ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item
Meeting of December 13, 2008

DATE: December 3, 2008

SUBJECT: Approval and Execution of an Underground Right of Way Easement and Vault Agreement to be Granted by the County Board of Arlington County, Virginia and Arlington Hotel Associates, LLC to Virginia Electric and Power Company, Doing Business in the Commonwealth of Virginia as Dominion Virginia Power, to Permit Location and Construction of an Underground Electric Vault Along N. Adams Street on the Northwest Corner of Lot 6, Courthouse Plaza, RPC No. 18005042.

C. M. RECOMMENDATIONS:

1. Approve the Underground Right of Way Easement and Vault Agreement ("Easement"), as attached, to be granted by the County Board of Arlington County, Virginia ("County") and Arlington Hotel Associates, LLC ("Arlington Hotel") to Virginia Electric and Power Company, doing business in the Commonwealth of Virginia as Dominion Virginia Power ("DVP"), to permit location and construction of an underground electric vault along N. Adams Street on the northwest corner of Lot 6, Courthouse Plaza, 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 Easement, subject to approval as to form by the County Attorney.

ISSUES: The Easement is required to permit construction of the underground electric vault for the hotel located on Courthouse Plaza, Lot 6 and to comply with conditions of the Site Plan #231. There are no issues identified with this request.

SUMMARY: Arlington Hotel, 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 Courthouse Plaza, Lot 6, join as grantor in granting the Easement, attached hereto as Attachment A, to DVP, to provide for the location and construction of an underground electric vault on the subject property.

County Manager: _____

County Attorney: _____

Staff: Linda Collier, Real Estate Bureau, DES

BACKGROUND: The underlying property that is the subject of the Easement is identified as Courthouse Plaza, Lot 6, and is located at the southeast corner of North Adams Street and Clarendon Boulevard ("Property") (see Vicinity Map attached hereto as Attachment B). In conjunction with plans for redevelopment of the Property, Arlington Hotel filed a request to amend Site Plan #231 to permit construction of a hotel, which amendment was approved by the County Board on February 25, 2006. 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 required to be granted to DVP by the County, as owner of the underlying fee interest in the Property, and Arlington Hotel, as the ground lessee of the Property, before construction of the electric vault can occur. The physical location of the Easement is depicted on "Plat to Accompany Right-of-Way Agreement, Virginia Electric and Power Company doing business as Dominion Virginia Power, Plat Number 41-08-0026", attached to the Easement as Exhibit A. The Easement permits the location of the vault and sets forth the specifications for construction and maintenance of the vault by Arlington Hotel. The Easement is binding upon the successors and assigns of Arlington Hotel, although when the ground lease expires, if the County owns all of the interest in the Property, certain provisions, such as the indemnification requirements will not apply to the County and any provisions requiring the expenditure of funds will be subject to appropriation.

Public Notice: Public notice of the proposal to grant the Easement was given in accordance with the Code of Virginia. Notice was placed in the December 5, 2008 issue of the Washington Times for the County Board meeting of December 13, 2008.

FISCAL IMPACT: None.

CONCLUSION: It is recommended that the County Board approve the Underground Right of Way Easement and Vault Agreement to be granted by the County Board of Arlington County, Virginia and Arlington Hotel Associates, LLC to Virginia Electric and Power Company, doing business in the Commonwealth of Virginia as Dominion Virginia Power, to permit location and construction of an underground electric vault along N. Adams Street on the northwest corner of Lot 6, Courthouse Plaza, 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 Easement, subject to approval as to form by the County Attorney.

Prepared by and return to:
LeClairRyan
Riverfront Plaza, East Tower
951 East Byrd Street, Eighth Floor
Richmond, Virginia 23219
Tax Parcel No.:_____

Underground Right of Way Easement and Vault Agreement

THIS UNDERGROUND RIGHT OF WAY EASEMENT AND VAULT AGREEMENT (hereinafter "Agreement"), is made and entered into this _____day of _____, 2008, by and between **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body politic, as ("OWNER"), **ARLINGTON HOTEL ASSOCIATES, LLC**, a Virginia limited liability company, together with its successors and assigns ("GROUND LESSEE") (both OWNER and GROUND LESSEE are sometimes collectively herein called "GRANTOR"), and **VIRGINIA ELECTRIC AND POWER COMPANY**, a Virginia public service corporation, doing business in the Commonwealth of Virginia as DOMINION VIRGINIA POWER, with its principal office in Richmond, Virginia ("GRANTEE").

RECITALS

WHEREAS, OWNER is the owner of certain real property located at 1401 N. Adams Street, more particularly described on Plat No. 41-08-0026, which is attached hereto as Exhibit A ("Plat") and incorporated by reference into this Agreement ("Real Property"); and

WHEREAS, pursuant to the terms of that certain Deed of Lease dated June 20, 2005, as amended by that certain First Amendment to Deed of Lease dated February 20, 2007 (collectively, the "Ground Lease"), OWNER has leased to GROUND LESSEE and GROUND LESSEE has leased from OWNER the Real Property pursuant to the terms and conditions of the Ground Lease.

WHEREAS, GROUND LESSEE is in the process of developing or plans to develop the Property into a commercial hotel development and has constructed or will construct a building and/or facility or a group of buildings and/or facilities on the Real Property ("Improvements"), title to which Improvements shall, pursuant to the terms of the GROUND LEASE remain in GROUND LESSEE until the Ground Lease expires or is otherwise terminated, or until transferred or conveyed to another individual or entity. The Real Property and all existing and future buildings, facilities, and common areas of

said commercial and/or residential real estate development are hereinafter collectively referred to as the GRANTOR'S Property; and

WHEREAS, GRANTEE will provide for the transmission and distribution of electric power to the Improvements; and for this purpose, GRANTOR will provide GRANTEE with the right, privilege and easement to use and access the GRANTOR'S Property as described herein; and

WHEREAS, in order for GRANTEE to transmit and distribute electric power to Improvements, it is necessary to construct a transformer station on the GRANTOR'S Property and to extend GRANTEE'S primary feeders to said transformer station; and it is the sole, express desire and request of the GROUND LESSEE that GRANTEE construct and install said transformer station, its associated equipment and facilities, and primary feeders underground rather than above ground pad-mounted or overhead; and

