



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of September 25, 2010**

DATE: September 8, 2010

SUBJECT: Approval and Acceptance of Deed of Temporary Easement for Staging and Temporary Easement for Construction on Portions of Parcel M, Central Place, Located between N. Moore Street and N. Lynn Street, for Construction of the Rosslyn Station Access Improvement Project (RPC # 16038016).

C. M. RECOMMENDATIONS:

1. Approve the attached Deed of Temporary Easement for Staging and Temporary Easement for Construction ("Deed") between McDonald's USA LLC ("McDonald's"), Grantor, and The County Board of Arlington County, Virginia ("County"), Grantee on portions of Parcel M, Central Place, located between N. Moore Street and N. Lynn Street, for use in the construction of the Rosslyn Station Access Improvements Project ("RSAIP") (RPC #16038016).
2. Authorize the Real Estate Bureau Chief, or his designee, Engineering and Capital Projects Division, Department of Environmental Services, to accept, on behalf of the County Board, the Deed and all related documents, subject to approval as to form of such documents by the County Attorney.

ISSUES: The Deed permits the County to use portions of the McDonald's property in construction of the RSAIP. There are no issues identified with this request.

SUMMARY: The attached Deed grants the County temporary use of a portion of the McDonald's property for construction of the RSAIP. The McDonald's property is at and above grade and is located over the staging area for the project.

BACKGROUND: Most of the proposed improvements for the RSAIP and most of the staging area for construction of the RSAIP are located on property within which the County previously secured the necessary easement from Central Place ("Temporary Easement"). However, in order for the County and its contractor, Clark Construction, to fully use a portion of the staging area and a portion of the area for the air conditioning chiller unit to be constructed as part of the

County Manager:

County Attorney:

Staff: Linda Eichelbaum Collier, Real Estate Bureau, DES

24.

RSAIP, the County needs permission from McDonald's to use a portion of Parcel M, Central Place ("Property"). The Property is located from elevation 85.65 to elevation 100 at and over portions of the previously granted easement for a staging area and previously granted easement for a temporary chiller. The latter easement will be used for the chiller until the garage built as part of the Central Place project ("Garage") is constructed. See attached Vicinity Maps, **Exhibits B-1** and **B-2** for the general location of the Property.

DISCUSSION: The County needs to obtain the right to use portions of the Property as a staging area for construction of the RSAIP and to install a temporary chiller which is part of the RSAIP. The Deed is attached as **Exhibit A** and has been executed by McDonald's. The areas that are the subject of the Deed are depicted on the plat attached to the Deed as **Exhibit 1**, entitled "Plat Showing A Staging Easement and Alternate Chiller Easement Area on Parcel M, Central Place, Deed Book 4233, Page 774, Arlington County, Virginia," dated March 15, 2010, last revised, July 27, 2010.

LEGAL DESCRIPTION OF THE PROPERTY: Parcel M is owned by McDonald's by virtue of a Special Warranty Deed recorded in Deed Book 4236 at Page 2785 among the land records of Arlington County, Virginia.

FISCAL IMPACT: None.

CONCLUSION: It is recommended that the County Board approve the attached Deed of Temporary Easement for Staging and Temporary Easement for Construction between McDonald's USA LLC, Grantor, and The County Board of Arlington County, Virginia, Grantee for use in the construction of the Rosslyn Station Access Improvements Project on portions of Parcel M, Central Place, located between N. Moore Street and N. Lynn Street (RPC #16038016), and authorize the Real Estate Bureau Chief, or his designee, Engineering and Capital Projects Division, Department of Environmental Services, to accept, on behalf of the County Board, the Deed and all related documents, subject to approval as to form of such documents by the County Attorney.

Return to:
 Arlington County Real Estate Bureau
 2100 Clarendon Boulevard
 Arlington, Virginia 22201

RPC Nos.: 16038016

**DEED OF TEMPORARY EASEMENT FOR STAGING
 AND TEMPORARY EASEMENT FOR CONSTRUCTION**

This DEED OF TEMPORARY EASEMENT FOR STAGING AND TEMPORARY EASEMENT FOR CONSTRUCTION ("Agreement") is made this ____ day of _____, 2010, by **MCDONALD'S USA LLC**, a Delaware limited liability company ("McDonald's"), Grantor, and **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA** ("County"), a body corporate, Grantee. McDonald's and the County are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

