of and has the right to convey the Temporary Easement, and that Grantor shall make no use of the Temporary Easement that is inconsistent with the Temporary Easement and the associated rights hereby conveyed.

The Temporary Easement conveyed by this document shall commence upon the date of acceptance of this Deed by the Grantee and shall expire upon the completion of the Elevator Project, or on an earlier date if Grantor is so notified in writing by Grantee.

This Deed incorporates all agreements between the parties hereto. No representations or statements have been made which would modify, add to or change the terms of this Deed.

This Deed is contingent upon, and shall not be effective until, accepted on behalf of the County Board of Arlington, Virginia.

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

WITNESS the following signature(s):

**[SIGNATURES APPEAR ON THE FOLLOWING PAGES]**

**GRANTOR:**

FASHION CENTRE MALL, LLC, a Delaware limited liability company

By: FASHION CENTRE ASSOCIATES, LLC, a Delaware limited liability company, its sole member

By: PENTAGON ASSOCIATES, LLC, a Delaware limited liability company, its sole member

By: PENTAGON CITY SHOPPING CENTER COMPANY LIMITED PARTNERSHIP, a Virginia limited partnership, its Managing Member

By: SIMON PROPERTY GROUP, L.P., a Delaware limited partnership, its general partner

By: SIMON PROPERTY GROUP, INC., a Delaware corporation, its general partner

BY: \_\_\_\_\_

NAME: \_\_\_\_\_ John Rulli  
President of Malls – Chief  
Administrative Officer

TITLE: \_\_\_\_\_

DATE: 7/15/2020

GRANTOR: \_\_\_\_\_

STATE: Indiana  
COUNTY: Marion

The foregoing instrument was acknowledged before me on this 15<sup>th</sup> day of July, 2020 by John Rulli, President of Malls + CAO of SIMON PROPERTY GROUP, INC., a Delaware corporation.

Notary Public: Kimmi O'Bryan  
My Commission Expires: 11/15/2024  
My Registration No.: \_\_\_\_\_



KIMMI O'BRYAN, Notary Public  
Resident of Marion County  
Commission Expires 11.15.2024

**GRANTEE:**

**THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**

ACCEPTED this 8th day of October, 2020 on behalf of  
The County Board of Arlington County, Virginia, as authorized by Virginia Code Section  
15.2-726 B.

By:   
COUNTY MANAGER

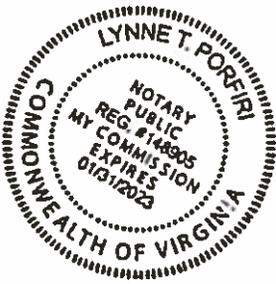
COMMONWEALTH OF VIRGINIA  
COUNTY OF ARLINGTON, to-wit:

The foregoing instrument was acknowledged before me by Mark J. Schwartz  
County Manager, on behalf of THE COUNTY BOARD OF ARLINGTON  
COUNTY, VIRGINIA, a body corporate, this 8th day of October, 2020

Notary Public:   
My Commission expires: 11/31/2023  
My Registration No.: 148905

The plans for the Elevator Project have been fully explained and made available to the  
Grantor for its review.

APPROVED AS TO FORM.  
  
COUNTY ATTORNEY



**Consent and Subordination of Lender**

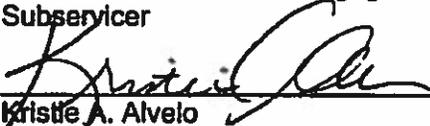
The undersigned parties, being the holder of that certain Amended and Restated Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing by virtue of: 1) an instrument recorded in Deed Book 4464, Page 2622 among the land records of Arlington County, Virginia; and 2) an Assignment of Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded in Deed Book 4480, Page 2348 among the land records of Arlington County, Virginia, and the Trustee of the same, covering the Property (RPC No. 35-005-029), do hereby consent to this Easement and subordinate their interest to the foregoing Easement as set forth in this Deed and does hereby agree that it will honor, recognize, and not interfere with the perpetual easement, rights, and privileges of WMATA, its successors and/or assigns in the event of foreclosure, conveyance in lieu of foreclosure, or any similar action.