WHEREAS, GRANTEE has determined that it is practicable to construct and install said transformer station, its associated equipment and facilities, and primary feeders underground, and that said underground installation will be in conformance with the rules of the National Electrical Safety Code (NESC), applicable state and local codes and ordinances, and the GRANTEE'S Terms and Conditions for Supplying Electric Service on file with the Virginia State Corporation Commission; and

WHEREAS, GROUND LESSEE fully understands that the installation, maintenance and operation of a(n) below grade transformer station, its associated equipment and facilities is significantly more expensive than the installation, maintenance and operation of an above ground pad-mounted transformer station, its associated equipment and facilities using GRANTEE'S standard construction practices; and

WHEREAS, GROUND LESSEE has agreed to accept full responsibility for certain costs and non-monetary obligations as described herein associated with GROUND LESSEE'S decision or requirement to install, maintain and operate the aforesaid below ground transformer station, its associated equipment and facilities; and

WHEREAS, it is the intent of GRANTOR that the GRANTOR'S Property be held, transferred, sold, conveyed and occupied subject to the covenants, obligations and costs hereinafter set forth in this Agreement which are hereby imposed by GRANTEE on GRANTOR, its successors and assigns, due to GROUND LESSEE'S decision to place the transformer station, its associated equipment and facilities and the primary feeders in a(n) below grade transformer vault.

WITNESSETH

NOW THEREFORE, for and in consideration of the sum of One Dollar ($1.00) cash in hand paid, the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency thereof which is hereby acknowledged, it is mutually agreed upon and contracted between the GRANTOR and GRANTEE, the following:

1(a). GRANTOR grants and conveys unto GRANTEE, its successors and assigns, the perpetual right, privilege and easement over, under, through, upon and across the GRANTOR'S Property as shown on the attached Plat for the purposes of:

(i). Transmitting and distributing electric power by one or more circuits to GRANTOR'S Property, including but not limited to: (A) transmission and distribution to an electric transformer substation located in a(n) below grade transformer vault on GRANTOR'S Property; (B) transmission and distribution to individual Delivery Points located in any building, facility or common area of GRANTOR'S Property, the location of said Delivery Points to be designated and approved by GRANTEE, said Delivery Points typically being located (i) at the termination of GRANTEE'S transformer or (ii) in the GROUND LESSEE'S Termination Compartment or Switchgear Equipment Room; and

(ii). Installing, constructing, repairing, maintaining, repairing, changing, altering, owning and operating an electric transformer substation on GRANTOR'S property, including all transformers, attachments, equipment, accessories and appurtenances desirable in connection therewith (hereinafter collectively referred to as "substation and appurtenances'), within a transformer vault to be provided by GROUND LESSEE in accordance with the terms and conditions set forth in Section 2 below.

(iii). Installing, constructing, repairing, maintaining, changing, altering, owning and operating the necessary underground and overhead conductors, wires, high voltage cables, transformers, switches and metering equipment required to transmit and distribute electricity to Delivery Points on GRANTOR'S Property.

1(b) GRANTEE, at all times and for all proper purposes under this Agreement, shall have the right of unobstructed access, including full and free ingress to and egress from the substation and appurtenances, and any switches, wires, conductors and cables located over, under upon, across and through GRANTOR'S Property and for the purposes set forth in Section 1(a) above and for the further purposes of installing and reading meters and replacing, relocating or removing any of GRANTEE'S equipment and

facilities. Such access shall not be unreasonably withheld, conditioned, or delayed by GRANTOR.

1(c). The location of the substation and appurtenances and primary feeder extensions shall be approved by GRANTEE. The easement granted in this Agreement pursuant to Section 1(a)(ii) above shall extend across GRANTOR'S Property as shown on the Plat attached hereto as Exhibit A, the location of the boundaries of said easement being shown in broken lines. For the purpose of exercising the rights granted herein, GRANTEE shall have the right of ingress to and egress from this easement over such private roads as may now or hereafter exist on GRANTOR's Property. The right, however, is reserved to GRANTOR to shift, relocate, close or abandon such private roads at any time. If there are no public or private roads reasonably convenient to this easement, GRANTEE shall have such right of ingress and egress over the lands of GRANTOR adjacent to this easement. GRANTEE shall exercise such rights in such manner as shall occasion the least practicable damage and inconvenience to GRANTOR. GRANTEE shall have the right to keep this easement clear of all buildings, structures, trees, roots, undergrowth and other obstructions which would interfere with its exercise of the rights granted hereunder, including, without limitation, the right to trim, top, retrim, retop, cut and keep clear any trees or brushes inside and outside the boundaries of this easement that may endanger the safe and proper operation of GRANTEE'S facilities. All trees and limbs cut by GRANTEE shall remain the property of the GROUND LESSEE.

1(d). GRANTOR reserves the right, subject to the terms and conditions of the Ground Lease, to use the Real Property in any manner that is not inconsistent with the rights granted to the GRANTEE herein.

2(a). During the term of the Ground Lease, GROUND LESSEE will install, construct, repair, alter, relocate, maintain, own, operate, and routinely inspect, at GROUND LESSEE'S sole expense and for GRANTEE'S exclusive use, all the necessary Vaults, hatches, doors, louvers, vents, grates, equipment rooms, manholes, handholes, transformer foundations pads, structural features for supporting and moving transformers, duct lines or other fireproof raceways, associated structural features necessary for proper ventilation, drainage, oil retention and general operation of the below grade transformer vault and equipment housing the substation and appurtenances, as well as tunnels or enclosures along with an unobstructed access to hatches, doors, louvers, vents, grates (said below transformers(s) and or switches and aforementioned appurtenances hereinafter collectively referred to as "Vault" or "Vaults") as from time to time may be required by the GRANTEE for the installation and efficient operation of GRANTEE'S substation and appurtenances. GRANTEE will be the primary holder of a key or access device and the primary operator of a padlock or other security device to be maintained on the Vault as may be required. Any improvement or changes made to the Vault must be approved by GRANTEE. If required by GRANTEE,

GROUND LESSEE will provide, at GROUND LESSEE'S sole expense, an access road of at least 15' wide and sufficient height to allow ingress and egress of cranes, trucks, etc. to the Vault. Following the expiration or sooner termination of the Ground Lease the obligations of the GROUND LESSEE set forth in this Section 2(a) shall become the responsibility of the OWNER; provided, however, that so long as the Owner is a body politic, any obligation under this Agreement requiring the expenditure of funds is subject to the appropriation of such funds by the body politic to the extent required by law.

