DATE: April 4, 2006

SUBJECT: Approval of a Deed of Easement Granting to the County Board a Permanent Easement for Public Street and Utilities Purposes Over, Under, Across and Upon a 1,927.47 Square Foot Portion of Lot 79-A in a Resubdivision of Part of Lot 77 and all of Lots 78 and 79, of Block C, Rucker’s Addition to Clarendon (RPC No. 18008004).

C. M. RECOMMENDATIONS:

1. **Approve** the attached Deed of Easement (“Deed of Easement”) granting to the County Board a permanent easement for public street and utilities purposes over, under, across and upon a 1,927.47 square foot portion of Lot 79-A in a Resubdivision of Part of Lot 77 and all of Lots 78 and 79, of Block C, Rucker’s Addition to Clarendon (RPC No. 18008004); and

2. **Authorize** the Real Estate Bureau Chief, Department of Environmental Services, or his designee, to accept, the Deed of Easement on behalf of the County Board, subject to approval as to form by the County Attorney.

ISSUE: None.

SUMMARY: The execution and delivery of the attached Deed of Easement (Exhibit A) satisfies various legal and equitable obligations to the County Board created by, and arising from, a Lease Agreement between Donald A. Peck and Kathleen Peck Hering, as Lessor, and the County Board, as Lessee, whereby the County leased a 1,927.47 square foot portion of the property known as Lot 79-A in a Resubdivision of Part of Lot 77 and all of Lots 78 and 79, of Block C, Rucker’s Addition to Clarendon for public street and utilities purposes. The leased area is a portion of the north side of the current Clarendon Boulevard right-of-way bounding and immediately east of the intersection with N. Danville Street (see attached Vicinity Map). If approved and accepted, the Deed of Easement will grant and convey to the County Board, a perpetual, permanent easement for public street and utilities purposes over, under across and upon the area previously leased to the Board.

BACKGROUND: On August 18, 1982, Donald A. Peck and Kathleen Peck Hering (“Lessors”) entered into a Lease Agreement (the “Lease”), with the County Board for the lease to the County of a 1,927.47 square foot portion (the “Leased Area”) of that certain parcel of real property situated in Arlington County, Virginia, known as Lot 79-A in a Resubdivision of Part of Lot 77 and all of Lots 78 and 79, of Block C, Rucker’s Addition to Clarendon (the “Property”) for
public street and utilities purposes. The Lease is recorded in Deed Book 2074 at Page 1024 among the land records of Arlington County, Virginia. The Leased Area is currently utilized as a portion of the north side of the Clarendon Boulevard right-of-way bounding and immediately east of the intersection with N. Danville Street.

The term of the recorded Lease is for one year, beginning January 1, 1983, with automatic annual renewals in perpetuity, unless terminated according to the provisions of the Lease. By its terms, the Lease automatically terminates upon the occurrence of certain specified events, including any conveyance of the Property to third parties. The Lease provides that if the Lease is terminated by one the specified termination events, that, prior to termination, the Lessors shall either: a) grant to the County Board a permanent easement for public street and utilities purposes over, under, across, and upon the entire Leased Area; or b) sell the Leased Area to the County Board, in fee simple, under terms specified by the Lease. The election of which option (a or b) shall occur prior to termination is at the sole option of the Lessors.

On February 1, 2006, the Lessors conveyed the Property to WSD-2636 Wilson LLC, by Special Warranty Deed recorded on February 2, 2006, in Deed Book 3947, at Page 555, among the land records of Arlington County Virginia. The conveyance effectively terminated the Lease. Prior to the conveyance of the Property from Lessors to WSD-2636 Wilson LLC, no grant or conveyance of an easement or fee interest in the Leased Area was made to the County Board by the Lessors, as required by the terms of the Lease.

After acquisition of the Property from the Lessors, WSD-2636 Wilson LLC subsequently encumbered the Property with a Credit Line Deed of Trust and Security Agreement, conveyed to R. Scott Ritter and Kendal E. Carson, Trustees (“Trustees”), dated February 1, 2006, and recorded February 2, 2006, in Deed Book 3947 at Page 560, among the land records of Arlington County Virginia, and an Assignment of Rents and Leases to United Bank (“Lender”), dated February 1, 2006, and recorded February 2, 2006, in Deed Book 3947 at Page 594, among the land records of Arlington County Virginia.

**DISCUSSION:** The Lessors, WSD-2636 Wilson LLC, the Trustees, and the Lender have all joined in the attached Deed of Easement to grant and convey to the County Board a perpetual, permanent easement for public street and utilities purposes over, under across and upon the Leased Area, and to satisfy all legal and equitable obligations to the County Board created by, and arising from, the Lease.

