

**DERWOOD STATION SOUTH
HOMEOWNERS ASSOCIATION, INC.**

AGREEMENT AND RELEASE OF CLAIMS

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September 14, 1999

C. Robert Dalrymple
301.650.7008
crd@linowes-law.com

Mr. Mitch Bonanno
Crimson Partners
455 Spring Park Place, Suite 100
Herndon, Virginia 22070

OVERNIGHT DELIVERY

✓ Mr. Wallace Keene
President
Derwood Station South Homeowners Association
7238 Wapello Drive
Derwood, Maryland 20855

OVERNIGHT DELIVERY

Re: Executed Agreement and Release of Claims

Gentlemen:

I am enclosing a fully executed Agreement and Release of Claims, executed in two parts, effectuating the agreement reached between Rock Creek L, LLC and Derwood Station South Homeowners Association. Per this Agreement, Rock Creek L, LLC must issue a check in the amount of Forty-Three Thousand Dollars (\$43,000.00) within five (5) working days of the date of execution. I am sending this by overnight mail today to the parties, so I have made the effective date of execution September 15, 1999 (the day of receipt).

I would ask that Mitch Bonanno send the check directly to Mr. Keene at the above address for Derwood Station South Homeowners Association.

Please feel free to contact me if you have any questions.

Very truly yours,

LINOWES AND BLOCHER LLP



C. Robert Dalrymple

CRD:pi
Enclosure
cc: Martin J. Hutt, Esquire

AGREEMENT AND RELEASE OF CLAIMS

THIS AGREEMENT AND GENERAL RELEASE OF ALL CLAIMS ("Agreement") is entered into as of this 15th day of September, 1999, by and between ROCK CREEK L, LLC ("Rock Creek") and the DERWOOD STATION SOUTH HOMEOWNERS' ASSOCIATION (on its own behalf and on behalf of the individual homeowners of which it is comprised (collectively "Derwood").

RECITALS:

- A. Rock Creek is the owner and developer of a property known as Parcel L, Gude North, as recorded in Plat Book 193, Plat number 21049 on April 28, 1999 (the "Property"). The Property is also known as 7331 Calhoun Place, Rockville, Maryland.
- B. Rock Creek has received site plan and subdivision approval for office/industrial use of the Property and is constructing a Federal Express distribution facility (the "Facility") on the Property pursuant to Building Permit No. 9905070081 (issued on July 28, 1999).
- C. Derwood Station South Homeowners' Association is a homeowners association which owns property that is in close proximity to, or contiguous with, the Property. Further, Derwood's members (i.e., the individual homeowners) own property that is either contiguous to the Property or is in proximity to the Property.
- D. Without admission of any obligation, liability or wrongdoing by Rock Creek, Derwood and Rock Creek desire to enter into this Agreement in order to amicably resolve all issues regarding zoning, permitting and initial occupancy of the Facility on the Property, and to provide for a certain payment in full settlement and satisfaction and final discharge of all claims, actions and challenges (formal, informal, past, present and future) by Derwood, along with any

and all other claims of Derwood, with regard to the zoning and permitting process for the development of the Property and the construction and initial occupancy of the Facility, upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing Recitals and in consideration of the mutual covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT:

1. **Release and Discharge.** In consideration of the payment called for herein, Derwood, along with and on behalf of its members, individual homeowners, heirs, personal representatives, agents, predecessors-in-interest, successors-in-interest, trustees, bankruptcy trustees and assigns (the Releasing Parties), hereby completely releases and forever and fully discharges Rock Creek, and their past, present and future officers, directors, stockholders, partners, members, attorneys, lenders, agents, servants, representatives, employees, subsidiaries, affiliates, parent companies, partners, predecessors-in-interest, successors-in-interest, assigns and all other persons, or entities with whom any of the former have been, are now or may hereafter be affiliated (collectively the "Released Parties"), of and from any and all past, present or future actions, challenges, claims, demands, obligations, contracts, agreements, promises, actions, lawsuits, causes of action, rights, damages, costs and/or administrative claims, which the Releasing Parties now have, have ever had or which may hereafter accrue or otherwise be acquired, on account of, or in any way growing out of the zoning and permitting processes relating to the development of the Property and the construction and initial occupancy of the

Facility. This Release, on the part of the Releasing Parties, is intended, and shall be, a fully binding and complete settlement between the Releasing Parties and the Released Parties of any and all pending or potential challenges to the zoning and permitting processes relating to the development of the Property and the construction and initial occupancy of the Facility.

The Released Parties hereby agree and covenant that they will not file, lodge, pursue or publicize any action, claim, complaint or challenge (with regard to the zoning and permitting processes relating to the development of the Property and the construction and initial occupancy of the Facility) against the Released Parties or any other entity whatsoever (whether formal or informal and whether directed to the Released Parties, any governmental or quasi-governmental body, agency or department of the media (including electronic and print media).

In the event that any action, complaint, claim or challenge (with regard to the zoning and permitting processes relating to the development of the Property and the construction and initial occupancy of the Facility) is lodged by the Releasing Parties, it is agreed that the Releasing Parties shall return to Rock Creek the full amount of the payment set forth in Paragraph No. 2 hereof, plus interest from the date of payment through the date of the return (based upon 8 ½% per annum up to a maximum of \$5,000.00 calculated interest), on demand by Rock Creek. Further, it is expressly agreed by the Releasing Parties that the subject payment (plus interest) shall be returned in the event of any documented action, complaint, claim or challenge (i.e., with regard to the zoning and permitting processes relating to the development of the Property and the construction and initial occupancy of the Facility), whether formal or informal and whether made or lodged against the Released Parties or any governmental or quasi-governmental body, agency or department. Further, the subject Payment shall be returned by the Released Parties in the event that any actions, claims, complaints or challenges are lodged with, or communicated

to, the media (including electronic and print media) regarding the zoning or permitting processes relating to the development of the Property and the construction and initial occupancy of the Facility.