2(b). GROUND LESSEE shall, at GROUND LESSEE'S sole expense, construct, install, operate, and maintain the Vault in safe condition, in good repair, and in accordance with the requirements and specifications of the National Electrical Safety Code (NESC) - Latest Edition, the National Electrical Code (NEC) – Latest Edition, and other applicable practices and specifications of the utility industry now in effect as or may hereafter be issued by the Virginia State Corporation Commission or the GRANTEE, and all applicable statutes, regulations, ordinances and orders of federal, state, municipal, regional and local authorities or officials having jurisdiction, as each of them may be amended or revised from time to time.

3. Any and all physical transport, including lifting, delivery, relocation or removal of GRANTEE'S transformers and the appurtenant and associated equipment and/or switches to and from ground level to their installation locations on, within, on or under the GRANTOR'S Property, for any subsequent repair or replacement, shall be performed by GROUND LESSEE, at GROUND LESSEE'S sole expense.

4. GROUND LESSEE, at GROUND LESSEE'S sole expense, will provide suitable space and suitable housing compartments, as GRANTEE may from time to time determine and approve, to be used for the installation, operation and housing of GRANTEE'S metering equipment. GROUND LESSEE, at GROUND LESSEE'S sole expense, will further install, construct, repair, alter, relocate, maintain, own and operate secondary cables to the secondary transformer terminals, terminal box, conduit lines, including conduit lines encased in concrete if necessary, electric switches and all other secondary appurtenances and devices required to provide electric service to all applicable buildings, facilities and common areas on GROUND LESSEE'S property, in accordance with and as deemed necessary by the requirements and specifications of the National Electrical Safely Code (NESC) - Latest Edition, the National Electrical Code (NEC) - Latest Edition, local fire codes and all other applicable practices and specifications of the utility industry now in effect or as may hereafter be issued by the Virginia State Corporation Commission or of the GRANTEE, and all applicable statutes, regulations, ordinances and orders of federal, state, municipal, regional and local authorities or officials, as each of them may be amended or revised from time to time.

5. GROUND LESSEE agrees to comply with the construction specifications, terms and conditions as set forth in the Requirements for Customer Owned Vault and Cable, attached hereto as Exhibit B and incorporated by reference into this Agreement provided said Requirements for Customer Owned Vault and Cable is executed and acknowledged by GROUND LESSEE contemporaneously with this Agreement and is recorded with and is a part of this Agreement.

6. Before GROUND LESSEE performs its obligations to install, construct, repair, maintain, change, alter or routinely inspect the Vault as set forth in Section 3 above, GROUND LESSEE shall provide a minimum of Forty-Eight (48) hours notice to GRANTEE to request GRANTEE (i) to provide qualified supervisory or otherwise qualified personnel as GRANTEE deems necessary or required and (ii) to provide access to the Vault to GROUND LESSEE, its agents and employees as needed. GROUND LESSEE shall bear the expense incurred by GRANTEE in providing GRANTEE'S personnel for any such oversight, repair, maintenance, change or alteration. It is understood by GROUND LESSEE that certain maintenance functions may require compliance with federal and/or state worker protection laws and regulations.

7. If, within a reasonable time after GRANTEE has given written notice to the GROUND LESSEE of any breach of GROUND LESSEE'S obligations under this Agreement causing conditions which GRANTEE deems as substandard or posing a potential hazard, and arrangements satisfactory to GRANTEE, in GRANTEE'S sole discretion, to install, repair, change, alter or correct such conditions have not been made, GRANTEE reserves the right to immediately make the necessary repairs, changes, alterations or additions, at GROUND LESSEE'S sole expense. This shall include, but not be limited to, any cleaning and maintenance necessary for the prevention of damages to the substation and appurtenances and/or Vault. GROUND LESSEE shall reimburse GRANTEE, on demand, for the costs incurred by GRANTEE in performing the work required to make necessary repairs, changes, alterations or additions.

8. GRANTEE shall have the right, without giving notice to GROUND LESSEE and at the sole expense of GROUND LESSEE, to make emergency repairs, alterations, additions or replacement of the Vault, as GRANTEE deems necessary, in GRANTEE'S sole discretion. GROUND LESSEE shall reimburse GRANTEE, on demand, for the costs reasonably incurred by GRANTEE in performing the work required to make such emergency repairs, changes, alterations or additions.

9. GRANTEE shall have the right to inspect, rebuild, remove, repair, improve, expand and relocate its substation and appurtenances together with the right to make such changes, alterations, substitutions or additions, including the right to decrease or increase the number of transformers, as GRANTEE may from time to time deem advisable (i) in and to its substations and appurtenances, switches, wires and cables and

(ii) to the Vault. Each of GROUND LESSEE and GRANTEE shall provide or make, at its sole expense, those changes, alterations, substitutions, or additions to the facilities it holds title to, as deemed advisable by GRANTEE in order to furnish electricity to GROUND LESSEE'S Property. GROUND LESSEE shall be solely responsible for any additional costs of transformers and equipment when required by insurance or inspection authorities.

10. In order for GRANTEE to properly maintain its substation and appurtenances, GROUND LESSEE will allow GRANTEE to interrupt GROUND LESSEE'S electric service periodically for sufficient duration to perform maintenance or other work as required under this Agreement. GRANTEE will endeavor to give GROUND LESSEE sufficient notification (normally two working days) of such interruption so as to cause as little disruption as possible to GROUND LESSEE'S tenants, occupants and/or personnel.

11. At any time, GROUND LESSEE may request GRANTEE, in writing, to perform any of GROUND LESSEE'S obligations under this Agreement, to include but not to be limited to the operation, maintenance, repair, and relocation of the Vault. If GRANTEE agrees to perform the work (such determination to be made at GRANTEE'S sole discretion), GROUND LESSEE shall be fully responsible for and shall, on demand, pay to GRANTEE, the full costs and expenses associated with the requested work. Any costs incurred by GRANTEE and charged to GROUND LESSEE pursuant to this Agreement, shall be based upon the full cost and expense to GRANTEE for performing such work, including but not limited to, the cost of labor and overtime incurred. Said costs and charges to GROUND LESSEE shall be determined by the regular and customary methods used by GRANTEE in determining and collecting such costs.

