



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of June 12, 2010**

DATE: June 2, 2010

SUBJECT: Approval of a Third Amendment to Deed of Lease for the Artisphere to Add an Additional 570 Square Feet of Space for Dressing Room and Storage Space Purposes (RPC # 16039002).

C. M. RECOMMENDATION: Take the following actions necessary for the County Board to approve the Third Amendment to the Artisphere lease:

1. Approve the Third Amendment to Deed of Lease between 1101 Wilson Owner, LLC and the County Board of Arlington County, Virginia; and
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 Third Amendment to Deed of Lease and all related documents, subject to approval as to form by the County Attorney.

ISSUES: This Board Report requests approval of a Third Amendment to the Artisphere lease. The Third Amendment would add 570 square feet of additional space for the County's use as dressing room and storage space. No issues have been identified with this request.

SUMMARY: The Third Amendment to Deed of Lease (the "Third Amendment") between 1101 Wilson Owner, LLC (the "Landlord") and the County Board of Arlington County, Virginia (the "County"), a copy of which is attached hereto as Attachment 1, amends the original Deed of Lease between the Landlord and the County, dated November 20, 2008 (the "Original Lease"). The Third Amendment will provide for an additional 570 square feet of space adjacent to the Artisphere, located at 1101 Wilson Boulevard (the "Building"), for use as dressing room and storage space in conjunction with the operation of the Artisphere. The additional space that is the subject of this Third Amendment (the "Additional Space") is more particularly shown on the floor plans attached to the Third Amendment and incorporated into the Deed of Lease, as amended, as "Exhibit R". The Third Amendment also provided that the County will be responsible for paying, as additional rent, the direct pass-through costs of after-hours operation of the heating, ventilation, and air conditioning (HVAC) system serving the main Artisphere lobby on the 6th level of the Building.

County Manager: MBma

County Attorney: BAK/SAM

Staff: Michael Halewski – Department of Environmental Services

BACKGROUND: County staff identified a need for additional dressing room and storage space for the effective programmatic operation of the Artisphere. The Additional Space is located on the 8th level, adjacent to the space already leased by the County under the Original Lease. The Additional Space is accessed via a common area corridor. The Newseum, a previous tenant in the County-leased space, also used the Additional Space from the Landlord for dressing room and storage purposes. At its May 22, 2010 meeting, the County Board approved a minor site plan amendment to SP #18, which applies to the Building, located at 1101 Wilson Boulevard (the “SP Amendment”). The SP Amendment, among other things, converted the 570 square feet of Additional Space from office/commercial use to dressing room and storage use.

DISCUSSION: The Building is located at 1101 Wilson Boulevard, in the Rosslyn sub-market of Arlington County, Virginia. The Building sits on the northwest intersection of Wilson Boulevard and North Kent Street, as more particularly shown on the vicinity map attached hereto as Attachment 2. The building is located within the North Rosslyn Civic Association.

The rental rate for the Additional Space is very competitive; the rate is less than the County pays for storage space in other County-leased facilities. Although the County will not be responsible to pay any additional amount for standard operating expenses for the Additional Space, the County will be responsible for any above-standard cleaning of the Additional Space as requested by the County on an as-needed basis.

A separate issue incorporated into this Third Amendment provides that the County will also be responsible for the cost of overtime (i.e., outside of normal building hours) heating, ventilation, and air conditioning (HVAC) in the Artisphere lobby on the 6th level of the Building. During demolition activities in the Artisphere, County contractors discovered that six air handling units serving the main Artisphere lobby on the 6th level of the Building are connected to the Building office tower’s HVAC system instead of the separate HVAC system solely serving the Artisphere. The County and its contractors investigated connecting these six air handling units to the separate HVAC system solely serving the Artisphere. County staff determined that such a connection would not be cost effective because: 1) the large up-front additional capital expense associated with the connection; and 2) the increase in operating costs of the Artisphere’s separate HVAC system during normal business hours. Therefore, the County is agreeing to cover the estimated costs of after-hours operation of the HVAC in the Artisphere lobby.

