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Barbara J. Hochman  
Auditor Bartholomew Co., Indiana

AMENDED AND RESTATED  
PARKING AND ACCESS EASEMENT AGREEMENT

Title AJ  
423961

This Amended and Restated Parking And Access Easement Agreement is made and entered into on this 17<sup>th</sup> day of December, 2012 ("Effective Date") by and between the City Of Columbus Redevelopment Commission, Grantor (hereinafter "Redevelopment" or "Grantor"), and Buckingham Cole, LLC, and Indiana Limited Liability Company (hereinafter "Buckingham" or "Grantee").

RECITALS

A. Buckingham entered into an agreement entitled *Second Street Downtown Columbus Memorandum Of Understanding* with Columbus Downtown Inc. on September 2, 2009.

B. The *Second Street Downtown Columbus Memorandum Of Understanding* was an unrecorded document that set forth certain rights duties and obligations by and between the parties.

C. The purpose and intent of that agreement was to assist Buckingham in the development of a mixed-use structure (commercial, residential, retail and office) including one-hundred seventy-nine (179) residential units, more or less. It further established obligations by and between the parties whereby the Buckingham would have use of two hundred (200) of the parking spaces in the parking garage owned by Columbus Downtown Inc., (hereinafter "CDI") around which the Buckingham structure was built on three (3) sides, and where said parking spaces would be made available to Buckingham for its residential and commercial tenants.

D. Subsequent thereto on September 23, 2011 Columbus Downtown Inc. did execute a *Parking And Access Easement Agreement* with Buckingham specifically recording and setting out Buckingham's right to use two hundred (200) spaces in the adjoining parking garage as well as the rights, duties and obligations of the parties.

E. That *Parking And Access Easement Agreement* was recorded in the office of the Recorder of Bartholomew County as Instrument Number ~~2001-~~ **2011-**00009195 on September 26, 2011.

F. The Parking Garage referred to in the aforesaid *Second Street Downtown Columbus Memorandum Of Understanding* and the *Parking And Access Easement Agreement* owned by Columbus Downtown, Inc. (hereinafter referred to as "Parking Garage") was transferred to the City of Columbus Redevelopment Commission by a document executed on April 5, 2012 and recorded in the office of the Recorder of Bartholomew County as Instrument Number 2012-00004215 on April 19, 2012.

G. On July 16, 2012 Columbus Downtown Inc. executed an assignment of its right, title and interest in the above agreements and transferred said agreements to the City Of Columbus Redevelopment Commission, to which Buckingham consented conditioned on the assumption by Redevelopment of CDI's obligations.

H. Redevelopment accepted the assignment and agreed to assume all obligations of CDI and abide by all terms and conditions imposed under the Second Street Downtown Columbus Memorandum of Understanding and the Parking and Access Easement Agreement and amendments (all collectively known as "Agreements") of CDI as set forth in the Agreements..

**NOW, THEREFORE THE PARTIES DO HEREBY AGREE:**

1. The *Parking And Access Easement Agreement* entered into September 23, 2011 is hereby terminated.

2. The consideration given for entering into this Amended and Restated Parking And Access Easement Agreement is the mutual termination of the September 23, 2011 agreement.

3. The Grantor is the owner of the following described real estate located in Columbus, Bartholomew County, Indiana upon which the Parking Garage is located:

Lot Numbered One (1) in 2<sup>nd</sup> Street Parking Garage Minor Subdivision recorded as Instrument #2009-15050 in Plat Book "R", page 219A in the Office of the Recorder of Bartholomew County, Indiana.

4. The Grantee is the owner of the following described real estate described located in Columbus, Bartholomew County, Indiana which surrounds the Grantor's real estate on the East, South and West sides:

Lot Numbered Two (2) in 2<sup>nd</sup> Street Parking Garage Minor Subdivision recorded as Instrument #2009-15050 in Plat Book "R", page 219A, in the Office of the Recorder of Bartholomew County, Indiana.