12. Electric service will be distributed hereunder by GRANTEE to each Delivery Point. Electric Service from the Delivery Point to each location of occupant, tenant, personnel or common area will be metered separately or otherwise pursuant to GROUND LESSEE'S or Customers request and billed based on GRANTEE'S applicable rate schedule. Before any Property Management Entity or individual or any Occupant of GROUND LESSEE'S Property may secure from GRANTEE the distribution of electric services within the GROUND LESSEE'S Property, said Property Management Entity or Individual or Occupant shall comply with GRANTEE'S Terms and Conditions for Supplying Electric Service on file with the Virginia State Corporation Commission, to include executing a standard form Agreement for the Purchase of Electricity if so required.

13. GROUND LESSEE will defend, indemnify, and save GRANTEE and GRANTEE'S suppliers, contractors, agents, employees, officers, directors, licensees, invitees, successors and assigns (collectively, the "GRANTEE'S Indemnitees"), harmless from and against all claims, demands, obligations, losses, fines, penalties, liabilities, damages (including consequential damages), costs, expenses, suits, causes of actions, proceedings and injuries, including, without limitation, fees and costs of attorneys of

GRANTEE'S choosing, experts and consultants, imposed upon, incurred by or asserted against GRANTEE as a result of (i) the act, omission, failure, negligence or willful misconduct of GROUND LESSEE and/or GROUND LESSEE'S suppliers, contractors, agents, employees, officers, directors, tenants, licensees, invitees, members, successors or assigns to comply with GROUND LESSEE'S obligations as set forth in this Agreement or (ii) the misrepresentation, breach or nonfulfillment of any covenant or duty on the part of GROUND LESSEE under this Agreement. In the event any action, suit or proceeding is brought against GRANTEE and/or any GRANTEE'S indemnitees by reason of any such occurrence as set forth in this Section 14. GROUND LESSEE, upon GRANTEE'S request, shall, at GROUND LESSEE'S expense, cause such action, suit or proceeding to be resisted and defended by counsel satisfactory to GRANTEE. This indemnification will survive the termination of this Agreement, except that in no event shall this paragraph apply to the Owner so long as the Owner is a body politic.

14. GRANTOR covenants that it is seized of and has the right to convey this easement and to obligate OWNER and GROUND LESSEE, as applicable, their respective successors and assigns to the terms of this Agreement; that GRANTEE shall have quiet and peaceable possession, use and enjoyment of the aforesaid easement, rights and privileges; and the GRANTOR shall execute such further assurances thereof as may be reasonably required by GRANTEE from time to time.

15. As evidenced by the acceptance, signature and recordation of this Agreement, GRANTOR and GRANTEE hereby agree for themselves, their respective successors and assigns, to be obligated to the applicable terms of this Agreement. All covenants herein shall run with the land and shall inure to the benefit of or be binding upon, as the case may be, successors and assigns to the parties hereto. In the event that any successor or assign is a body politic, any obligation under this Agreement requiring the expenditure of funds is subject to appropriation of such funds by the body politic to the extent required by law.

16. This Agreement and Exhibits A and B attached hereto are intended by the Parties as the final expression of their Agreement and shall not be modified by any promise, agreement, or representation, of any agent, or employee of GRANTEE unless such promise, agreement, or representation is incorporated in writing in this Agreement before acceptance. This Agreement, including the Exhibits A and B thereto, can be amended only by agreement between the parties in writing.

17. GRANTEE'S right to assign or transfer its rights, privileges and easements, as granted herein, shall be strictly limited to the assignment or transfer of such rights, privileges and easements to any business which lawfully assumes any or all of GRANTEE'S obligations as a public service company or such other obligations as may be related to or incidental to GRANTEE'S stated business purpose as a public service

company; and any such business to which such rights, privileges and easements may be assigned shall be bound by all of the terms, conditions and restrictions set forth herein.

18. GRANTEE reserves the right to utilize its substation and appurtenances located on GRANTOR'S Property and to add transformers and switches and other associated equipment to GROUND LESSEE'S Vault as may be required or practicable, said requirement or practicability to be determined in GRANTEE'S sole discretion, to provide electricity to property of Customers other than GROUND LESSEE. GRANTEE will use its best efforts and good faith to require any new property of other Customers benefiting from electricity distributed from said substation and appurtenances and any additional transformers and switches and other associated equipment to share in the costs and obligations of GROUND LESSEE pursuant to this Agreement on a pro-rata basis. In no event shall this paragraph require the owner, so long as the Owner is a body politic, to pay Grantee for any costs and obligations of Customers other than GROUND LESSEE.

19. Whenever the context of the Agreement so requires, the singular number shall mean the plural and the plural the singular.

20. This Agreement shall be interpreted, construed and governed by the laws of the Commonwealth of Virginia. The Parties hereby submit to the jurisdiction of courts in, and venue is hereby stipulated to be in Richmond, Virginia.

21. The individual executing this Agreement on behalf of OWNER warrants that OWNER is a body politic, duly organized and existing under the laws of the state herein above mentioned and that he or she has been duly authorized to execute this Easement on behalf of said County. The individual executing this Agreement on behalf of the GROUND LESSEE warrants that GROUND LESSEE is a limited liability company, duly organized and existing under the laws of the state herein above mentioned and that he or she has been duly authorized to execute this Easement on behalf of said limited liability company.

NOTICE TO LANDOWNER: You are conveying rights to a public service corporation. A public service corporation may have the right to obtain some or all of these rights through exercise of eminent domain. To the extent that any of the rights being conveyed are not subject to eminent domain, you have the right to choose not to convey those rights and you could not be compelled to do so. You have the right to negotiate compensation for any rights that you are voluntarily conveying.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK
SIGNATURE PAGE TO FOLLOW

SIGNATURE PAGE(S) TO UNDERGROUND RIGHT OF WAY EASEMENT AND VAULT AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed under seal as of the day and year first above written.

GROUND LESSEE:
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, its manager

By:_____
Name: Robert B. Donohoe
Title: Senior Vice President
Date:_____

District of Columbia
City of Washington, to-wit:
I,_____, a Notary Public in and for the District of Columbia at Large, whose commission expires on the _____day of _____, 20___, do hereby certify that_____ whose name is signed to the foregoing writing dated the _____day of _____, 20___, as _____ of _____, acknowledged the same before me in the state aforesaid this __ day of _____, 20_____.