The attached Third 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 dressing room and storage uses permitted by the Lease; and 4) enable the County to use and occupy the Premises. Some of the pertinent provisions of the Third Amendment are as follows:

- The Third Amendment commences on July 1, 2010, and terminates (pursuant to the terms of the Original Lease) on April 30, 2023, subject to a five-year option to renew until April 30, 2028.

- The base rental rate for the Additional Space from July 1, 2010 through June 30, 2011 will be \$20 per square foot per annum, totaling \$11,400.00 for the first lease year, payable in equal monthly installments of \$950.00.
- The base rental rate includes all operating expenses, with the exception of charges for any above-standard cleaning requested by the County.
- The base rental rate for the Additional Space will escalate by 3% per annum beginning on July 1, 2011.
- The County will be responsible for paying additional rent totaling \$19,156.37 annually, payable in equal monthly installment of \$1,596.37. This additional rent is a direct pass-through cost from the Landlord to the County of the after-hours operation HVAC in the Artisphere lobby on the 6th level of the Building (the "HVAC Rent"). The Landlord can, upon prior written notice, adjust the HVAC Rent periodically (i.e. not more than once in a two year period) if the actual costs of the overtime HVAC in the Artisphere lobby on the 6th level of the Building differs from the HVAC Rent then paid by the County to the Landlord.
- The County's use of the Premises is limited to dressing room or storage purposes.
- The Additional Space is provided to the County in "as is" condition, with no obligation of the Landlord to make improvements or alterations.
- All other terms of the Original Lease remain in full force and effect.

FISCAL IMPACT: Funding for the base storage rent, any above-standard cleaning, and additional HVAC Rent expenses are available in the Artisphere's FY 2011 budget and will be paid out of the following account: 101.436183.89010.0000.0000.0000.

ATTACHMENT 1

THIRD AMENDMENT TO DEED OF LEASE

THIS THIRD AMENDMENT TO DEED OF LEASE ("Third Amendment") is made this ____ day of _____ 2010, by and between 1101 WILSON OWNER, LLC, a Delaware limited liability company ("Landlord"), and THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body politic ("Tenant").

W I T N E S S E T H:

WHEREAS, by that certain Deed of Lease dated November 21, 2008 (the "Original Lease"), as amended by that certain First Amendment to Deed of Lease dated June 19, 2009 (the "First Amendment") and as amended by that certain Second Amendment to Deed of Lease dated July 21, 2009 (the "Second Amendment") (the Original Lease as amended by the First Amendment and by the Second Amendment being hereinafter referred to collectively as the "Lease"), Landlord leased to Tenant, and Tenant leased from Landlord, approximately 53,516 square feet of area in the building located at 1101 Wilson Boulevard, Arlington, Virginia (the "Building"), upon the terms and conditions more specifically set forth therein; and

WHEREAS, Tenant desires to lease from Landlord, and Landlord desires to lease to Tenant, additional space in the Building comprising approximately 570 square feet of area for use as one or more dressing rooms, for storage space or for any combination thereof, upon the terms and conditions set forth in this Third Amendment, and to amend the Lease accordingly, as more particularly set forth herein.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) in hand paid, the mutual covenants and agreements contained herein and

other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant do hereby agree as follows:

1. Capitalized Terms. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Lease.

2. Dressing Room Space. (a) The Lease is hereby amended by inserting therein a new Section 47, to read as follows:

"47. DRESSING ROOM SPACE.

