



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of January 24, 2009**

DATE: January 22, 2009

SUBJECT: Approval of a First Amended Deed of Lease between International Place Property, LLC, as Landlord, and the County Board of Arlington County, Virginia, as Tenant, for 5,136 Square Feet of Space in a Portion of a Building Located at 1735 N. Lynn Street, Arlington, Virginia (RPC No. 16039018).

C. M. RECOMMENDATIONS:

1. Approve the attached First Amended Deed of Lease between International Place Property, LLC, as Landlord, and the County Board of Arlington County, Virginia, as Tenant, for 5,136 Square Feet of Space in a Portion of a Building Located at 1735 N. Lynn Street, Arlington, Virginia (RPC No. 16039018); and
2. Authorize the Real Estate Bureau Chief, to execute, on behalf of the County Board of Arlington County, Virginia, the First Amended Deed of Lease and all related documents, without limitation, all documents, present or future, concerning subordination, non-disturbance, attornment, and estoppels, all subject to approval as to form by the County Attorney; and

ISSUES: This is an amendment of an existing County lease that expands the leased area and extends the term of the lease for one additional year; no issues have been identified.

SUMMARY: This is a request for the County Board of Arlington County, Virginia's (the "County") approval of, and authorization for the County's Real Estate Bureau Chief to execute, a First Amended Deed of Lease (the "Amendment"). The Amendment is attached to this Report as "Attachment 1". If the County approves this Amendment, then the term of the County's existing lease at 1735 N. Lynn Street, Arlington, Virginia (RPC No. 16039018), will be extended for one (1) additional year. The leased space is currently occupied by the County Department of Environmental Services's Arlington County Commuter Services ("ACCS") program, including Arlington Transportation Partners ("ATP") and Commuter Information Center ("CIC") operations. The extension of the lease term and expansion of the leased space provided for in the Amendment will allow the ACCS program to continue to occupy the leased space for one additional year while a new, long-term office space for the program is constructed. The Amendment will also incorporate an additional 2,173 rentable square feet of office space adjacent to the original leased space. Space limitations in the County's existing leased space required CIC to lease this additional office space

County Manager: _____

County Attorney: _____

Staff: Michael R. Halewski – Department of Environmental Services, Real Estate Bureau

directly from the landlord. The combined leased office space is located in a building on North Lynn Street in North Rosslyn, between Wilson Boulevard and 19th Street North, approximately one-half block north of Wilson Boulevard. The site location of the building and the lease space is more particularly shown on the Vicinity Map, attached hereto as "Attachment 2".

BACKGROUND: The County Board of Arlington County, Virginia entered into a Deed of Lease, dated September 12, 2001 (the "Original Lease"), as Tenant, for the lease of 2,963 square feet of office space in the building located at 1735 N. Lynn Street, Arlington, Virginia (the "Building"). The location of the Building is more particularly shown on the Vicinity Map, attached as "Exhibit B" to the attached Amendment. The term of the Original Lease ends on January 31, 2009. Since the commencement of the Original Lease, the leased space has been occupied by two County programs, the Arlington Transportation Partners ("ATP") and the Commuter Information Center ("CIC").

ATP offers free services that makes it easy for Arlington employers (593 member companies representing 131,206 employees), residential communities (289 member buildings representing 57,297 apartment/ condo units), developers, and visitor services (42 hotels) to set up commuter benefits programs and/or provide information regarding transportation options for their employees, tenants and guests.

CIC provides call center support for Arlington Transit's (703) 228-RIDE and ArlingtonTransit.com. They provide online, email and phone support for CommuterPage.com, and fulfillment support for CommuterDirect.com. Every month CIC staff members fulfill over \$1.1 million in fare media sales and answer thousands of phone calls and emails relating to general commuting questions.

ATP and CIC's staffing and programming needs have tripled in the past seven years. The space needs of these two programs continued to increase as County staff worked to identify a larger space to lease for the future occupancy of ATP and CIC. This required CIC to lease an additional 2,173 square feet of space in the Building, adjacent to the original leased space. CIC's separate lease also expires on January 31, 2009. The ATP and CIC programs have now reached the full capacity of the two leased spaces, and have not been able to implement additional programmatic growth due to a lack of additional space.

The County staff has identified a suitable space for the future occupancy of the ATP and CIC programs. The approval of the lease for the larger space, located at 1501 Wilson Boulevard, Arlington, Virginia, is the subject of a separate Board Report. It is estimated that if the County approves the new lease for the larger space, then the design and construction of the tenant improvements in the new larger space will be completed in October of 2009.