5. Grantor hereby grants an easement to Grantee, Grantee's tenants, and its customers, licensees and invitees, for the Grantee's spaces and the nonexclusive right to use: walkways, elevators and elevator lobbies, sidewalks, common areas, pedestrian bridges and walkways connecting the Parking Garage to the Grantee's structure corresponding and connected to each floor of the structure, roadways, driveways, driving lanes and paid services constructed in and on the Grantor's parcel from time to time, for the charges set forth herein, for the purpose of providing pedestrian and vehicular access to and from the Grantor's Parking Garage located on its parcel and Grantee's structure located on its parcel and parking for the benefit of the Grantee's development.

6. This easement includes the Grantee's exclusive use of two hundred (200) to be identified parking spaces ("Grantee Spaces"). Grantor and Grantee agree to use good faith efforts to identify the location of the Grantee Spaces within thirty (30) days of the Effective Date. Upon identification of the location of the Grantee Spaces, such location of the Grantee Spaces shall not be altered without the prior written consent of both Grantor and Grantee.

7. Grantee's access to the parking spaces shall commence immediately upon the date a certificate of occupancy is issued to Grantee for Grantee's development. Grantee shall have the use of all of the Grantee Spaces on the date the certificate of occupancy is issued for the project.

8. The Grantor shall remit to the Grantee, commencing on or before December 31, 2013 and on or before the 31<sup>st</sup> day of each year for the following four (4) years, the sum of Sixty Thousand Dollars (\$60,000.00) per year as additional consideration for Grantee's cost of development; these payments shall be for a total period of five (5) years. Grantee shall be entitled to offset the amount that Grantor fails to pay Grantee (or an affiliate thereof) with respect to the payments set forth in this paragraph 8 against the Fixed Parking Fee until such obligation is satisfied in full.

9. Grantee shall pay Grantor an amount equal to Fifty Dollars (\$50.00) per allotted parking space (pursuant to paragraph number 7 hereof) per month (hereinafter called "Fixed Parking Fee") for the first five (5) years of Grantee's use of said parking spaces. Said payments shall commence (the "Parking Rental Commencement Date") for all Grantee Spaces on the first (1<sup>st</sup>) day of the sixth (6<sup>th</sup>) month immediately following the date a certificate of occupancy is issued for the project ("Parking Rental Commencement Date"). If the certificate of occupancy is issued for the project on any day following the 1<sup>st</sup> day of any given month, the Fixed Parking Fee shall be prorated for that particular month.

10. Commencing on the date of the fifth (5<sup>th</sup>) anniversary of the Parking Rental Commencement Date and every year thereafter, the Fixed Parking Fee shall escalate to an amount tied to the Consumer Price Index for "Midwest-sized E Urban Rent for Primary Residence" published by the US Bureau of Labor Statistics annualized for the 12 months most recently available prior to such anniversary; or, if the foregoing publication no longer exists, the consumer price index measure published by the federal government that most closely resembles the foregoing for the trailing five years shall be utilized.

11. Beginning on the date of the seventh (7<sup>th</sup>) anniversary of the Parking Rental Commencement Date and for each year thereafter, the Fixed Parking Fee shall be equal to either the amount established pursuant to the method set forth in paragraph number 10 above or the amount of the Grantor's actual average monthly net cost of operating the Parking Garage plus any

reasonable reserves for capital repairs to the Parking Garage, whichever is less.

12. Grantor agrees to manage and maintain the Parking Garage in a businesslike manner consistent with parking garage best management practices. Grantee shall not be responsible for any fees or charges associated with the Parking Garage except for the parking rental fees as set forth herein.

13. Grantee, at its sole cost, shall be permitted to place signage in the Parking Garage to identify the Grantee's spaces. The size, location and wording of said signage shall be subject to the Grantor's consent and approval and said consent and approval shall not be unreasonably withheld.

14. At the time this agreement is being entered into, there exists driveway accesses to and from the Parking Garage to the publicly dedicated streets adjacent to same. Grantor agrees to maintain the driveway accesses as they presently exist. Grantor, may from time to time, add, remove and/or relocate any garage accesses as shall become necessary so long as such action on the part of the Grantor does not diminish or materially interfere with the access rights granted to any party herein. Further, Grantor shall have the right to impose reasonable rules and regulations on the use of the roads and parking areas within the Parking Garage, provided such rules and regulations do not materially interfere with the rights granted herein. Grantor shall provide the Grantee with 24 hours' notice in advance of the imposition of any rules or regulations as to use of roads and parking areas within the Parking Garage.