A. Term: Landlord leases unto Tenant, and Tenant hereby leases from Landlord, approximately 570 square feet of area (the 'Dressing Room Space') located on the eighth (8th) floor of the Building, which Dressing Room Space is hereby agreed to be that certain space which is shown on Exhibit R attached hereto and made a part of this Lease, for a term (the 'Dressing Room Space Term') commencing on July 1, 2011 (the 'Dressing Room Commencement Date') and continuing through and including this Lease Expiration Date (and through the last day of the Renewal Term, if the Renewal Option is exercised pursuant to Section 46), unless earlier terminated pursuant to the provisions of this Lease. The Dressing Room Space is not contiguous with the other portion of the Demised Premises on the eighth (8th) floor of the Building. Accordingly, Landlord hereby grants to Tenant the non-exclusive right and license to use the portion of the Common Areas on the eighth (8th) floor of the Building that connects the Dressing Room Space to the other portion of the Demised Premises on the eighth (8th) floor of the Building (the 'Connecting Hall'), as such Connecting Hall is shown on Exhibit R attached hereto, for ingress and egress between the Dressing Room Space and the other portion of the Demised Premises in the eighth (8th) floor of the Building. Tenant shall have such right and license to use the Connecting Hall as aforesaid at any and all times during the Dressing Room Space Term, and Landlord shall not revoke such license except in the event of a termination of the Lease in accordance with its terms; provided, however, that Landlord shall have the right to temporarily close all or any portion of the Connecting Hall for repairs or renovation provided that Landlord has given Tenant at least ten (10) days' prior written notice thereof (except in the event of an emergency) and further provided that Tenant continues to have access to the Dressing Room space during such temporary closure at all times that Tenant is scheduled to have an event in its Premises and for the two

hours immediately preceding, and the two hours immediately following, such event, and in the event of any such temporary closure, Landlord will use commercially reasonable efforts to minimize the duration of any such closure.

B. Condition of Dressing Room Space: Landlord shall deliver to Tenant and Tenant shall accept the Dressing Room Space in its 'as is' condition on the Dressing Room Space Commencement Date; it being agreed that (i) Landlord makes no representations or warranties with respect to the condition of the Dressing Room Space, and (ii) Landlord shall have no obligation to make any improvements or alterations to the Dressing Room Space, but Tenant shall have the right to make Alterations in and to the Dressing Room Space pursuant to the terms of this lease.

C. Dressing Room Space Base Rent: In addition to the Base Rent for the Demised Premises set forth in Section 4.A. of this Lease, commencing on the Dressing Room Space Commencement Date and continuing thereafter throughout the Dressing Room Space Term, Tenant covenants and agrees to pay to Landlord in accordance with Section 4.B. of this Lease Monthly Base Rent for the Dressing Room Space in the following amounts (the 'Dressing Room Space Monthly Base Rent'):

<u>Time Period</u>	<u>Rate of Dressing Room Space Base Rent Per Square Foot Per Annum</u>	<u>Rate of Dressing Room Space Base Rent Per Annum</u>	<u>Dressing Room Space Monthly Base Rent</u>
Dressing Room Commencement Date - 6/30/11	\$20.01	\$11,400.00	\$950.00
7/1/11 - 6/30/12	\$20.61	\$11,742.00	\$978.50
7/1/12 - 6/30/13	\$21.22	\$12,095.40	\$1,007.95
7/1/13 - 6/30/14	\$21.86	\$12,460.20	\$1,039.35
7/1/14 - 6/30/15	\$22.52	\$12,836.40	\$1,069.70
7/1/15 - 6/30/16	\$23.20	\$13,224.00	\$1,102.00
7/1/16 - 6/30/17	\$23.90	\$13,623.00	\$1,136.25
7/1/17 - 6/30/18	\$24.62	\$14,033.40	\$1,169.45
7/1/18 - 6/30/19	\$25.36	\$14,455.20	\$1,204.60
7/1/19 - 6/30/20	\$26.12	\$14,888.40	\$1,240.70
7/1/20 - 6/30/21	\$26.90	\$15,333.00	\$1,277.75
7/1/21 - 6/30/22	\$27.71	\$15,794.76	\$1,316.23
7/1/22 - 4/30/23	\$28.54	\$16,267.90	\$1,355.66

Landlord and Tenant acknowledge and agree that the Rate of Dressing Room Space Base Rent Per Square Foot Per Annum set forth above shall not, under any circumstance, be used or considered by the parties or the Brokers in the determination of the FMV Rental Rate for the Demised Premises under the terms of this Lease.