Approval and acceptance of the Deed of Easement will grant and convey to the County Board, a perpetual, permanent easement for public street and utilities purposes over, under across and upon the Leased Area, as required by the terms of the Lease.

**FISCAL IMPACT:** None.
DEED OF EASEMENT

This DEED OF EASEMENT is made this ___ day of ______________, 2006, by WSD-2636 WILSON LLC, DONALD A. PECK, and KATHLEEN P. NOBLES (also known of record as KATHLEEN PECK HERING and KATHLEEN E. P. HERING) (“Grantors”), S. SCOTT RITTER, TRUSTEE, and KENDAL E. CARSON, TRUSTEE, either of whom may act (together and singly, “Trustees”), UNITED BANK (“Lender”), and THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate (“County Board “ and "Grantee”).

RECITALS:

R-1. WSD-2636 Wilson LLC is owner of that certain parcel of real property situated in Arlington County, Virginia, known as Lot 79-A, Block ‘C’, Rucker’s Addition to Clarendon (the “Property”), by a Special Warranty Deed from Donald A. Peck and Kathleen P. Nobles, as Grantors, dated February 1, 2006, and recorded in Deed Book 3947 at Page 555, among the land records of Arlington County Virginia.

R-2. Prior to conveyance of the Property to WSD-2636 Wilson LLC by the former property owners, Donald A. Peck and Kathleen P. Nobles (then known as Kathleen Peck Hering) (“Peck and Nobles”); Peck and Nobles entered into a Lease Agreement, dated August 18, 1982, with the County Board for a portion of the Property, which was recorded in Deed Book 2074 at Page 1024 among the land records of Arlington County, Virginia (“Lease Agreement”). The terms of the prior recorded Lease Agreement state that it automatically terminates upon, among other things, any conveyance of the Property to third parties and requires that Peck and Nobles grant or sell to the County Board an interest in the leased portion of the Property prior to the termination of the Lease Agreement.

R-3. Prior to the acceptance by the Grantee of this Deed of Easement, the required grant or sale has not been made to, or accepted by, the County Board.

R-4. S. Scott Ritter and Kendal E. Carson, either of whom may act, are the named Trustees, and United Bank is the beneficiary of a Credit Line Deed of Trust and Security Agreement on the Property executed by WSD-2636 Wilson LLC, as Grantor, dated February 1, 2006, recorded in Deed Book 3947 at Page 560, among the land records of Arlington County Virginia (“Deed of Trust”).

R-5. United Bank is also the Assignee of an Assignment of Rents and Leases on the Property, between WSD-2636 Wilson LLC, as Borrower, and United Bank, as Lender, dated February 1, 2006, recorded in Deed Book 3947 at Page 594, among the land records of Arlington County, Virginia (“Assignment of Rents and Leases”).

R-6. The Grantors, Trustees, and Lender all join in this Deed of Easement to satisfy all legal and equitable obligations created by, and arising from, the Lease Agreement.
NOW, THEREFORE, for and in consideration of these premises, the covenants contained herein, the satisfaction of the rights of the Grantee pursuant to, and arising out of, the recorded Lease Agreement, and the sum of One Dollar ($1.00), the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

EASEMENT FOR PUBLIC STREET AND UTILITIES

1. Each Grantor hereby grants and conveys to the Grantee, free and clear of all leases, mortgage, liens, easement, or other encumbrances of any kind, a perpetual permanent easement for public street and utilities purposes over, under, across and upon One Thousand Nine Hundred Twenty-Seven and Forty-Seven One Hundredths (1,927.47) square feet of land (“Easement Area”), situated in Arlington County, Virginia, and being the same area shown on the plat entitled “Area Leased for Public Street and Utilities Purposes for 15th Street N. at Danville St.” attached to the Lease Agreement dated August 18, 1982, recorded in Deed Book 2074 at Page 1024, which plat was approved on July 1, 1982 by the Arlington County Director of Public Works (the "Plat"), and being a portion of the same property acquired by the Peck and Nobles by deed dated May 17, 1976 and recorded in the Land Records of the Arlington County Circuit Court in Deed Book 1914 at Page 505 at Page, and more particularly described therein as:

“Lot 79-A in a Resubdivision of Part of Lot 77 and all of Lots 78 and 79, of Block C, Rucker’s Addition to Clarendon according to a plat attached to a Deed of Release from Harry R. Thomas, Trustee recorded in Deed Book 407, page 430 of the Land Records of Arlington County, Virginia”,

together with the right of Grantee to construct, maintain, repair, reconstruct, replace, relocate, and/or remove public street and utility facilities, including accessories and appurtenances thereto, within said easement area, and for such other purposes as are incidental and related thereto, and together with the right of ingress and egress over the Property, in order to construct, maintain, repair, reconstruct or replace the public street and utility facilities within the above-described Easement Area (the rights and Easement Area are referred to herein jointly as the "Easement"). Each Grantor, by this Deed of Easement, grants and conveys to the Grantee any and all of their respective legal and equitable right, title, and interest, in and to the Easement.