Because the leases on the current spaces expire on January 31, 2009, County staff has negotiated a lease extension with the landlord. The lease extension includes an amendment for an additional 2,173 square feet leased separately by CIC from the Landlord to provide CIC with office space. The Landlord has agreed to a one year extension and the expansion, but was not willing to extend the lease term for less than one year (e.g. nine months). The terms by the landlord to lease month to month exceeded the cost of an annual lease extension.

DISCUSSION: The attached Amendment has been structured to: 1) provide a commercially viable agreement; 2) protect the County's rights and needs as a local government; 3) be consistent with the office uses permitted by the Lease; and 4) enable the County to occupy the leased space for an appropriate period of time. Some of the pertinent provisions of the Amendment are as follows:

- The term of the lease is amended to extend the termination date by one additional year to January 31, 2010.
- The lease is amended to expand the leased space to include the additional 2,173 square feet of space currently leased separately by CIC.
- The lease is amended to increase the base rent payable during the one year extension to \$17,120.00 per month.
- The lease is amended to provide the County with an option to extend the term of this lease by one (1) additional year (i.e. February 1, 2010 – January 31, 2011) at a base rent of \$17,804.80 per month.
- The lease is amended to increase the County's pro rata share of operating expenses and real estate taxes from 1.22% to 2.11% to reflect the increase in square footage included in the Amendment.
- The lease is amended to update the notice addresses for both the County and the landlord.
- The lease is amended to eliminate references to the expired site plan condition regarding the provision of rent-free space to the County.
- The lease is amended to add reflexive anti-terrorism representations (i.e. both parties represent that they are not restricted from doing business in the United States under the USA PATRIOT Act, and that they do not now, and will not in the future, engage in transactions with persons or entities named on the Office of Foreign Asset Control Specially Designated Nationals and Blocked Persons List).
- All other terms and conditions of the Original Lease shall remain in full force and effect.

The lease of 1735 North Lynn Street will run through January 31, 2010, while the lease of 1501 Wilson Boulevard (the new ACCS offices) will begin upon execution, but rent will not begin until substantial completion of tenant improvements, which is expected to be October 1, 2009. This will result in four months of overlapping rental payments. The County has explored options in both buildings to try to avoid this circumstance; however other options available would result in the County paying substantially more in month-to-month rental costs to the existing landlord.

FISCAL IMPACT: Base rent and additional rent for the extended term (i.e. February 1, 2009 – January 31, 2010) totals \$205,440, or \$17,120 per month. Additional rent (i.e. operating expenses and real estate taxes) is estimated to be an additional \$2,592.62 per month. Both the base rent and additional rent will be payable out of the following account: 101.436183.41150.0000.0000.CIC, and are included in the current budget. The Arlington County Commuter Services transit programs are funded almost entirely by Federal grants, State grants and revenues generated by these programs' operations.

FIRST AMENDED DEED OF LEASE

THIS FIRST AMENDED DEED OF LEASE (the "First Amendment") is made as of this _____ day of _____, 20__, by and between **INTERNATIONAL PLACE PROPERTY LLC**, a Delaware limited liability company, (successor in interest to JBG/JER INTERNATIONAL PLACE, L.L.C.), authorized to do business in the Commonwealth of Virginia, as Landlord, and **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body corporate and politic, as Tenant.

RECITALS:

WHEREAS, Landlord's predecessor-in-interest, JBG/JER International Place, L.L.C., and Tenant entered into that certain Deed of Lease dated September 12, 2001 (the "Original Lease") for Tenant to lease from Landlord certain premises comprising Two Thousand Nine Hundred Sixty-three (2,963) rentable square feet of office space on the first floor (the "Original Premises") of the building known as International Place and located at 1735 North Lynn Street, Arlington Virginia, 22209 (the "Building"), as shown on the Vicinity Map attached hereto as Exhibit B, which Original Premises is designated as "102, Arlington County Board, Approx. 2,963 RSF" on the floor-plan attached hereto as Exhibit A;

WHEREAS, Tenant desires, and pursuant to the terms of this First Amendment, Landlord agrees, to extend the term of the Original Lease;

WHEREAS, Tenant also desires, and pursuant to the terms of this First Amendment, Landlord agrees, to lease from Landlord expansion space, consisting of Two Thousand One Hundred Seventy-three (2,173) rentable square feet of office space (the "Expansion Premises") on the first floor of the Building, which Expansion Premises is designated as "101, The Convention Store, Approx. 2,173 RSF" on the floor-plan attached hereto as Exhibit A; and

WHEREAS, the Original Lease, as amended by this First Amendment, is hereinafter referred to as the "Lease."