I. Renewal Term Base Rent: If the Renewal Option is exercised pursuant to Section 46 of this Lease, then, notwithstanding any other term of this Lease, the Dressing Room Space Base Rent shall be in the following amounts:

<u>Time Period</u>	<u>Rate of Dressing Room Space Base Rent Per Square Foot Per Annum</u>	<u>Rate of Dressing Room Space Base Rent Per Annum</u>	<u>Dressing Room Space Monthly Base Rent</u>
5/1/23 - 6/30/23	\$29.54	N/A	\$1,355.65
7/1/23 - 6/30/24	\$29.40	\$16,759.00	\$1,396.50
7/1/24 - 6/30/25	\$30.28	\$17,259.60	\$1,438.30
7/1/25 - 6/30/26	\$31.19	\$17,778.36	\$1,481.53
7/1/26 - 6/30/27	\$32.13	\$18,314.16	\$1,526.18
7/1/27 - 4/30/28	\$33.09	\$18,861.36	\$1,571.78

E. Additional Rent: Notwithstanding any other term of the Lease, Tenant shall have no obligation to pay Additional Rent for Operating Expenses or for Real Estate Tax Expenses with respect to the Dressing Room Space; provided, however, Tenant shall be responsible for the costs of after-hours and above-standard cleaning and char service actually provided by Landlord to the Dressing Room Space if so requested by Tenant, pursuant to the terms of Section 12.A(2) of this Lease.

F. Incorporation into Demised Premises: Except as otherwise expressly provided herein, the Dressing Room Space shall be deemed a part of the Demised Premises for all purposes of this Lease from and after the Dressing Room Space Commencement Date, such that both Landlord and Tenant shall have such respective rights and obligations with respect to the Dressing Room Space as apply to the remainder of the Demised Premises (excluding the Terrace Area) from and after the Dressing Room Space Commencement Date. Landlord and Tenant acknowledge and agree that the Dressing Room Space is not considered to be Bonus Space, Restricted Space or Unrestricted Space for any purpose under the terms of this Lease."

(b) Section 11.J. of the Lease is hereby amended with respect to all periods commencing on or after the Dressing Room Space Commencement Date by deleting therefrom the number "53,926" where it appears and by inserting the following number in lieu thereof:

"54,396." For avoidance of doubt, it is hereby confirmed that Section 5.A(1) of the Lease shall not be amended to reflect the increase in the size of the Demised Premises on the Dressing Room Commencement Date, in light of the fact that Tenant has no obligation for Operating Expenses or Real Estate Tax Expenses with respect to the Dressing Room Space.

(c) Section 10.A(3) of the Lease is hereby amended by adding the following new sentence at the end thereof:

"Notwithstanding the foregoing, (i) except as otherwise set forth in Section 10.F. hereof with respect to Tenant's payment of Water Loop Rent, Landlord shall be responsible for the cost of electrical use attributable to the Dressing Room Space, (ii) Tenant shall have no obligation to install, maintain, repair or replace any electrical meter or submeter with respect to the Dressing Room Space, and (iii) Tenant shall have no obligation to contract with an electrical utility provider with respect to the electrical supply to the Dressing Room Space."

3. Water Loop for Dressing Room Space. The Lease is hereby amended by inserting therein a new Section 10 F., to read as follows:

"F. Water Loop for Dressing Room Space. Landlord and Tenant hereby acknowledge and agree that Tenant shall have the right to tap into the condenser water loop serving the Building for six (6) pieces of Tenant's equipment (each piece requiring a separate "tap-in", with a total aggregate tonnage equal to twenty-seven (27) tons), provided that Tenant shall pay to Landlord, as Additional Rent, the amount (the 'Water Loop Rent') of Nineteen Thousand One Hundred Fifty-Six and 40/100 Dollars (\$19,156.37) per annum, payable in equal monthly installments of One Thousand Five Hundred Ninety-Six and 37/100 dollars (\$1,596.37) each, for each year or portion thereof that Tenant utilizes such six (6) tap-ins to the condenser water loop. In the event that Tenant, at its election, adds an additional tap-in (in excess of six (6) tap-ins and twenty-seven (27) tons) to the water loop for