_____ _____
Notary Public (Print Name) Notary Public (Signature)

_____
Notary Reg. No.

DVPION0(s). 41-08-0026
Tax Map No. RPC # 18005042

Consent and Subordination

The undersigned being the Beneficiary and Trustee under that certain Leasehold Deed of Trust, Assignment of Leases and Profits, Security Agreement and Fixture Filing, dated September 18, 2007 and recorded on September 18, 2007 in Deed Book 4135 at page 1295 among the land records of Arlington County Virginia ("Deed of Trust") encumbering a leasehold interest in the Real Property, does hereby consent to the recordation of the Underground Right of Way Easement and Vault Agreement ("Agreement") to which this Consent and Subordination is annexed and subordinates the lien of the Deed of Trust to the provisions of the aforesaid Agreement.

BENEFICIARY:
CAPMARK BANK, a Utah industrial bank

By: _____
Name: _____
Its: _____

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

I, _____, a Notary Public in and for the State/Commonwealth of _____, whose commission expires on the _____day of _____, 20____, do hereby certify that _____ whose name is signed to the foregoing writing dated the _____day of _____, 20___, as _____ of _____, acknowledged the same before me in the state aforesaid this _____day of _____, 20___.

_____ _____
Notary Public (Print Name) Notary Public (Signature)

_____
Notary Reg. No.

TRUSTEE:

_____
Christopher J. Hart, Esq., Trustee

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

I, _____, a Notary Public in and for the State/COMMONWEALTH of_____, whose commission expires on the _____day of _____, 20____, do hereby certify that _____ whose name is signed to the foregoing writing dated the _____day of _____, 20___, as _____ of _____, acknowledged the same before me in the state aforesaid this _____day of _____, 20___.

_____ _____
Notary Public (Print Name) Notary Public (Signature)

_____
Notary Reg. No.

OWNER:
COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate and politic

By:_____

Title:_____

Date:_____

Commonwealth of Virginia
County of Arlington

The foregoing was acknowledged before me this _____day of _____
, 20_____ by _____, who is the
_____ for the County Board of Arlington
County, Virginia, a body corporate and politic.

Approved as to form:

_____
County Attorney

GRANTEE:
VIRGINIA ELECTRIC AND POWER COMPANY
d/b/a DOMINION VIRGINIA POWER

By: _____
Name: TIM WINSKY
Title: ASSOCIATE PROJECT DESIGNER
Date: _____

COMMONWEALTH OF VIRGINIA
CITYICOUNTY OF _____, to-wit:

I, _____, a Notary Public in and for the Commonwealth of Virginia at Large, whose commission expires on the _____day of _____, 20____, do hereby certify that _____ whose name is signed to the foregoing writing dated the _____day of _____, 20___, as _____ of _____, acknowledged the same before me in the state aforesaid this _____day of _____, 20___.

_____ _____
Notary Public (Print Name) Notary Public (Signature)

_____
Notary Reg. No.

Exhibit A - Plat No. 41-08-0026
Exhibit B - Requirements for Customer Owned Vault and Cable

Exhibit A
The Plat

(see attached)

EXHIBIT B

RESPONSIBILITY

GROUND LESSEE shall install, own and maintain the Vaults (as such term is defined in the underground Right of Way Easement and Vault Agreement), equipment rooms, transformer foundation pads, structural features for supporting and moving transformers, and secondary cable and all other fixed items including conduits encased in concrete from an exterior wall 36" below ground level to the Vaults, manholes and handholes in accordance with the National Electrical Code (NEC), local codes and GRANTEE requirements as noted herein so that the installation will qualify as exterior wiring.

CODES AND APPROVAL

All GROUND LESSEE-owned Vaults covered by these requirements shall comply with the latest edition of the National Electrical Safety Code (NESC) and local inspection department. Reference should be made to sections of the NEC governing locations, material thickness of walls, floor, roof and doors, sills, locks, ventilators, louvers, grates, dampers, duct pipes and storage. GRANTEE shall be consulted in all cases regarding proposed Vault installations prior to completion of final electrical drawings. Approval of Vault design as far as GRANTEE is concerned can be given only after two (2) sets of detailed final electrical and structural plans are submitted to the Distribution Construction Department. One (1) set will be returned to the contractor or consulting engineer marked "APPROVED" if the design meets the approval of GRANTEE.

LOCATION

The preferred location of the Vault is above grade, either inside or outside of the building. Load requirements and allotted space may make below grade, or multiple locations necessary; however, **GRANTEE SHALL BE CONSULTED BEFORE THE FINAL CHOICE OF THE VAULT LOCATION IS MADE.** Approval of local insurance rating authorities, code requirements and the merits of each particular case will govern the Vault location. GRANTEE will not assume any responsibility for changes in insurance rates resulting from such installation. GROUND LESSEE will be responsible for any costs incurred if the Vault must be relocated at a future date.

ACCESS

The Vault shall have removable roof slabs and/or grates which when removed will provide a minimum of 10' by 12' open area to permit the installation of transformers

and equipment. In network and submersible transformer installations, the minimum opening will be 10' by 17'. Each individual slab shall not weigh in excess of 2,500 pounds unless otherwise approved by GRANTEE and shall be waterproof. The load bearing strength of the Vault roof and grating will be determined by its location in regard to the type of traffic passing over it. Roof slabs and grates shall have a counter-sunk non-ferrous 3/4 inch pipe coupling with a non-ferrous plug for closing and a 3/4 inch nipple at each corner extending through the slab. There will be two (2) personnel entrances in opposite ends of the Vault, either a fire-rated door opening to the garage, and a manhole ring and cover in the ceiling (preferred), or two manhole rings and covers. A hinged area of grating with provisions for locking will also be accepted with GRANTEE approval. The door into the garage shall swing out and be equipped with panic bars, pressure plates, or other devices that are normally latched, but open under simple pressure. In addition, the door shall have a hasp for GRANTEE to place its padlock, or a GRANTEE lock cylinder may be incorporated into the panic door hardware.

There will be no overhanging roofs, flag poles, or other obstacles that will interfere with the operation of a crane in the vicinity of the Vault roof opening.

