



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of November 14, 2009

DATE: October 29, 2009

SUBJECT: Approval and Acceptance of a License Agreement by and among JBG/Courthouse Metro, L.L.C., the County Board of Arlington County, Virginia and Arlington Street People's Assistance Network, Inc. to Permit Emergency Egress Across Property Located at 2055 15th Street North and 2050 Wilson Boulevard in Arlington County, Virginia (RPC No. 18001004) From the Emergency Winter Shelter Located at 2049 15th Street North in Arlington County, Virginia (RPC No. 18001003).

C. M. RECOMMENDATIONS:

1. Approve the attached License Agreement ("Agreement") by and among JBG/Courthouse Metro, L.L.C. ("JBG"), the County Board of Arlington County, Virginia ("County") and Arlington Street People's Assistance Network, Inc. ("A-SPAN" or "Operator") to Permit Emergency Egress Across Property Located at 2055 15th Street North and 2050 Wilson Boulevard in Arlington County, Virginia (RPC No. 18001004) ("JBG Parcel") From the Emergency Winter Shelter Located at 2049 15th Street North in Arlington County, Virginia (RPC No. 18001003) ("County Parcel").
2. Authorize the Real Estate Bureau Chief, or his designee, Engineering and Capital Projects Division, Department of Environmental Services, to execute on behalf of the County Board, the Agreement and all related documents, including but not limited to a letter of acknowledgement of the License Agreement with the ground lessors, subject to approval as to form of such documents by the County Attorney.

ISSUES: The Agreement is required for the County to comply with the building code requirements for emergency egress from the Emergency Winter Shelter, which requirements arise from the proposed increase in participant capacity at the Emergency Winter Shelter. There are no issues identified with this request.

SUMMARY: In order to comply with building code requirements to increase participant capacity at the Emergency Winter Shelter, the County must obtain the Agreement from JBG to permit emergency egress from the Emergency Winter Shelter over, on and through a portion of the JBG Parcel which abuts the County Parcel. JBG is a long term (99 years) tenant of the JBG

County Manager: BMD

County Attorney: BAK/W

Staff: Linda Collier, Real Estate Bureau, DES

18.

Parcel which is owned by 2050 Wilson Blvd., LLC. If the Agreement is terminated, the certificate of occupancy for the increased capacity at the Emergency Winter Shelter will no longer be valid.

BACKGROUND: A-SPAN operates the Emergency Winter Shelter under contract with the County. The Emergency Winter Shelter is located on the County Parcel in a building owned by the County. In order to increase the capacity of shelter participants the building code requires a back door emergency egress. Last year the Emergency Winter Shelter experienced high demand with an average of 53 participants per night. With this Agreement, the program will be able to increase capacity to 73 total participants to meet this season's anticipated demand. Due to the surrounding development, the only location possible for the emergency egress is over, on and through the JBG Parcel which parcel abuts the western property line of the County Parcel. The JBG Parcel is currently used by JBG for a parking lot.

A similar Agenda Item, seeking approval and acceptance of a Temporary Emergency Egress Easement ("Easement") for emergency egress from the Emergency Winter Shelter, was brought to the Board last month and deferred because the property owner of the JBG Parcel had not yet signed the proposed Easement. Because such property owner did not join in the Easement as negotiated, County staff has instead negotiated the attached License Agreement, by which JBG will grant to the County emergency egress rights. The Agreement does not require the property owner (2050 Wilson Blvd., LLC) to join in as a party. Rather, the ground lessors, which include the property owner, have authorized JBG, by letter of acknowledgment, to enter into the Agreement.

DISCUSSION: The proposed Agreement (Exhibit A) would provide temporary emergency egress from the Emergency Winter Shelter through the abutting JBG Parcel as set forth on the attached "Plat Showing License Area for Emergency Egress on Lot 22A Part Block 1 Fort Myer Heights D.B. 862, Pg. 450 Arlington County, Virginia" prepared by Robert L. Franca, Land Surveyor, dated October 27, 2009 and approved by Arlington County Department of Environmental Services, Engineering & Capital Projects Division, October 27, 2009 ("Plat") and designated as "License Area for Emergency Egress Area = 364 S. F." ("License Area"). See Vicinity Maps Attached as Exhibits B-1 and B-2. The Agreement will terminate the earlier of: 1) written notice by the County to JBG that the County no longer needs the Agreement; or 2) sixty days after JBG receives 4.1 Site Plan approval for certain real estate, which site plan approval includes the JBG Parcel; or, 3) until April 19, 2104 (which is the date JBG's ground lease for the JBG Parcel terminates) or upon earlier termination of the JBG ground lease. In addition, the Agreement can be terminated by JBG at any time upon 270 days written notice or if the County fails to maintain specified insurance coverage. The Agreement also provides the County with rights on the JBG Parcel to restripe the existing parking lot, to relocate the existing wheel stops and signs and to make a cut through the wall between the JBG Parcel and the County Parcel. The certificate of occupancy will no longer be valid if the Agreement is terminated.