15. Grantor shall maintain the Parking Garage and specifically the parking spaces covered under the terms of this easement in good order and in good condition and when necessary, repair same. Grantor shall maintain the condition of the parking garage including but not limited to, cleaning, painting, striping, removal of garbage, debris and trash, removal of obstructions, removal of snow and ice, and repairs to and resurfacing of the paving, curbs, and driveways, as may be necessary from time to time at no additional expense to the Grantee.

16. The parties agree to cooperate to implement the intent of this agreement and not unreasonably and unduly interfere with each other's rights duties and obligations herein.

17. To the extent necessary, Grantor agrees to cooperate with the Grantee to establish any garage access walkways as shall be necessary to allow Grantee's tenants to have access to the Parking Garage.

18. Insurance: Grantor shall carry public liability and casualty insurance in a reasonable amount based on the commercial use in connection with the Grantor's parcel and Grantee shall carry public liability and casualty insurance in a reasonable amount based on the commercial use in connection with the spaces Grantee leases herein.

19. In the event of a breach, or an attempted or threatened breach, by either of the parties hereto of any of the terms, covenants or agreements hereof, the other party shall be entitled to full and adequate relief by injunction and/or all other legal and equitable remedies. Notwithstanding the foregoing, if either party shall fail to cure such breach within thirty (30) days after written notice of such breach as provided by the non-breaching party to the breaching party, then the non-breaching party may 1) cure said defect and 2) recover from the breaching party all costs and expenses associated therewith including reasonable attorney's fees and costs.

20. The terms and conditions herein shall be deemed covenants which shall be provided for the benefit of the Grantee's parcel and binding upon the Grantor's parcel, and said covenants shall run with the land and shall be for the benefit of and binding upon the Grantor's and Grantee's successors and assigns.

21. All notices required to be given herein or which any party may choose to give to the other shall be provided in writing and sent to the respective Grantor or Grantee at the addresses below or other such address as a party shall direct:

City of Columbus Redevelopment  
Commission  
123 Washington St.  
Columbus, IN 47201  
Attention Legal Counsel

Buckingham Cole, LLC  
c/o Buckingham Companies  
941 N. Meridian St.  
Indianapolis, IN 46204  
Attn: Legal Department

IN WITNESS WHEREOF, this Agreement has been executed by Grantor and Grantee as of the first date written above.

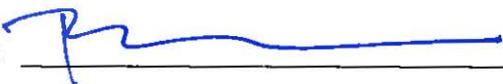
**GRANTOR:**

**GRANTEE:**

The City of Columbus  
Redevelopment Commission

Buckingham Cole, LLC

By:   
Printed: KRISTEN S. BROWN  
Title: PRESIDENT

By:   
Printed: Bradley B. Chambers  
Title: Manager

STATE OF INDIANA )  
 ) SS:  
COUNTY OF BARTHOLOMEW )

Before me, a Notary Public in and for said County and State, personally appeared KRISTEN S. BROWN, the PRESIDENT of the City of Columbus Redevelopment Commission, who acknowledged that he/she is fully authorized to execute this document on behalf of the Commission and, being duly sworn, states that the representations therein contained are true to the best of his/her knowledge and belief.

Dated this 17<sup>th</sup> day of DECEMBER, 2012.

Heather M. Pope  
HEATHER M. POPE Notary Public  
Resident of Bartholomew County, IN



My Commission Expires: 5.11.17



STATE OF INDIANA )  
 ) SS:  
COUNTY OF Boone )

Before me, a Notary Public in and for said County and State, personally appeared Bradley B Chambers, the Manager of the Buckingham Cole, LLC, who acknowledged that he/she is fully authorized to execute this document on behalf of the Buckingham Cole, LLC, and, being duly sworn, states that the representations therein contained are true to the best of his/her knowledge and belief.

Dated this 18<sup>th</sup> day of November, 2013.



Tracy L. Reinholt  
Notary Public  
Resident of Boone County, IN

My Commission Expires: \_\_\_\_\_

This Instrument Prepared by Stanley A. Gamso #15167-03, LAWSON, PUSHOR, MOTE & GAMSO, 426 Fourth Street, Columbus, IN, 47202-0764, 379-2331

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. Stanley A. Gamso