WITNESSETH:

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **EFFECTIVE DATE OF AMENDMENT:** All provisions of this First Amendment shall become effective February 1, 2009 ("Effective Date"), unless otherwise specifically provided elsewhere herein.

2. EXPANSION OF LEASED PREMISES:

A. Article I, Section 1.2, of the Original Lease is hereby deleted in its entirety and replaced with the following:

Premises:

A. Suite 102, consisting of Two Thousand Nine Hundred Sixty-three (2,963) square feet of rentable area located on the first (1st) floor of the Building, as more particularly designated as "102, Arlington County Board, Approx. 2,963 RSF" on the floor-plan attached hereto as Exhibit A (the "Original Premises"); and

B. Suite 101, consisting of Two Thousand One Hundred Seventy-three (2,173) square feet of rentable space on the first (1st) floor of the Building, as more particularly designated as "101, The Convention Store, Approx. 2,173 RSF" on the floor-plan attached hereto as Exhibit A (the "Expansion Premises").

B. The Original Premises and the Expansion Premises shall hereinafter be referred to collectively as the "Premises".

C. Tenant shall take the Expansion Premises "as-is", in the condition in which the Expansion Premises is in as of the Effective Date, without any obligation on the part of Landlord to prepare or construct the Expansion Premises for Tenant's occupancy and without any warranty or representation by Landlord as to the condition of the Expansion Premises.

3. EXTENSION OF LEASE TERM; EXPIRATION DATE; CONTINUATION OF TERMS:

A. Effective as of the execution date hereof, the description of the Lease Term referred to in Article I, Section 1.3, of the Original Lease is hereby deleted in its entirety and replaced with the following:

Lease Term: Ninety-six (96) months.

B. Effective as of the execution date hereof, Article I, Section 1.4(c), of the Original Lease is hereby deleted in its entirety and replaced with the following:

Lease Expiration Date: January 31, 2010 (subject to Tenant's option to renew, as hereinafter described).

C. Effective as of the execution date hereof, the amendments in this Section 3 of this First Amendment extend the term of the Original Lease for an additional twelve (12) months (the "Amended Term"). The Amended Term shall be upon the same terms and conditions contained in the Original Lease (including, without limitation, the Operating

Charges Base Year, pursuant to Section 1.7 of the Lease, and the Real Estate Taxes Base Year, pursuant to Section 1.8 of the Lease). During the Amended Term, Tenant shall make estimated payments on account of Operating Expenses and Real Estate Taxes with respect to both the Original Premises and the Expansion Premises in accordance with Article V of the Lease.

4. **BASE RENT:** Article I, Section 1.5, of the Original Lease is hereby deleted in its entirety and replaced with the following:

Base Rent: Two Hundred Five Thousand Four Hundred Forty Dollars (\$205,440.00), payable by Tenant to the Landlord in twelve (12) equal monthly installments of Seventeen Thousand One Hundred Twenty Dollars (\$17,120.00).

5. **BASE RENT ESCALATION:** Article I, Section 1.6, of the Original Lease is hereby deleted in its entirety and replaced with the following:

Base Rent Annual Escalation Percentage: Four percent (4%) per annum.

6. **TENANT'S PROPORTIONATE SHARE:**

A. Article V, in the first (1st) paragraph (unnumbered) of Section 5.2, of the Original Lease is hereby deleted in its entirety and replaced with the following:

5.2. Commencing on the first anniversary of the Lease Commencement Date, Tenant shall pay Tenant's proportionate share of the amount by which Operating Expenses [as defined in Section 5.2(a)] for each calendar year falling entirely or partly within the Lease Term exceed a base amount (the "Operating Changes Base Amount") equal to the Operating Expenses incurred during the Operating Charges Base Year. Tenant's proportionate share with respect to Operating Expenses shall be Two and Eleven hundredths of one percent (2.11%), which is equal to that percentage which is equal to a fraction, the numerator of which is the number of rentable square feet of the Premises (5,136 rentable square feet), and the denominator of which is the number of rentable square feet of office space in the Building (243,584 rentable square feet, excluding storage, roof and garage space). Notwithstanding the foregoing provisions of this Section 5.2, in determining Tenant's proportionate share of increases in Operating Expenses for any calendar year, the portion of operating Expenses for such calendar years which constitutes Controllable Operating Expenses (as hereinafter defined) shall not exceed one hundred five percent (105%) of the amount of Controllable Operating Expenses (as hereinafter defined) for the immediately preceding calendar year (the "Controllable Operating Expenses Cap"). As used herein, "Controllable Operating Expenses" shall mean all Operating Expenses except for (i) license and permit fees and any other governmental charges of any nature, (ii) property taxes or other taxes of any nature, except to the extent that any of the same are excluded from Operating Expenses pursuant to Section 5.2(a) hereof, (iii) utilities costs,

(iv) insurance requirements, (v) costs of providing char and janitorial services, and (vi) costs of compliance with governmental requirements.

B. Article V, the first (1st) paragraph (unnumbered) of Section 5.3, of the Original Lease is hereby deleted in its entirety and replaced with the following:

Commencing on the first anniversary of the Lease Commencement Date, for each calendar year during the Lease Term, Tenant shall pay Tenant's proportionate share of the amount by which Real Estate Taxes [as defined in Section 5.3(a)] for each calendar year falling entirely or partly within the Lease Term exceed the actual base amount (the "Real Estate Taxes Base Amount") equal to the Real Estate Taxes incurred during the Real Estate Tax Base Year, as finally determined. Tenant's proportionate share with respect to Real Estate Taxes shall be that percentage which is equal to a fraction, the numerator of which is the number of rentable square feet of the Premises (5,136 rentable square feet), and the denominator of which is the number of rentable square feet of office space in the Building (243,584 rentable square feet, excluding storage, roof and garage space).

C. The existing Article V, Section 5.3, subsections (a) through (d), are not amended hereby, and shall remain in effect.

7. **BROKERS:** Article I, Section 1.10, of the Original Lease is hereby deleted in its entirety and replaced with the following:

Tenant represents and warrants that it has not directly or indirectly dealt with any broker in connection with this First Amendment, other than Landlord's broker, CB Richard Ellis ("Landlord's Broker"). Landlord shall, pursuant to a separate agreement between Landlord and Landlord's Broker, be solely responsible for the payment of brokerage commissions to the Broker.

8. **TENANT NOTICE ADDRESSES:** Effective as of the execution date hereof, Article I, Section 1.11, of the Original Lease is hereby deleted in its entirety and replaced with the following:

Tenant Notice Addresses: The County Board of Arlington County, Virginia
2100 Clarendon Boulevard, Suite 302
Arlington, Virginia 22201
Attn: County Manager

With a copy to:
Department of Environmental Services
Engineering & Capital Projects Division
Real Estate Bureau
2100 Clarendon Boulevard, Suite 900
Arlington, Virginia 22201
Attn: Real Estate Bureau Chief

With a copy to:

Department of Environmental Services
Transportation Division
Commuter Services
2100 Clarendon Boulevard, Suite 900
Arlington, Virginia 22201
Attn: Commuter Services Chief

9. **LANDLORD NOTICE ADDRESSES:** Effective as of the execution date hereof, Article I, Section 1.12, of the Original Lease is hereby deleted in its entirety and replaced with the following:

For all purposes of the Lease, the notice address for Landlord is as follows:

International Place Property LLC
c/o Beacon Capital Partners, LLC
200 State Street - 5th Floor
Boston, Massachusetts 02109

With a copy to:

Goulston & Storrs, P.C.
400 Atlantic Avenue
Boston, Massachusetts 02110
Attention: International Place, Virginia

10. **SITE PLAN FREE SPACE PROVISION; REFERENCES TO "RENT FREE":**

A. Article I, Section 1.18, of the Original Lease is hereby deleted in its entirety and replaced with the following:

Intentionally Omitted.

B. In addition, any reference to "1,800 square feet of "rent free" rentable area", "Space A", "Space B", and/or "Rent-free space" in the Lease is hereby deleted and is of no further force of effect. The parties hereby acknowledge that Tenant is not entitled to any space rent-free and that the Original Premises now contains, in the aggregate, 2,963 square feet of rentable area (comprised of those areas described in the Original Lease as: (i) Space A (1,163 square feet of rentable area), plus (ii) 1,800 square feet of "rent free" rentable area).