**LENDER**

U.S. Bank National Association, as Trustee for the Registered Holders of BAML Trust 2011-FSHN, Commercial Mortgage Pass-Through Certificates, Series 2011-FSHN

By: KeyBank National Association, a national banking association  
Its: Master Servicer

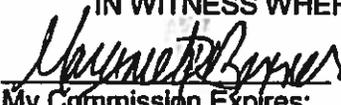
By: Berkadia Commercial Mortgage LLC, a Delaware limited liability company  
Its: Subservicer

By:   
Name: Kristie A. Alvelo  
Title: Authorized Representative

STATE/Commonwealth of Pennsylvania \*  
\* to wit:  
\*  
CITY/COUNTY OF Montgomery

I HEREBY CERTIFY that on this 17<sup>th</sup> day of July, 2020, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared Kristie A. Alvelo known to be (or satisfactorily proven) to be an Authorized Representative of Berkadia Commercial Mortgage LLC, a Delaware limited liability company, Subservicer for KeyBank National Association, a national banking association, Master Servicer for U.S. Bank National Association, as Trustee for the Registered Holders of BAML Trust 2011-FSHN, Commercial Mortgage Pass-Through Certificates, Series 2011-FSHN, and that such person, in such capacity and being authorized to do so, executed the foregoing instrument on behalf of the foregoing entities and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
My Commission Expires: Oct 6, 2021  
Registration No. 1131740

[NOTARIAL SEAL]

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
Margaret Benner, Notary Public  
Horsham Twp., Montgomery County  
My Commission Expires Oct. 6, 2021  
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

TRUSTEE

LINDA REHAK,  
a resident of Chesterfield County, Virginia

By: [Signature]  
Name: Linda S. Rehak  
Title: [Signature]

STATE/COMMONWEALTH OF Virginia \*  
CITY/COUNTY OF Chesterfield \* to wit:

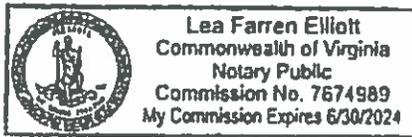
I HEREBY CERTIFY that on this 29<sup>th</sup> day of July, 2020 before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared Linda Rehak known to be (or satisfactorily proven) to be the \_\_\_\_\_ of \_\_\_\_\_, and that such person, in such capacity and being authorized to do so, executed the foregoing instrument on behalf of the foregoing entities and for the purposes therein contained.

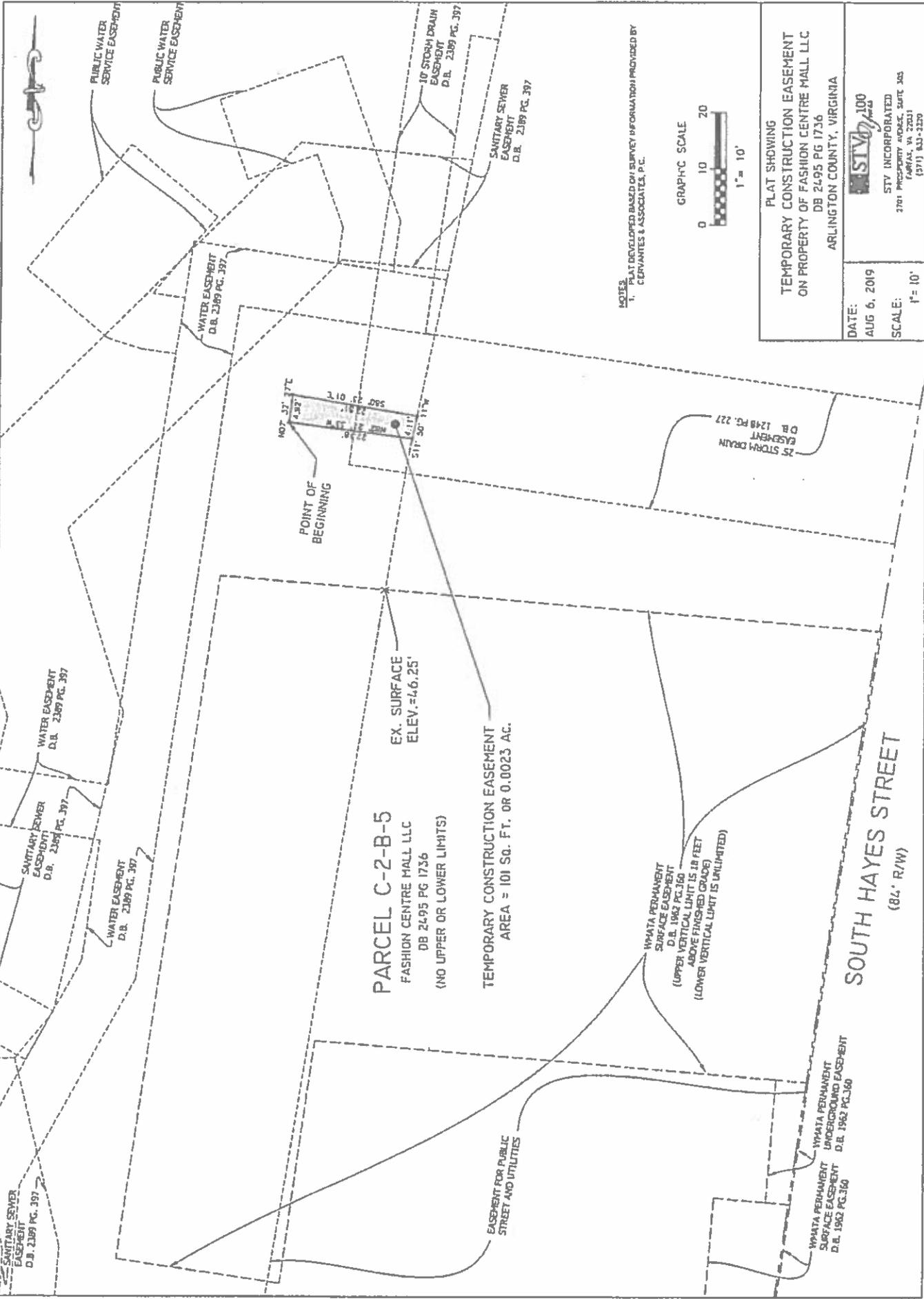
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Lea Farren Elliott