2. Reference is hereby made to the above-referenced Plat for a full and more complete description of the Easement Area hereby conveyed.

3. All facilities previously installed or constructed by the Grantee, or installed or constructed by Grantee in the future, shall be and remain the property of the Grantee. No additional charge shall at any time be made for the property used or occupied by the Grantee’s facilities. The Grantee shall have all rights and privileges reasonably necessary for the use of the Easement.

4. Grantors covenant and warrant that the Grantors, collectively, are seized of and, individually and collectively, have the right to convey the Easement, and that
Grantors shall make no use of the Easement area which is inconsistent with the Easement rights hereby conveyed.

SUBORDINATION

5. The Trustees, by and with the consent of the Lender, as evidenced by the Lender’s signature affixed to this Deed of Easement, do hereby acknowledge, agree, and consent that the lien of the Deed of Trust be, and the same is, subordinated to the Easement and all rights granted by this Deed of Easement to the Grantee.

6. The Lender further acknowledges, agrees, and consents that the lien of the Assignment of Leases be, and the same is, subordinated to the Easement and all rights granted by this Deed of Easement to the Grantee.

ADDITIONAL PROVISIONS

7. This Deed of Easement 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 of Easement.

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

9. The Recitals are incorporated herein.

10. With the exception of the covenants and warranties set forth in Paragraph 4 above, which shall survive execution and delivery of this Deed of Easement, this Deed of Easement is made by the parties hereto in full satisfaction of such parties’ obligations under the Lease Agreement and the parties recognize and agree that such Lease Agreement is terminated.

11. This Deed of Easement will be effective after acceptance and execution on page 9 hereof on behalf of the County Board of Arlington County, Virginia.

[signatures appear on following pages]
GRANTORS:

WSD-2636 WILSON LLC,
a Virginia limited liability company

By:________________________________
Name:_____________________________
Title:______________________________

State:  __________________
County: _________________

The foregoing instrument was acknowledged before me on this           day of
_____________, 2006, by___________________________, ____________________ of
WSD-2636 Wilson, LLC.

Notary Public: __________________________
My Commission expires: ________________

[signatures continue on following pages]
Donald A. Peck

State: ________________
County: ________________

The foregoing instrument was acknowledged before me on this    day of
_______________, 2006, by Donald A. Peck.

Notary Public: ________________
My Commission expires: ________________

[signatures continue on following pages]
Kathleen P. Nobles
(also known of record as Kathleen Peck Hering and Kathleen E. P. Hering)

State: __________________
County: _________________

The foregoing instrument was acknowledged before me on this ______ day of
______________, 2006, by Kathleen P. Nobles.

Notary Public: __________________
My Commission expires: ____________

[signatures continue on following pages]
TRUSTEE:

____________________________
S. Scott Ritter, Sole Acting Trustee

State: ______________________
County: ____________________

The foregoing instrument was acknowledged before me on this ________ day of _________________, 2006, by S. Scott Ritter, Sole Acting Trustee.

Notary Public: __________________________
My Commission expires: __________________

[signatures continue on following page]
LENDER:

UNITED BANK,
a ________________________________

By:________________________________
Name:_____________________________
Title:______________________________

State:  __________________
County: _________________

The foregoing instrument was acknowledged before me on this           day of
_____________, 2006, by___________________________, ____________________ of
United Bank.

Notary Public: __________________________
My Commission expires: ________________

State:  __________________
County: _________________

[signatures continue on following page]
GRANTEE:

Accepted this _____ day of ________________ , 200__, on behalf of the County Board of Arlington County, Virginia, pursuant to an action of the said Board duly adopted on ________________________, 2006.

By:  _______________________________________________________

For the County Board of Arlington County, Virginia

COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON, to-wit:

The foregoing instrument was acknowledged before me by ____________
____________________, on behalf of THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA, a body corporate, this _____ day of ________________ ,
2006.

Notary Public ________________________________

My Commission expires:_________________________

APPROVED AS TO FORM:__________________________

COUNTY ATTORNEY
ATTACHMENT 1 - VICINITY MAP
Easement for Public Street and Utilities Purposes – RPC No. 18008004

Easement for Public Street and Utilities Purposes
RPC No. 18008004