11. **TENANT'S OPTION TO EXTEND THE LEASE TERM:** Article III of the Original Lease is hereby amended by adding thereto a new Section 3.5 as follows:

3.5 On the conditions, which conditions Landlord may waive, at its election, by written notice to Tenant at any time, that Tenant is not in default of its covenants and obligations under the Lease beyond any applicable notice and cure period, and that The County Board of Arlington County, Virginia, itself, is occupying the entirety of the Premises then demised to Tenant, both as of the time of option exercise and as of the commencement of the hereinafter described additional term, Tenant shall have the option to extend the Lease Term for one (1) additional twelve (12) month term, such additional term commencing as of February 1, 2010 and expiring as of January 31, 2011 (the "Extension Term"). Tenant may exercise such option to extend by giving Landlord written notice on or before October 15, 2009. Upon the timely giving of such notice, the Lease Term shall be deemed extended upon all of the terms and conditions of the Lease (including, without limitation, the Operating Charges Base Year, pursuant to Section 1.7 of the Lease, and the Real Estate Taxes Base Year, pursuant to Section 1.8 of the Lease), except that Landlord shall have no obligation to construct or renovate the Premises and that the Base Rent during the additional term shall be as hereinafter set forth. If Tenant fails to give timely notice, as aforesaid, Tenant shall have no further right to extend the Lease Term, time being of the essence of this Section 3.5.

(a) The Base Rent for the Premises during the Extension Term shall be Two Hundred Thirteen Thousand Six Hundred Fifty-Seven and 60/100 Dollars (\$213,657.60) per annum, payable by Tenant to the Landlord in twelve (12) equal monthly installments of Seventeen Thousand Eight Hundred Four and 80/100 (\$17,804.80).

(b) Tenant shall have no further option to extend the Lease Term other than the Extension Term herein provided.

(c) Notwithstanding the fact that Tenant's exercise of the Extension Term herein shall be self-executing, the parties shall promptly execute a lease amendment reflecting such additional term after Tenant exercises the option herein. The execution of, or a failure to execute, such lease amendment shall not be deemed to waive any of the conditions of Tenant's exercise of its option to extend contained in this Section 3.5, unless otherwise specifically provided in such lease amendment.

12. INAPPLICABLE AND DELETED PROVISIONS: The following provisions are no longer applicable, and are hereby deleted from the Lease, and are of no further force and effect:

- A. Exhibit B to the Original Lease.
- B. Article XXVII of the Original Lease.

13. **ANTI-TERRORISM REPRESENTATIONS:** The Lease is hereby amended by adding thereto a new Article XXVIII, Sections 28.1 and 28.2, to read as follows:

ARTICLE XXVIII
ANTI-TERRORISM REPRESENTATIONS

28.1 Tenant represents and warrants to Landlord that:

(a) Tenant is not, and shall not during the Lease Term become, a person or entity with whom Landlord is restricted from doing business under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (commonly known as the “**USA Patriot Act**”) and Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001 and regulations promulgated pursuant thereto, including, without limitation, persons and entities named on the Office of Foreign Asset Control Specially Designated Nationals and Blocked Persons List (collectively, “**Prohibited Persons**”); and

(b) Tenant is not currently conducting any business or engaged in any transactions or dealings, or otherwise associated with, any Prohibited Persons in connection with the use or occupancy of the Premises; and

(c) Tenant will not in the future during the Lease Term engage in any transactions or dealings, or be otherwise associated with, any Prohibited Persons in connection with the use or occupancy of the Premises.

28.2 Landlord represents and warrants to Tenant that:

(a) Landlord is not, and shall not during the Lease Term become, a person or entity with whom Tenant is restricted from doing business under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (commonly known as the “**USA Patriot Act**”) and Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001 and regulations promulgated pursuant thereto, including, without limitation, persons and entities named on the Office of Foreign Asset Control Specially Designated Nationals and Blocked Persons List (collectively, “**Prohibited Persons**”); and

(b) Landlord is not currently conducting any business or engaged in any transactions or dealings, or otherwise associated with, any Prohibited Persons in connection with the use or occupancy of the Premises; and

(c) Landlord will not in the future during the Lease Term engage in any transactions or dealings, or be otherwise associated with, any Prohibited Persons in connection with the use or occupancy of the Premises.