Legal Description of the Property: The JBG Parcel is owned by 2050 Wilson Blvd., LLC by virtue of a Deed recorded among the Arlington County Land Records ("Land Records") in Deed Book 2894 at Page 2134. JBG entered into a Deed of Lease dated as of April 20, 2005 with

Approval of a License Agreement for Emergency Egress
For Homeless Shelter Located at 2049 15th Street North

2050 Wilson (“Lease”), which Lease term is for ninety-nine (99) years, expiring on April 19, 2104. A Memorandum of Lease pertaining to the Lease was recorded among the Land Records in Deed Book 3830 at Page 1856.

FISCAL IMPACT: None. The County is not being charged for the Agreement.

CONCLUSION: It is recommended that the County Board approve the License Agreement by and among JBG/Courthouse Metro, L.L.C., the County Board of Arlington County, Virginia And Arlington Street People’s Assistance Network to Permit Emergency Egress Across Property Located at 2055 15th Street North and 2050 Wilson Boulevard in Arlington County, Virginia (RPC No. 18001004) From the Emergency Winter Shelter Located at 2049 15th Street North in Arlington County, Virginia (RPC No. 18001003) and authorize the Real Estate Bureau Chief, or his designee, to execute on behalf of the County Board, the License Agreement and all related documents, including a letter of acknowledgment of the License Agreement with the ground lessors, subject to approval as to form by the County Attorney.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "Agreement") is dated as of the ____ day of _____, 2009, by and among JBG/COURTHOUSE METRO, L.L.C., a Delaware limited liability company, Grantor ("Licensor" or "JBG"), THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate (the "Licensee" or "County") and ARLINGTON STREET PEOPLE'S ASSISTANCE NETWORK, INC. ("A-SPAN" or "Operator").

WHEREAS, by virtue of a Deed recorded in Deed Book 1441 at Page 623 among the land records of Arlington County, Virginia ("Land Records"), County is the owner, in fee simple, of a parcel of real estate, with improvements thereon, located at 2049 15th Street North in Arlington County, Virginia, and more particularly described in the legal description attached hereto as "Exhibit C," RPC No. 18001003 ("County Parcel"); and

WHEREAS, the County has funded and owns an emergency winter shelter located upon the County Parcel ("Homeless Shelter"), which Homeless Shelter is operated by Arlington Street People's Assistance Network, Inc. ("A-SPAN" or "Operator"); and

WHEREAS, by virtue of a Deed of Lease dated as of April 20, 2005 ("Lease"), JBG entered into a lease with 2050 Wilson Blvd., LLC with respect to that certain parcel of real estate, with improvements thereon, located at 2055 15th Street North and 2050 Wilson Boulevard in Arlington County, Virginia, and more particularly described in the legal description attached hereto as "Exhibit D," RPC No. 18001004 ("JBG Parcel"), which Lease term is for ninety-nine (99) years, commencing on April 20, 2005 and expiring on April 19, 2104. A Memorandum of Lease pertaining to the Lease of the JBG Parcel is recorded among the Land Records in Deed Book 3830 at Page 1856; and

WHEREAS, the JBG Parcel abuts the County Parcel; and

WHEREAS, the County and Operator desire to obtain, and Licensor desires to grant to the County, permission to use, as described herein, a portion of the JBG Parcel for

pedestrian emergency egress from the County Parcel to the 15th Street right-of-way, which emergencies include, among other things, fire, law enforcement and medical emergencies; and

WHEREAS, the Operator joins into this Agreement to confirm its obligations under Sections 4 and 7 hereof.