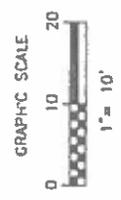
My Commission Expires: 6-30-24  
Registration No. 7674989

[NOTARIAL SEAL]





NOTES:  
 1. PLAT DEVELOPED BASED ON SURVEY INFORMATION PROVIDED BY CURVANTES & ASSOCIATES, P.C.



PLAT SHOWING  
 TEMPORARY CONSTRUCTION EASEMENT  
 ON PROPERTY OF FASHION CENTRE MALL LLC  
 DB 24-95 PG 1736  
 ARLINGTON COUNTY, VIRGINIA

DATE: AUG 6, 2019  
 SCALE: 1" = 10'

STV INCORPORATED  
 3701 PROSPERITY AVENUE, SUITE 300  
 FARMAS, VA 22031  
 (571) 833-3370



**PARCEL C-2-B-5**  
 FASHION CENTRE MALL LLC  
 DB 24-95 PG 1736  
 (NO UPPER OR LOWER LIMITS)

TEMPORARY CONSTRUCTION EASEMENT  
 AREA = 101 SQ. FT. OR 0.0023 AC.

EX. SURFACE  
 ELEV. = 46.25'

WHATA PERMANENT  
 SURFACE EASEMENT  
 D.B. 1962 PG.360  
 (UPPER VERTICAL LIMIT IS 18 FEET  
 ABOVE FINISHED GRADE)  
 (LOWER VERTICAL LIMIT IS UNLIMITED)

WHATA PERMANENT  
 UNDERGROUND EASEMENT  
 D.B. 1962 PG.360

**SOUTH HAYES STREET**  
 (84' R/W)

EASEMENT FOR PUBLIC  
 STREET AND UTILITIES

SANITARY SEWER  
 EASEMENT  
 D.B. 2389 PG. 397

WATER EASEMENT  
 D.B. 2389 PG. 397

WATER EASEMENT  
 D.B. 2389 PG. 397

PUBLIC WATER  
 SERVICE EASEMENT

PUBLIC WATER  
 SERVICE EASEMENT

WATER EASEMENT  
 D.B. 2389 PG. 397

10' STORM DRAIN  
 EASEMENT  
 D.B. 2389 PG. 397

SANITARY SEWER  
 EASEMENT  
 D.B. 2389 PG. 397

25' STORM DRAIN  
 EASEMENT  
 D.B. 1248 PG. 227

DESCRIPTION  
TEMPORARY CONSTRUCTION EASEMENT  
THROUGH AND OVER  
PARCEL C-2-B-5  
DB 2495 PG 1736  
FASHION CENTER MALL, L.L.C.  
ARLINGTON COUNTY, VIRGINIA

BEGINNING AT A POINT located N 23° 48' 22.9" E, 29.81 feet from the northwest corner of existing WMATA Permanent Surface Easement recorded in Deed book 1962, Page 360 among the Land Records of Arlington County, Virginia.

Thence departing from the aforesaid the following;

- North 07°32'27" East, 4.92 feet to a point, thence
- South 80°23'01" East, 22.51 feet to a point, thence
- South 11°50'11" West, 4.11 feet to a point, thence
- North 82°27'33" West, 22.18 feet to the point of beginning.

Containing 101 square feet or 0.0023 acres.

Existing easements overlapped by this plat are as follows:

- 1) 25' storm drain easement D.B. 1248 pg. 227
- 2) 10' storm drain easement D.B. 2389 pg. 397