14. **CONTROLLING TERMS**: In the event that any of the provisions of the Original Lease are inconsistent with the provisions of this First Amendment, the provisions of this First Amendment shall control.

15. **RECITALS**: The recitals are incorporated herein by this reference as if fully set forth at this point in the text of this First Amendment.

16. **INTEGRATION**: The recitals, terms, conditions and Exhibits herein shall constitute part of the Lease, and be incorporated therein by reference.

17. **RATIFICATION**: As hereby amended, the Lease is ratified, confirmed and approved in all respects.

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EXECUTED under seal as of the date first above-written.

LANDLORD: INTERNATIONAL PLACE PROPERTY LLC, a Delaware limited liability company

By: BCSP IV U.S. Investments, L.P., a Delaware limited partnership, its sole member

By: BCSP REIT IV, Inc., a Maryland corporation, its general partner

BY: Gregg A. Popkin
NAME: Gregg A. Popkin
TITLE: Managing Director
DATE: 12/8/08

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

BY: _____
NAME: URI ARKIN
TITLE: REAL ESTATE BUREAU CHIEF
DATE: _____

APPROVAL AS TO FORM

COUNTY ATTORNEY

EXHIBIT A

ORIGINAL PREMISES AND EXPANSION PREMISES

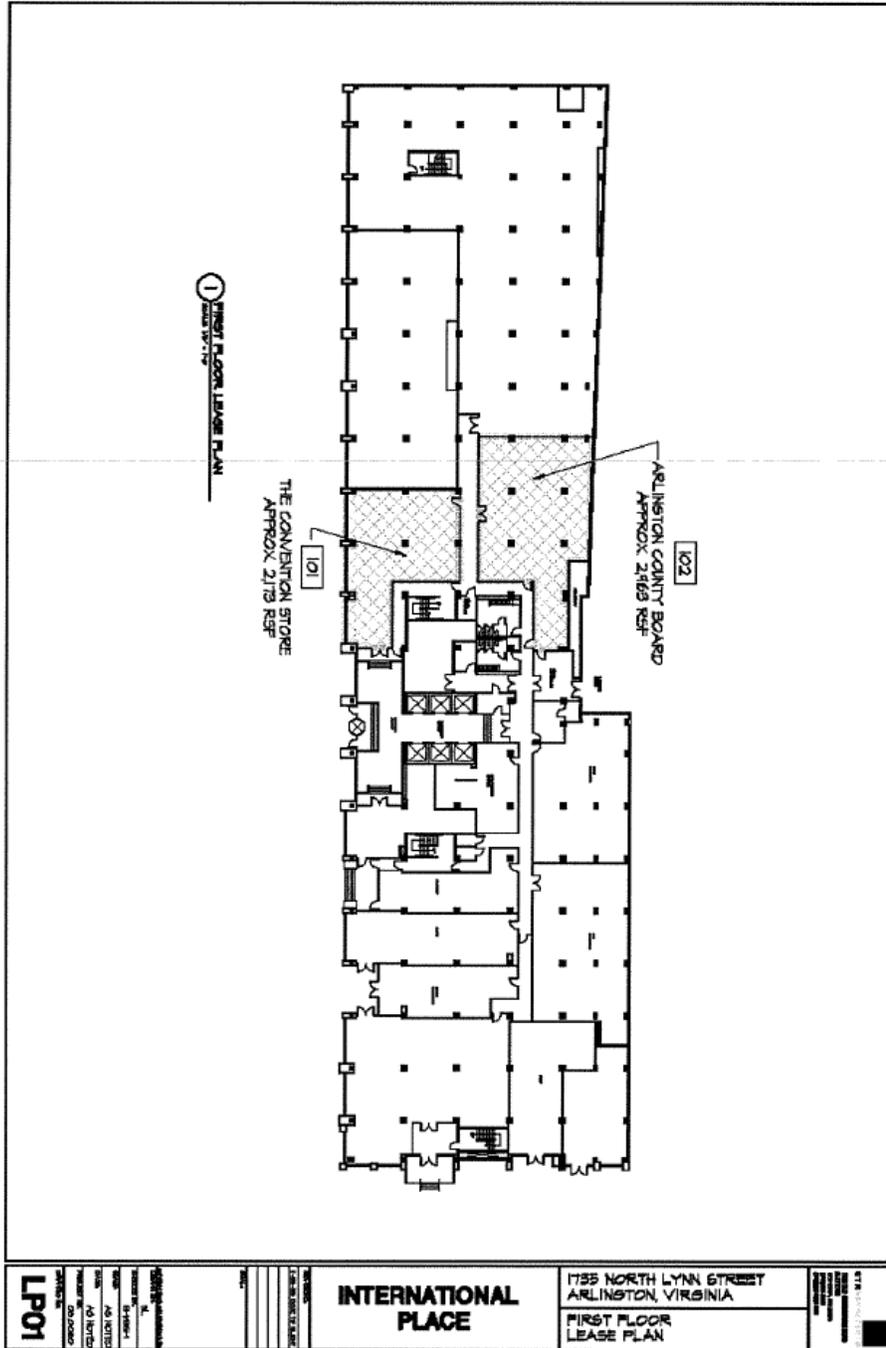
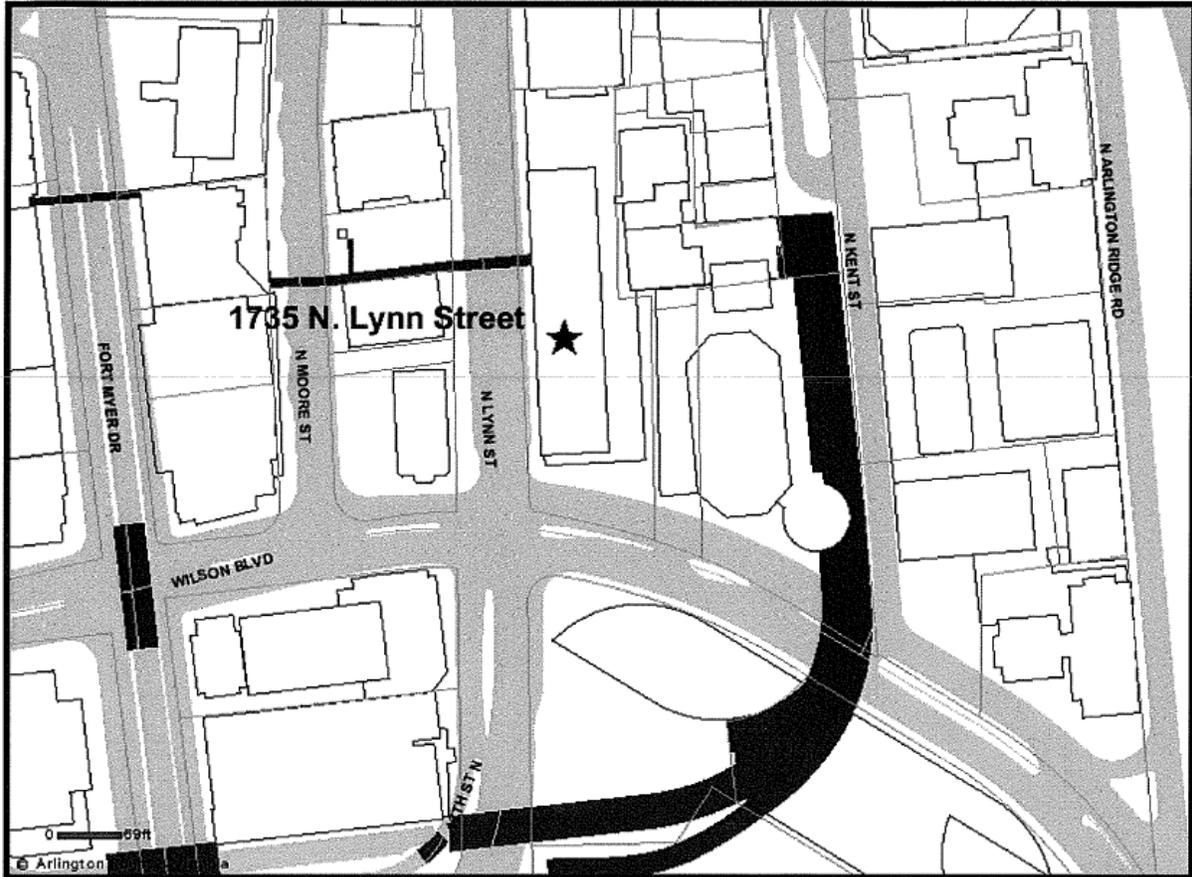