WITNESSETH:

For and in consideration of One Dollar (\$1.00), cash in hand paid, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Licensed Premises. Licensor hereby grants to Licensee, its officials, officers, employees, agents, contractors and subcontractors, an irrevocable license for the permission to use, upon the terms hereinafter provided, portions of the JBG Parcel, as the same is described as “License Area for Emergency Egress Area = 364 S.F.” (“License Area”) on a plat attached hereto as “Exhibit A,” said plat entitled “Plat Showing License Area for Emergency Egress on Lot 22A Part Block 1 Fort Myers Heights D.B. 862, Pg. 450 Arlington County, Virginia”, dated October 27, 2009, and prepared by Robert L. Franca, Land Surveyor, and approved by Arlington County Department of Environmental Services, Engineering & Capital Projects Division, October 27, 2009.
2. Term. The term of this Agreement shall begin on the date that the last party signs this Agreement (“License Date”) and shall continue until the earlier to occur of: A) such time as the County gives written notice to JBG that the County no longer requires emergency egress from the County Parcel over, across and through the JBG Parcel; or B) sixty (60) days after JBG receives 4.1 Site Plan approval for real estate, which site plan approval includes 2050 Wilson Boulevard (RPC No. 18001004); or, C) until April 19, 2104 (“License Term”). Ninety days before the end of the License Term, JBG shall give written notice (as provided below) to the County’s Building Official that this Agreement will terminate ninety days after such notice is delivered. Notwithstanding the foregoing, JBG shall have the right to terminate the Agreement: (a) at any time upon two hundred and

seventy (270) days notice to the County; (b) at any time upon expiration of the term of the Lease or of the right of JBG to use and/or occupy the JBG Parcel; or, (c) at any time the County fails to maintain insurance in coverage comparable to the insurance described in paragraph 6 hereof. Such comparable coverage includes the right for the County to opt for self-insurance coverage in any amount that the County may adopt under a formal self-insurance program enacted by resolution of the Arlington County Board pursuant to Code of Virginia, Section 15.2-1518 or other similar or successor Code Section.

3. Permitted Uses. The County is permitted to use, during the License Term, the License Area for pedestrian egress from the County Parcel, by the County and by the public at large, over, across, and through the JBG Parcel in the License Area, as more completely set forth herein. The County and the public at large shall have full and free use of the License Area for the purposes named herein and all rights and privileges necessary to the exercise of this Agreement, including the right of access to and from the License Area to the 15th Street right-of-way. The License Area shall be used by the County and the public at large only for egress from the County Parcel in connection with emergencies pertaining to the County Parcel, such emergencies to include, among other things, fire, law enforcement and medical emergencies. The rights granted to the County by this Agreement do not include the right for the public at large to use the License Area for non-emergency vehicular or pedestrian travel.

In addition to the above, among other things, the County is permitted to:

(A) to restripe, at the County's expense, the parking spaces located on the JBG Parcel parking lot in the manner set forth on Exhibit B and to relocate, at the County's expense, the existing parking signage and concrete wheel stops to accurately reflect the restriped parking spaces (collectively, the "Restriping Work"); and

(B) to locate, maintain, install, repair, replace, relocate and remove signage and/or striping on, across and through the JBG Parcel to identify the License Area during the License Term (collectively, the "Identification Work"); and

(C) to remove, alter, repair, relocate, and replace a portion of the wall located on the JBG Parcel and in the area of the common property line between the JBG Parcel and the County Parcel, abutting the License Area, to create an opening so that persons can access

fully the License Area from the County Parcel (the alteration of such wall, together with the Restriping Work and the Identification Work, the “Work”); and

(D) during the performance of the Work, the right to place construction material(s) and equipment on the JBG Parcel for such time as is necessary to complete the Work and accomplish the items described in subparagraphs (A), (B) and (C) above as long as the County coordinates the Work with JBG to reasonably minimize the interruption of the use of the JBG Parcel and to attempt to perform the Work before or after general weekday work hours or on weekends.

The uses described in Section 3. of this Agreement are jointly hereinafter referred to as “Permitted Uses.”

4. Maintenance of License Area. The Operator and JBG shall maintain, and require others to maintain, the License Area free and clear of all obstructions at all times except when the License Area is being used for emergency egress permitted by this Agreement.

5. License Fee. No license fee shall be charged to Licensee by Licensor in addition to the consideration enumerated in this Agreement.