Ladders shall be securely fastened to the Vault or area-way wall by GROUND LESSEE and shall extend from the floor to the Vault roof or top wall area-way and allow for extension 3 feet above the manhole. The ladders shall clear any conductor, conduit, raceway, trough, bus-duct or transformers by at least three feet. Ladders will be furnished by GRANTEE.

An access road at least 15' wide and of sufficient height to allow ingress and egress of cranes, trucks, etc. shall be provided to the Vault.

SIZES

In general, the minimum inside dimensions of a Vault located adjacent to the building shall be 17 feet high, 16 feet wide, and 42 feet long, based on preliminary load information provided by GROUND LESSEE. Also, based on this load information, GRANTEE will be installing initially one pad-mounted switch and one pad-mounted transformer. Vault floors shall have a minimum load bearing strength of 3,000 pounds per square inch or greater as may be required by GRANTEE or local codes.

DRAINAGE

The floor of the Vault shall slope 1/8 inch per foot to a grating covered 4" (minimum) drain in a corner of the Vault. The drain will provide for water with provision for oil retention. If required, allowance must be made to contain 1200 gallons of oil. GROUND

LESSEE will be billed for replacement of GRANTEE equipment damaged due to improper drainage. Drainage plan shall be submitted to GRANTEE for approval.

LIGHTING

Light fixtures, switches and associated material will be furnished and installed by GROUND LESSEE. The light switch shall be at a convenient location adjacent to each personnel entrance to the Vault. Power for lights shall be supplied by GROUND LESSEE. An average illumination level of 15 foot candles (150 lux) is required and is to be distributed evenly throughout the Vault. in addition, GROUND LESSEE is to provide one (1) 120 volt duplex GFCI electric outlet. **VAULT LIGHTING AND OUTLET ARE TO BE TIED INTO THE EMERGENCY GENERATING SYSTEM OF THE BUILDING.**

PULLING-IN-IRONS

Pulling-in-irons shall be installed by GROUND LESSEE in the floor, roof, and walls of the Vault as required by GRANTEE. The pulling-in-irons will be furnished by GRANTEE, and must be tied to the steel reinforcement of the concrete structure. Minimum tension on pulling-in-irons will be 6,000 pounds,

METERING

All metering devices shall be located outside of the Vault at a point designated for each individual installation. GRANTEE shall be consulted in all cases regarding proposed metering installations prior to the completion of the final electrical drawings. GRANTEE'S Meter Department, at that time, will furnish specifications and mounting data for the most suitable equipment, which may be incorporated in the electrical drawings.

If the metering transformers are to be mounted in GROUND LESSEE'S switchgear or cubical, two (2) copies of the shop drawing shall be submitted to GRANTEE'S Meter Department prior to fabrication. One copy will be returned to the contractor or consulting engineer marked "APPROVED" if the design meets with the approval of GRANTEE.

CONTENTS

Nothing but transformers, switches, cables, racks, supports, lighting and other equipment related to the operation of transformers shall be located in the Vault. No pipes (excluding sprinkler system), fans (other than Vault ventilation fans), etc. will be permitted within the Vault.

VENTILATION

All Vaults must be ventilated to the outside with a minimum net ventilating area of three square inches per KVA of transformer capacity, but no less than one square foot, exclusive of louvers or grating material. It is recommended that, in any case, provision be made for cross ventilation where practical. GROUND LESSEE is to provide for forced ventilation, if required, for proper cooling of transformers. However, natural ventilation is preferred.

GRANTEE recommends that cross ventilation be provided by placing one half of the required ventilation area on each end of the Vault, or distributing the required ventilation area along the entire length of the Vault. GRANTEE has calculated the required ventilation area to be 80 square feet (exclusive of louvers and grating materials) using the load information GRANTEE has provided. If cross ventilation is not incorporated into GRANTEE'S design, additional ventilation area may be required.

In most instances, the initial installation will not require forced ventilation. GROUND LESSEE should, however, make provisions in the Vault design for it in case the power requirements of the building increase. If forced ventilation is necessary, 8000 CFM (cubic feet/minute) is the minimum capacity presently required as calculated using the load information GRANTEE has provided. A manually operated three position switch must be provided inside the Vault for the ventilation. The switch shall have two "on" positions and one "off" position. One "on" position shall be connected to a normal building voltage source and the other "on" position to an emergency building voltage source. If additional disconnect devices are located outside the Vault, locking means must be provided for a GRANTEE lock unless prohibited by electrical codes or local ordinance. GRANTOR must receive specific approval of the ventilation system from GRANTEE.

GROUNDING

There shall be a minimum of four (4) driven ground rods, one in each corner of the Vault. The ground rods shall be 5/8 inch by 8 foot copper weld rods. The ground rods shall be mechanically connected to a continuous visible 4/0 bare stranded copper conductor securely fastened to the walls at least 12 inches above floor level. All non-current carrying metal, in addition to circuit neutral, shall be connected to the 4/0 ground bus by at least number 6 bare stranded copper, The ground resistance at each ground rod shall be measurable at 25 ohms or less. Sectional type ground rods may be used, if necessary, to lower the ground resistance to the required 25 ohms.

CONDUIT LINES

Any conduit or ductbank installed by GRANTEE will not penetrate any wall of the Vault structure or building. Where a GROUND LESSEE installed conduit section is provided, the conduit section shall have at least one spare duct. The ducts in the conduit section shall have an external separation of 1.5 inches (2.5 inches at the Vault wall) and be concrete encased. The ducts are not to be less than 8 inches in diameter, unless specified otherwise, for GRANTEE primary conductors. Ducts entering the Vault for GRANTEE'S conductors shall be non-metallic. Ducts shall enter the Vault laterally through any wall at a location and depth designated by GRANTEE.

Ducts entering the Vault laterally from underneath shall be turned up and water sealed. The location of the duct entrance in the Vault shall be approved by GRANTEE. Care should be exercised in location of ducts in or entering a Vault so that access hatches, doors, or louvers, will not be obstructed or the installation or removal of the transformer will not be hampered.

All conduit entering or leaving the Vault must be at least 36 inches below final grade outside of the building and shall be **BELL ENDED FLUSH** with the inside wall of the Vault. GROUND LESSEE shall stub out 10 feet beyond exterior wall with schedule 40 PVC encased in concrete or as otherwise required by GRANTEE.