Tenant's use of condenser water, then the Water Loop Rent shall be increased by Seven Hundred Dollars (\$700.00) per annum, payable in equal monthly installments, for each additional ton that is added by an additional tap-in (in excess of the original twenty-seven (27) tons) that Tenant utilizes in the water loop. Water Loop Rent shall be payable at the times and in the manner set forth in the lease for the payment of Base Rent, and shall be subject to increase from time to time as provided herein.

Notwithstanding the foregoing, in the event that the actual cost of that portion of the Water Loop Rent which is for utilities exceeds the initial Water Loop Rent, then from time to time throughout the Term, but not more often than once in any two (2) year period, Landlord shall have the right, upon six (6) months' prior written notice to Tenant, to increase the Water Loop Rent by an amount which is equal to the increase in the cost of utilities from such cost as was included in the initial Water Loop Rent or the Water Loop Rent which was then in effect, as applicable, and Tenant shall pay such increased Water Loop Rent from and after the date which is six (6) months following the date of said notice from Landlord to Tenant. Simultaneously with such notice, Landlord shall provide Tenant with documentation to support the amount of increase in the cost of utilities asserted by Landlord."

4. County Board Approval. The execution of this Third Amendment and its delivery to Tenant shall constitute a revocable offer by Landlord. If such offer is not accepted by Tenant by execution and delivery of this Third Amendment to Landlord on or before June 18, 2010, following the approval of The County Board of Arlington County, Virginia (the "County Board") of this Third Amendment, then Landlord shall have the right to revoke such offer by notice to Tenant, in which event no liability whatsoever shall accrue to Landlord or Tenant, and Landlord and Tenant shall have no obligations whatsoever to each other pursuant to this Third Amendment.

5. Brokers. Landlord and Tenant each represents and warrants to the other that neither of them has employed any broker with respect to the Dressing Room Space or in procuring or carrying on any negotiations relating to this Third Amendment.

6. Ratification. Except as expressly modified by this Third Amendment, all terms and provisions of the lease shall remain in full

force and effect. All of the Sections of the Lease not specifically amended hereby shall remain as provided in the Lease. The Lease is hereby further amended by inserting therein Exhibit R attached hereto, which Exhibit R is hereby incorporated into the Lease by this reference.

7. Third Amendment Effective Date. For purposes of Section 47 of the Lease, the term "Third Amendment Effective Date" means the date of completion of all of the following: (i) approval as to form of this Third Amendment by the County Attorney; (ii) approval of this Third Amendment by the County Board (as evidence by an action of the County Board) and (iii) execution and delivery of this Third Amendment by the last of Landlord, Tenant and Landlord's mortgagee to execute and deliver same.

8. Authority. Landlord and Tenant represent and warrant to each other that the person signing this Third Amendment on its behalf has the requisite authority and power to execute this Third Amendment and to thereby bind the party on whose behalf it is being signed.

9. Lender Approval. This Third Amendment shall not be binding upon Tenant without the execution by Landlord's current mortgagee secured by the Building of the Joinder hereto.

10. Counterparts. This Third Amendment may be executed in several counterparts, all of which shall constitute one and the same document.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Third Amendment to Deed of Lease as of the day and year first hereinabove written.

WITNESS:

LANDLORD:

1101 WILSON OWNER, LLC, a Delaware limited liability company

By: _____

By: _____

Name: Anthony Westreich
Title: President

WITNESS:

TENANT:

THE COUNTY BOARD OF ARLINGTON COUNTY,
VIRGINIA, a body politic

By: _____

By: _____

Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____

County Attorney

JOINDER BY MORTGAGEE

The undersigned, being Landlord's sole mortgagee, hereby joins in this Third Amendment for the sole purpose of granting its consent hereto.