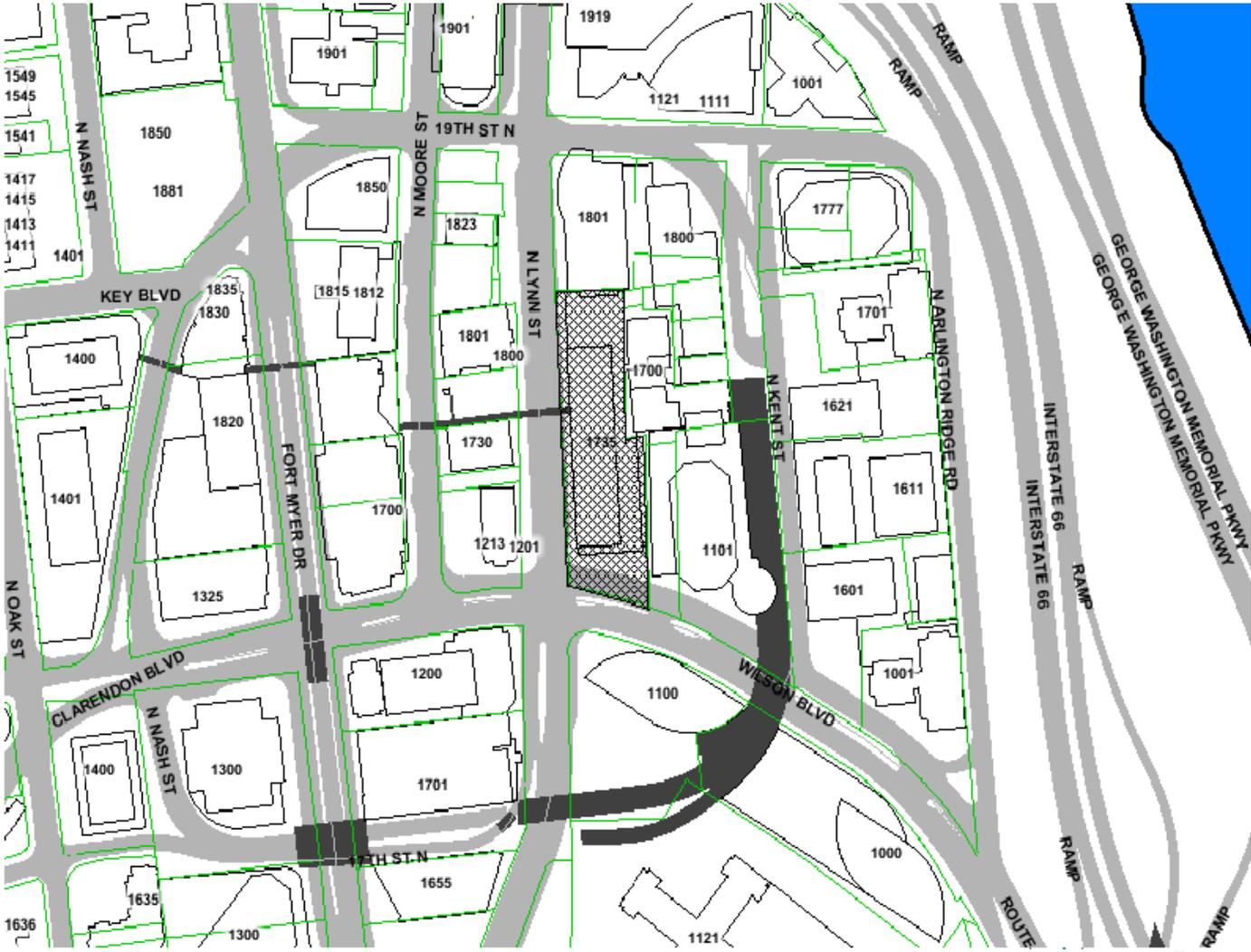
EXHIBIT B

VICINITY MAP



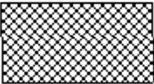
**First Amended Deed of Lease
Arlington Transportation Partners and Commuter Information Center
1735 N. Lynn Street
December 13, 2008**

VICINITY MAP



NOTE: This map is for property location assistance only. It does not represent the latest survey or other information.

**First Amended Deed of Lease
1735 N. Lynn Street
RPC No. 16039018
Arlington, Virginia**

 = Site Location



The subject office space is located in a building located on North Lynn Street in North Rosslyn, between Wilson Boulevard and 19th Street North, approximately one-half block north of Wilson Boulevard.

January 24, 2008