BUS DUCT OR CABLE -LOW VOLTAGE -UNDER 600 VOLTS

GROUND LESSEE-owned and installed low voltage cable or bus duct size shall be in accordance with the requirements of the NEC and local ordinances. The minimum voltage insulation approved for the low voltage cable is 600 volts. The low voltage cable and/or bus duct should be installed in a manner approved by GRANTEE Whenever GROUND LESSEE'S cable requirements exceed the maximum for unloading the transformer, it will be GROUND LESSEE'S responsibility to provide bus duct. The cable should be either in a trough or racked. In either case, clearance of five feet above the top of the transformer is necessary. Cable racking details must be approved by GRANTEE. Under no circumstances should a type of support be used which permits individual phases of the cable to be completely surrounded by ferrous material. GRANTEE shall be notified by GROUND LESSEE of the number and size of the cables to be installed. The use of 750 MCM Al or 500 MCM Cu to off-load switchgear is preferred. If another size cable is used, GRANTEE shall be consulted. Bus duct should be drilled for compression connections having 9/16 inch holes spaced 1-3/4 inch on center. Cables will be installed by GROUND LESSEE from the bus duct to the terminals of the transformers. GRANTEE will terminate at the transformer end. In the event the number of GROUND LESSEE conductors exceeds the terminating capacity of GRANTEE'S transformer, GRANTEE shall provide secondary cable to a mutually agreeable termination point (bus duct or junction box) to be provided by GROUND LESSEE within the Vault.

AUTOMATIC SPRINKLER SYSTEM

Sprinkler systems may be required in new transformer Vaults to comply with governmental codes and requirements of insurance carriers.

There are two (2) basic types of sprinkler systems: wet and dry. The wet type has water in the piping inside the Vault and at the sprinkler heads at all times. The dry type has no water in the piping until the system is activated by high temperatures. The dry type is preferred.

The system is activated when the temperature at the sprinkler head reaches a pre-selected level. To insure that the system does not operate unless there is a tire, a minimum temperature setting should be 286N Fahrenheit.

SOUND PROOFING

GRANTOR will install, own and maintain, at no cost to GRANTEE, any sound proofing necessary to maintain a tolerable level of transformer noise which may be transmitted within the building. GRANTEE will provide GROUND LESSEE and architects with the manufacturer's maximum decibel design level of transformers for building design purposes. GRANTEE assumes no responsibility that sound proofing is adequate or proper for the noise level for GROUND LESSEE.

WORKMANSHIP

It is expected that the work performed under these recommendations will be done in a neat and professional manner. All cables shall be installed by personnel experienced in handling the type of cable being used in the installation.

MODIFICATIONS

All specifications wherewith are subject to change and GROUND LESSEE will be notified.

ADDITIONAL INFORMATION AND REQUIREMENTS
TRANSFORMERS LOCATED ON OR WITHIN A BUILDING OR VAULT

GROUND LESSEE shall install, own and maintain the secondary cable to the secondary terminals of the transformers. GRANTEE will not penetrate GROUND LESSEE'S roof with secondary cable. GROUND LESSEE shall be responsible for racking all GROUND LESSEE owned secondary cables to the terminal point of the transformer.

GROUND LESSEE will deliver GRANTEE owned transformers and appurtenances from ground level outside the building to the permanent locations on or within the building both for initial and for any replacement installations. Should it be necessary at any time during the life of the service for the transformer and appurtenances to be replaced, GROUND LESSEE will deliver the then presently installed transformers and appurtenances on or within the building to ground level outside of the building where they will be accessible to GRANTEE.

GROUND LESSEE shall be responsible for the installation meeting the approval of local fire codes, the local insurance rating authority, and any change in insurance rates resulting from the installations. GROUND LESSEE shall be responsible for additional costs of transformers (dry or askeral) and equipment when required by insurance or inspection authorities.

GROUND LESSEE and OWNER shall execute an "Underground Right of Way Easement and Vault Agreement" covering the installation of transformers on the roof or within the building or Vault.

Dominion Virginia Power
Attention: TIM WINSKY
ASSOCIATE PROJECT DESIGNER
907 W. GLEBE RD.
ALEXANDRIA, VA 22305

LETTER OF AGREEMENT
TRANSFORMER VAULT SPECIFICATIONS

We understand and agree with your requirements as submitted. All conduit work and inspection coordination will comply fully with these specifications. It is further agreed that all appropriate contractors, subcontractors and agents have been made aware of the requirements set forth above. Compliance by all parties is guaranteed. Any questions arising during the construction, maintenance and operation phase will be brought to your immediate attention.

Signature: _____

Print Name: _____

Date: _____

District of Columbia
To-wit:

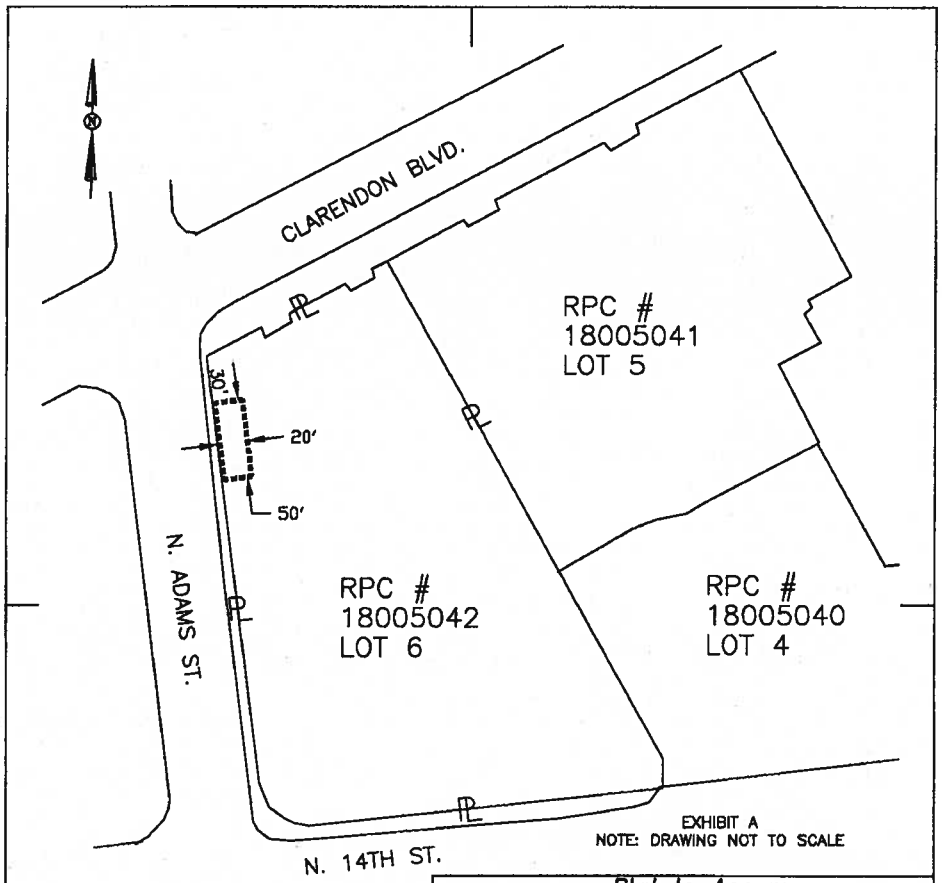
I, _____, a Notary Public in and for the District of Columbia, at Large, whose commission expires on the _____day of _____, 2013, do hereby certify that _____ whose name is signed to the foregoing writing dated the _____ day of _____, 20___, as _____ of _____, acknowledged the same before me in the state aforesaid this _____day of _____, 20__.