LaSalle Bank National Association, as trustee for the registered holders of 1B Commercial Mortgage Trust 2007-03, Commercial Mortgage Pass-Through Certificates, Series 2007-03

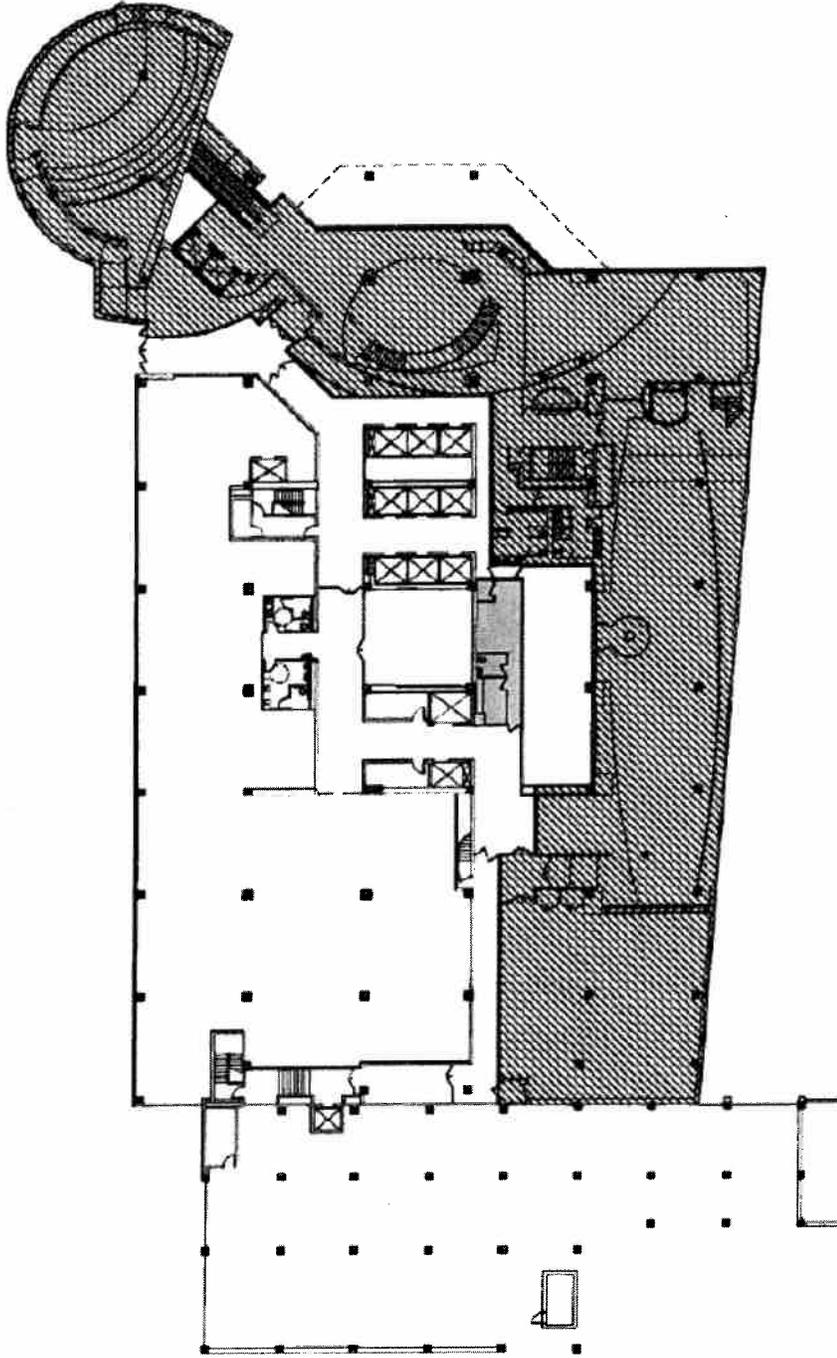
By: KeyCorp Real Estate Capital Markets, Inc., its authorized agent