2. **Payment.** In consideration of the agreement and covenants set forth herein, and upon full execution of this Agreement by an authorized officer(s) of Derwood Station South Homeowners' Association, and within five (5) working days thereof, Rock Creek shall pay to Derwood Station South Homeowners Association the sum of Forty-Three Thousand Dollars (\$43,000.00).

3. **Attorneys' Fees.** Each party hereto shall bear all of their own attorneys' fees and costs with regard to the dispute, the drafting and negotiation of this Agreement, and the implementation of this Agreement.

4. **Warranty of Capacity to Execute Agreement.** Derwood represents and warrants that no other person or entity has or has had any interest in the action, challenges, claims, demands, obligations, or causes of action referred to in this Agreement, that Derwood has the sole right and exclusive authority to execute this Agreement (on its own behalf and on behalf of its members) and receive the sum specified herein (for itself and its members) and that Derwood has not sold, assigned, transferred, conveyed or otherwise disposed of any of the action, challenges, claims, demands, obligations, or causes of action referred to in this Agreement.

5. **Entire Agreement and Successors-in-Interest.** This Agreement contains the entire agreement between Derwood and Rock Creek with regard to the matters set forth herein and shall be binding upon and inure to the benefit of the members, agents, executors, trustees,

bankruptcy trustees, administrators, personal representatives, heirs, predecessors, successors and assigns of Derwood, Rock Creek and the Released Parties.

6. **Representation of Comprehension of Document.** In entering into this Agreement, Derwood represents that Derwood has relied upon the legal advice of Derwood's attorneys who are the attorneys of Derwood's own choice, that the terms of this Agreement have been completely read and explained to Derwood by their attorneys, and that those terms are fully understood and voluntarily accepted by Derwood.

7. **Governing Law.** This Agreement, and the performance of the parties hereunder, shall be construed and interpreted in accordance with the laws of the State of Maryland. In any action arising out of the construction, interpretation, validity or performance of this Agreement, venue shall be in the Circuit Court for Montgomery County, Maryland. Further, the parties agree to and hereby waive any right to a jury trial in matters arising out of the construction, interpretation, validity or performance of this Agreement and/or the claims set forth herein.

8. **Additional Documents.** Derwood and Rock Creek agree to cooperate fully to execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement. Further, Derwood agrees to formally withdraw any and all actions, challenges, claims and lawsuits that have been lodged with respect to the Property, the Facility, the proposed or actual use of the Facility, the potential noise emanating from the Facility and any other matters pertinent hereto, and to otherwise fully cooperate with Rock Creek in its efforts to develop the Property and use the Facility.

9. **Confidentiality.** Derwood agrees that the existence of this Agreement, the terms of this Agreement, and any matters within the scope of this Agreement are, with respect to

Derwood, privileged and strictly confidential, and shall not be used by Derwood as evidence or otherwise in any action or proceeding and shall not be otherwise disclosed by Derwood to persons not parties hereto, except (a) to Derwood's members; (b) to Derwood's accountants or attorneys; or (c) pursuant to Court Order; or (d) by agreement in writing of all parties hereto; or (e) as required by law; or (f) in any action or proceeding to enforce or defend the terms of this Agreement. If, pursuant to subparagraphs (c) through (f) above, this Agreement is required to be disclosed by Derwood in a judicial or administrative proceeding, Derwood shall require that it be filed under seal. If Derwood is required by law to disclose this Agreement and its terms, or any statements, acts or omissions relating thereto, Derwood shall advise all other parties by telephone and in writing as promptly as possible prior to disclosure, so as to allow the other parties an opportunity to object to the disclosure, to be furnished with a copy of written materials pertaining to such disclosure, and to be given sufficient time to respond to such disclosure and pursue any remedies available to that party.

10. **Effectiveness and Counterparts.** This Agreement shall become effective following execution by all of the parties. This Agreement may be executed in duplicate originals, all of which shall be one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date first set forth hereinabove.

ATTEST:

DERWOOD STATION SOUTH
HOMEOWNERS' ASSOCIATION

By: Wallace O. Keene (SEAL)

Name: Wallace O. Keene

Title: President, DSS HOA

Date: 9/10/99

By: ROCK CREEK L, LLC,
a Maryland limited liability company

By: ROCK CREEK ASSOCIATES H
PARTNERSHIP, L.L.P.,
a Texas limited liability partnership
Sole Managing Member

By: _____ (SEAL)

Name: R. Kevin Dougherty

Title: Managing General Partner

Date: _____

ATTEST:

DERWOOD STATION SOUTH
HOMEOWNERS' ASSOCIATION

By: _____ (SEAL)

Name: _____

Title: _____

Date: _____

By: ROCK CREEK L, LLC,
a Maryland limited liability company

By: ROCK CREEK ASSOCIATES H
PARTNERSHIP, L.L.P.,
a Texas limited liability partnership
Sole Managing Member



MITCH BONANNO

By: R. Kevin Dougherty (SEAL)

Name: R. Kevin Dougherty

Title: Managing General Partner

Date: 9/8/99