6. Insurance. Arlington County carries a broad form property insurance policy (Policy Number KTK-CMB-6149N99-3-09) written by Travelers Indemnity Company. The first \$1,000,000.00 general and automobile liability exposure is covered under a formal self-insurance program enacted by resolution of the Arlington County Board pursuant to Code of Virginia, Section 15.2-1518. Additionally, Arlington County carries a \$10,000,000.00 Umbrella Liability policy provided through VACo Risk Management Programs, Inc., Policy Number VA-AR-006-10. All purchased insurance policies carry a policy term of July 1, 2009 to July 1, 2010. These policies are reviewed and renewed on an annual basis. Within twenty (20) business days of the License Date, the County shall furnish to JBG, certificates of insurance evidencing that all insurance which has been purchased by the County as specified in this paragraph 6 is in force. Any such certificates of insurance for insurance which has been purchased by the County as specified in this paragraph 6 shall specify that JBG, JBG Properties, Inc. and JBG/Development Group, L.L.C. have been added as additional insureds, and all such certificates of insurance for insurance which has been purchased by the County as specified in this paragraph 6 shall

provide for notice to JBG in the event of cancellation or non-renewal of said coverage.

7. Operator Responsibilities. Operator joins in this Agreement to acknowledge and agree that it will benefit from the grant of the emergency egress provided in this Agreement. Accordingly, Operator understands and agrees that it shall be responsible for any and all expenses, costs, death, injury, loss or damage arising, directly or indirectly, in whole or in part, out of the use of the License Area, or any portion thereof, as it relates to its operation of the Homeless Shelter and shall be responsible for all claims, liability, damages, costs, losses or expenses, including attorneys' fees, arising out of such death, injury, loss or damage during such times as it operates the Homeless Shelter. Operator shall indemnify, defend and hold harmless JBG, and its officers, directors, members, principals, affiliates, agents and employees (the collectively, "Indemnified Parties") from any and all liability, damages, losses, and costs, including but not limited to, reasonable attorneys' fees (together, "Claims") that arise from or in connection with the use or access of the License Area, or any portion thereof resulting from its operation of the Homeless Shelter. This provision shall survive the expiration or earlier termination of this Agreement for Claims arising during the time A-SPAN operates the Homeless Shelter.

8. JBG Use of License Area. JBG reserves the right to make such use of the License Area which is not inconsistent with the rights of the County and the Operator set forth in this Agreement and the construction rights granted herein.

9. Notices. All notices or other communications hereunder shall be in writing and shall be either hand delivered, sent by commercial courier (such as Federal Express) or sent by United States registered or certified mail, return receipt requested, at the following addresses or such other address hereafter provided by notice to the other party:

If to Licensee:

Arlington County
Department of Environmental Services
Division of Engineering & Capital Projects
Real Estate Bureau
2100 Clarendon Boulevard, Suite 800
Arlington, VA 22201
Attn: Real Estate Bureau Chief

EXHIBIT A

If to Licensor: JBG/Courthouse Metro, L.L.C.
c/o The JBG Companies
4445 Willard Avenue, Suite 400
Chevy Chase, Maryland 20815
Attn: Kathleen Webb

with a copy to: JBG/Courthouse Metro, L.L.C.
c/o The JBG Companies
4445 Willard Avenue, Suite 400
Chevy Chase, Maryland 20815
Attn: Legal Department

If to A-SPAN: Executive Director
A-SPAN
PO Box 100731
Arlington, VA 22210
Attn: Kathleen Sibert

Any party may, by notice given at least five (5) days before such change becomes effective, designate a new address to which such notices shall be sent. Notice shall be deemed effective when delivered.

.11. Severability. If any term or provision of this Agreement shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable, then the remainder of this Agreement, other than those terms or provisions which are held to be invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

12. Entire Agreement/Applicable Law. This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof. The parties expressly acknowledge and represent that they have not relied on any oral or written representations, warranties, promises, statements, covenants or agreements, express or implied, direct or indirect, given or made by or on behalf of the other, except those representations, if any, expressly contained herein. This Agreement shall not be modified, changed or terminated,

EXHIBIT A

in whole or in part, in any manner other than by an agreement in writing signed by duly authorized representatives of the Licensor and Licensee. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia. All legal actions instituted by Licensor or Licensee concerning this Agreement shall be filed solely in the Arlington County General District or Circuit Court and in no other court.

13. Incorporation of Recitals. The foregoing recitals are fully incorporated into this Agreement by this reference.

IN WITNESS WHEREOF, Licensor, Licensee and the Operator have caused this Agreement to be executed and delivered as their respective acts, intending to be legally bound by its terms.