By: _____
Name:
Title:

EXHIBIT R

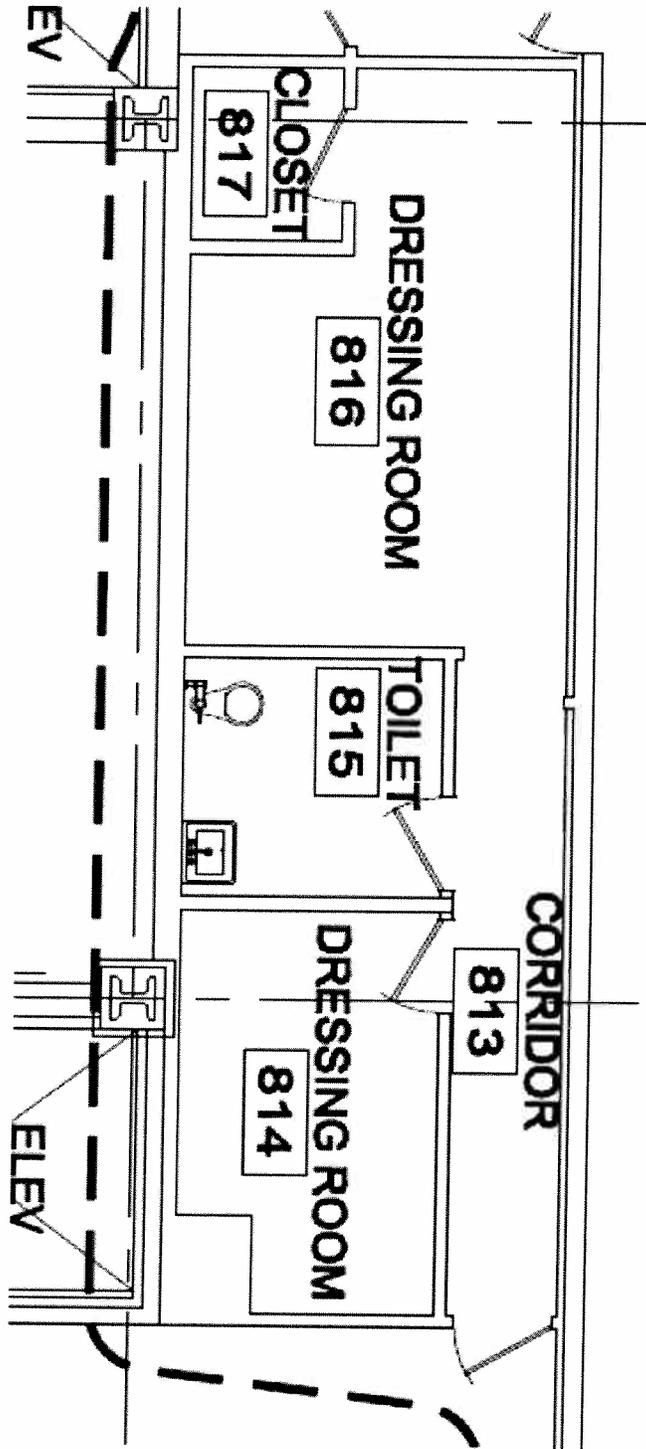
PLAN OF DRESSING ROOM SPACE AND CONNECTING HALL

20,118 GSF

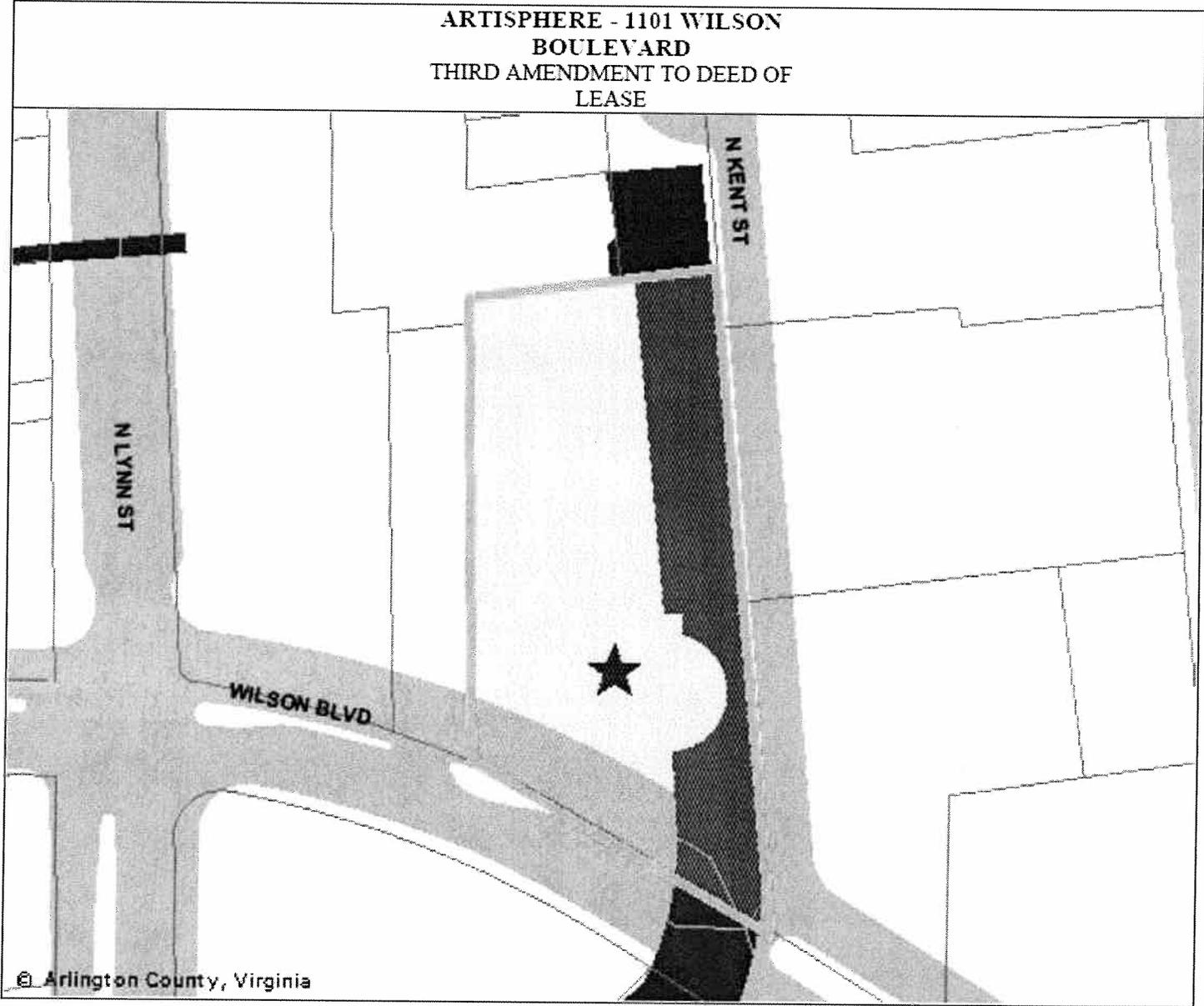


1101 Wilson Blvd. - 8th Floor Area Plan
23 June 2008





11



**ARTISPHERE – 1101 WILSON BOULEVARD (RPC #16039002)
THIRD AMENDMENT TO DEED OF LEASE**

JUNE 12, 2010

ARTISPHERE - 1101 WILSON
BOULEVARD
THIRD AMENDMENT TO DEED OF
LEASE



ARTISPHERE – 1101 WILSON BOULEVARD (RPC #16039002)
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JUNE 12, 2010

ARTISPHERE - 1101 WILSON
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