_____ _____
Notary Public (Print Name) Notary Public (Signature)

Notary Reg. No.
#49824

DVPION0(s). 41-08-0026
Tax Map No. RPC # 18005042

EXHIBIT A
TO ATTACHMENT A



OWNER:
ARLINGTON HOTEL ASSOCIATES LLC

NEIGHBORHOOD:
COURTHOUSE PLAZA

Legend

Location of Boundary Lines of Right-of-Way 20'

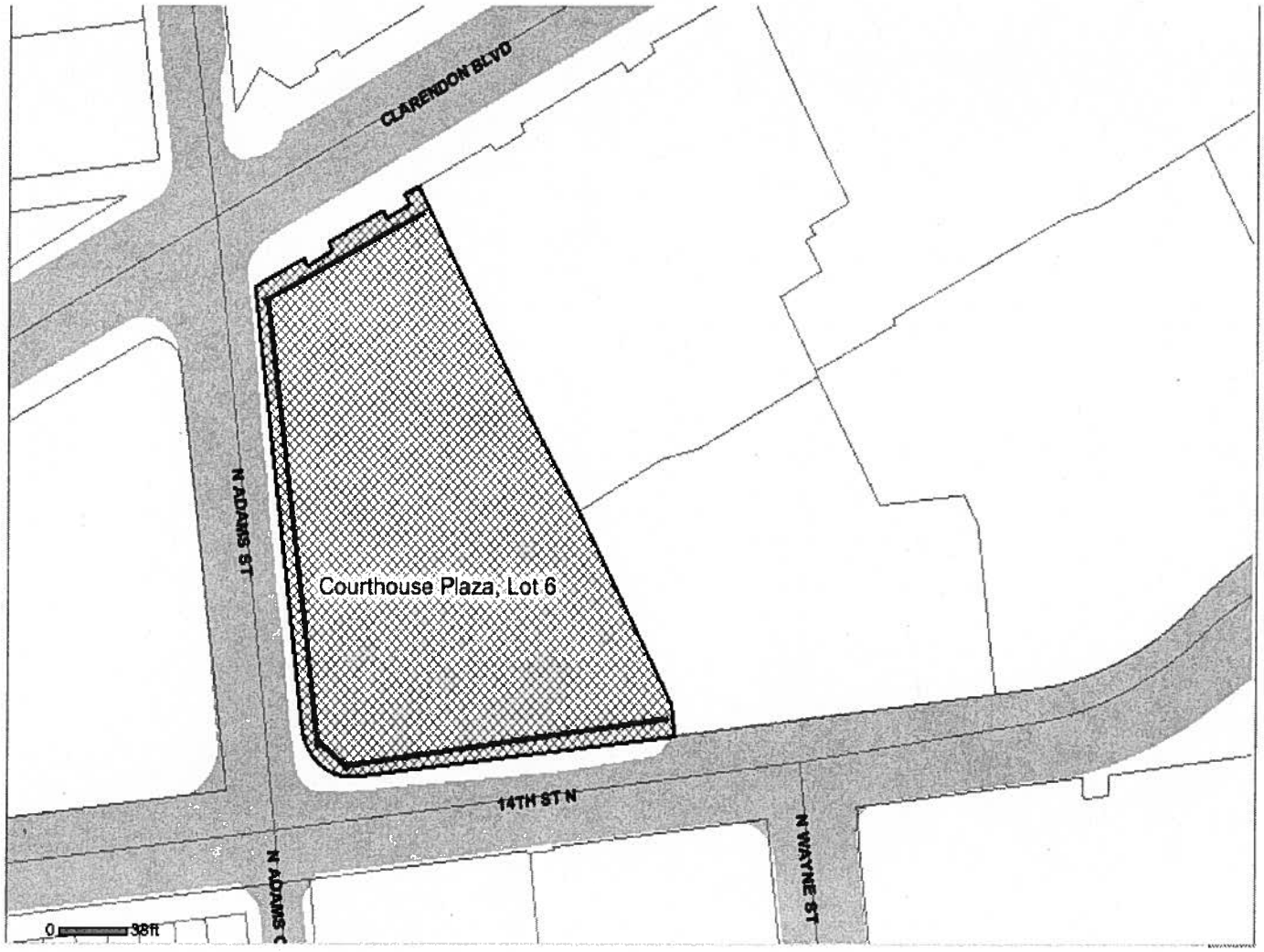
Indicates Property Line is Right-of-Way Boundary

Page 1 of 1

Plat to Accompany
Right-of-Way Agreement

VIRGINIA ELECTRIC AND POWER COMPANY
doing business as
Dominion Virginia Power UG

District		
ARL/ALEX		
District-Township-Borough	County-City	State
NEIGHBORHOOD #970000	ARLINGTON	VIRGINIA
Office	Plat Number	
ARL/ALEX	41-08-0026	
Estimate Number	Grid Number	
6800406	C0918	
Date	By	

ATTACHMENT B

VICINITY MAP
COURTHOUSE PLAZA, LOT 6
RPC NO. 18005042