[SIGNATURES BEGIN ON THE FOLLOWING PAGES]

LICENSOR:

JBG/Courthouse Metro, L.L.C.

By: JBG/Company Manager, L.L.C.,
its Managing Member

By: [Signature]
Name: Brian P. Coulter
Title: Managing Member

STATE OF MARYLAND
COUNTY OF MONTGOMERY

The foregoing instrument was acknowledged before me on this 4th day of November, 2009, by Brian P. Coulter, as Managing Member of JBG/Company Manager, L.L.C., the Managing Member of JBG/COURTHOUSE METRO, L.L.C., a Delaware limited liability company.

(SEAL)
My commission expires: _____
My ID No. Marianne Caveny
Notary Public
Montgomery County, Maryland
My Commission Expires: 11/10/09

Marianne Caveny
Notary Public

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

Approved as to form:

County Attorney

LICENSEE:

County Board of Arlington County, Virginia

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 200_, by _____, on behalf of the County Board of Arlington County, Virginia.

Notary Public

My commission expires: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

OPERATOR:

Arlington Street People's Assistance Network, Inc.
("A-SPAN")

By: Kathleen Sibert
Name: KATHLEEN SIBERT
Title: EXECUTIVE DIRECTOR

COMMONWEALTH OF VIRGINIA
COUNTY/CITY OF Arlington

The foregoing instrument was acknowledged before me on this 4th day of November,
2009, by Kathleen Sibert, as Executive Director of Arlington Street
People's Network, a Virginia corporation.

(SEAL)
My commission expires: May 31, 2010
My ID No. 7043416

Eileen Feldman
Notary Public

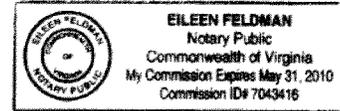


Exhibit C -- County Parcel – 18001003

All that certain lot or parcel of land, lying and being in Arlington County, Virginia, and more particularly described as follows:

Part of Lot TWENTY-THREE (23), Block ONE (1), FORT MYER HEIGHTS Subdivision, described by metes and bound by Basil M. DeLashmutt, Certified Engineer and Surveyor, as follows:

Beginning at an iron pipe at the intersection of the line common to Lots 23 and 24, Block 1, Fort Myer Heights, as the same appears duly platted and recorded among the land records of Arlington County, Virginia, and the new Northerly line of 15th Street, North (Beuna Vista Avenue), said new line being parallel to and 7.50 feet distant northerly from the original northerly street line; thence with the said new northerly line of 15th Street, North, S. 84° 24' 30" W. 50.0 feet to a pipe in the line common to Lots 22 and 23; thence with a portion of said common line, N. 5° 35' 30" W. 85.00 feet to a pipe; thence departing from said common line and running through Lot 23, N. 84° 24' 30" E. 50.00 feet to a pipe in the line common to Lots 23 and 24; thence with a portion of the line common to said Lots 23 and 24, S. 5° 35' 30" E. 85.00 feet to the point of beginning, containing 4,250 square feet;

[AND BEING the same property conveyed to Edythe Polsby Richman, by Deed dated April 28, 1950, and recorded in Deed Book 932 at page 74, among the land records of Arlington County, Virginia.]

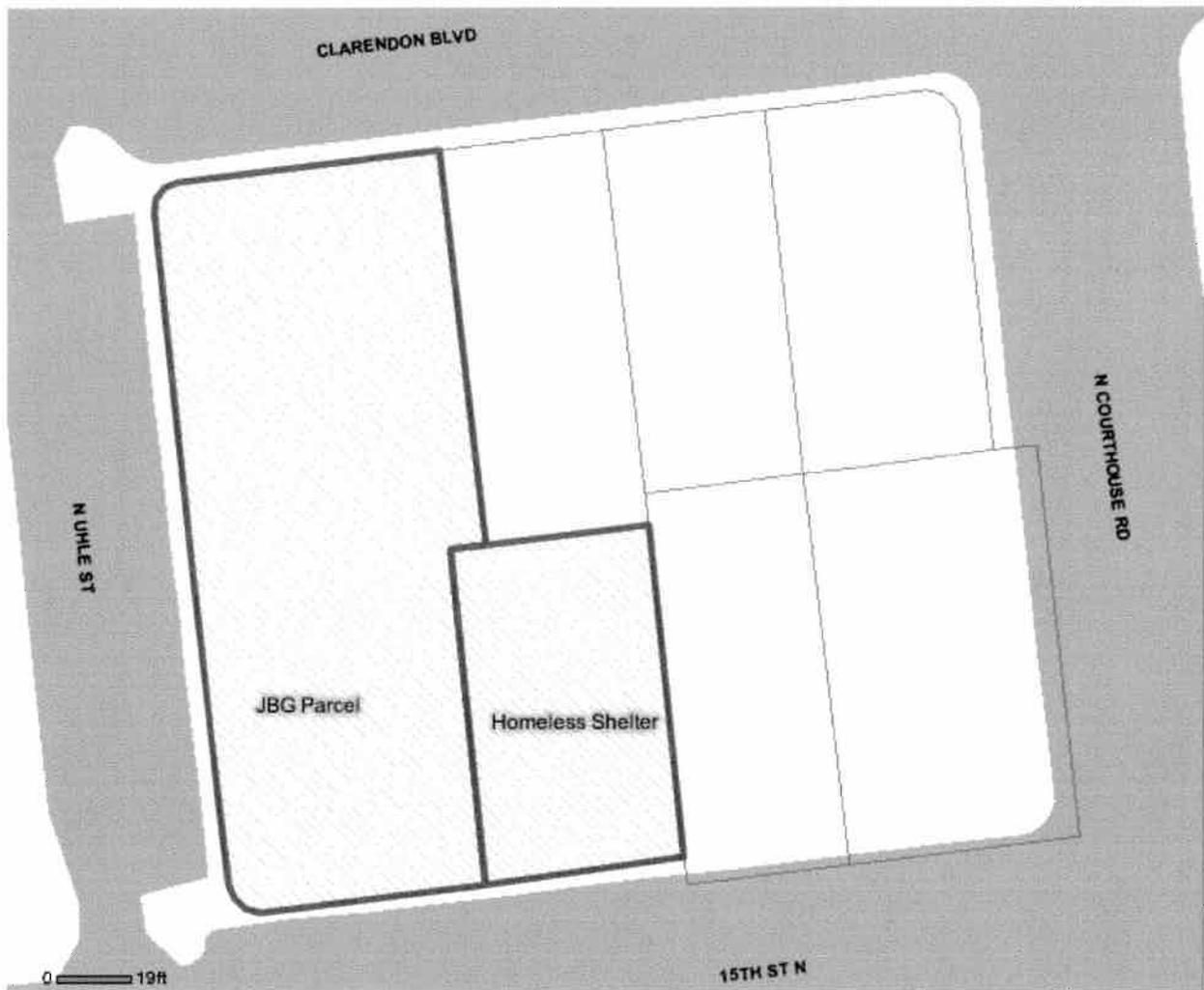
Exhibit D-JBG Parcel-RPC No. 18001004

All that certain lot, piece or parcel of land lying and being in Arlington County, Virginia described as follows:

Lot 1A and Lot 22A of a Resubdivision of part of Block 1, Fort Myer Heights, as shown on a plat attached to Deed of Dedication recorded in Deed Book 862, page 450, among the land records of Arlington County, Virginia.

BEING a portion of the same real estate conveyed to First Federal Savings and Loan Association of Arlington by Deed from Frederick Raymond Bause (also known as R. Raymond Bause) and Lillian D. Bause, his wife, dated August 20, 1946, recorded August 27, 1946 in the Clerk's Office of the Circuit Court, County of Arlington, Virginia in Deed Book 732, page 530. First Federal Savings and Loan Association of Arlington merged with Arlington-Fairfax Savings and Loan Association, Arlington, Virginia. First Federal Savings and Loan Association of Arlington was the surviving institution, with a change in its corporate title to Continental Federal Savings and Loan Association. On August 1, 1985, Continental Federal Savings and Loan Association converted to a federal savings bank charter under the new corporate title of Continental Federal Savings Bank. By Certificate of Merger filed with the Virginia State Corporation Commission, Continental Federal Savings Bank merged into Crestar Bank, effective May 14, 1993.

VICINITY MAP
2049 15TH Street North (RPC NO. 18001003)
2055 15TH Street North-2050 Wilson Boulevard (RPC No. 18001004)



VICINITY MAP
2049 15TH Street North (RPC NO. 18001003)
2055 15TH Street North-2050 Wilson Boulevard (RPC No. 18001004)