- R-1 McDonald's owns certain real property situated in Arlington County, Virginia known as Parcel M, Central Place (RPC No. 16038016) by virtue of a Special Warranty Deed recorded in Deed Book 4236 at Page 2785 among the land records of Arlington County, Virginia ("Land Records") ("McDonald's Property"); and
- R-2 Central Place, L.L.C. ("Central Place") owns in fee simple certain real property situated in Arlington County, Virginia, bounded by N. Moore Street and N. Lynn Street, known as Parcel R, Central Place (RPC No. 16038015) by virtue of a Deed of Resubdivision recorded in Deed Book 4233 at Page 774 among the Land Records ("Central Place Property"); and
- R-3 Parcel M is surrounded in part by Parcel R and, at certain elevations, Parcel M is both above and below a portion of Parcel R as depicted on Exhibit 1 attached hereto; and
- R-4 At a regular meeting on May 5, 2007, the County Board of Arlington County, Virginia enacted an "*Ordinance Approving SP # 335 Site Plan Amendment: Central Place LLC, to Construct Approximately 354 Dwelling Units, Approximately 600,855 Square Feet of Commercial/Retail Space, with Modification of Use Regulations for Density, Storage, Mechanical Rooms, Shafts, Observation Decks, Coverage, Parking, Loading Space and Drive Aisle Requirements; 1213 Wilson Blvd. 1720, 1735 N. Lynn St., 1801 N. Lynn St, 1801, 1823 N. Moore St., Lots 1, 2, 3, 4, 5, and Outlots A-3, A-4 and A-5, Block 10, Rosslyn (RPC #16-038-001, -002, -003, -004, -005, -006, -008, -009, -010, -011, -012, -013; 16-039-005, -018 ("Site Plan")*"); and

- R-5 The mixed-use development authorized by the Site Plan includes, among other things, an office building, a plaza, and a garage (collectively, "Phase I") and a residential building ("Phase II", and together with Phase I, collectively, the "Developer Project") on the McDonald's Property, the Central Place Property and other property located in the block bounded by North Lynn Street, Wilson Boulevard, North Moore Street and 19th Street North in Arlington County, Virginia; and
- R-6 Pursuant to the Site Plan and a certain Project Agreement among Central Place, Central Place II, LLC, Washington Metropolitan Area Transit Authority ("WMATA") and County ("Project Agreement"), the County may construct for WMATA, certain improvements, structures, facilities, additions and/or renovations to the existing Rosslyn Metro Station, including but not limited to three high-speed, high-capacity passenger elevators, an emergency stairway, airshaft(s), a chiller, including utilities and connections therefor ("Chiller"), a two level underground station mezzanine and passageway connection with finishes, and all appurtenant facilities and systems, including but not limited to electrical, plumbing, communications, fare collection and mechanical equipment on, in, under and through the Developer Project as more fully set forth in the Project Agreement (collectively the "Rosslyn Station Access Improvements" or "RSAI"); and
- R-7 By a certain Deed of Temporary Easement for Staging and Temporary Easement for Construction, between Central Place and the County, recorded in Deed Book 4361 at Page 1666 among the Land Records, Central Place granted and conveyed to the County, among other things, a Temporary Staging Easement and an Alternate Chiller Easement as set forth therein; and
- R-8 In order to permit construction of the RSAI, McDonald's desires by this Agreement to grant and convey to the County certain easements as described hereinafter.

NOW THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. TEMPORARY STAGING EASEMENT.

- A. Subject to the terms and conditions set forth herein, McDonald's hereby grants and conveys to the County, for use by and for the benefit of the County and its employees, agents, representatives, officers, contractors, subcontractors and assigns (collectively, "Grantee Parties"), a temporary staging easement upon, over, through, across and under a portion of Parcel M depicted as Staging Easement ("Staging Easement Area") on a plat entitled "Plat Showing a Staging Easement and Alternate Chiller Easement Area on Parcel M, Central Place, Deed Book 4233, Page 774, Arlington County, Virginia," dated March 15, 2010, last revised July 27, 2010, prepared by Bowman

Consulting Group, Ltd., attached hereto and designated as Exhibit 1 for the rights to, and the purposes of, any and all staging activities for the construction, installation, location, placement, testing, access, inspection, maintenance, repair, replacement, reconstruction and/or removal of the RSAI, including, but not limited to, the location in and the use of such Staging Easement Area for the following: (i) any and all temporary structures, facilities, equipment, motor vehicles, and fencing for completion of the construction of the RSAI, (including, but not limited to, a shop, warehouse, dry house and trailers, water treatment facilities; a batch plant, generator and muck bin); (ii) the installation and use of cranes; (iii) the location and storage of construction equipment and materials; (iv) the performance of sediment control and storm drainage control; (v) temporary utilities for staging activities; (vi) any activities to prepare the Staging Easement Area for use for staging and construction of the RSAI; (vii) location and use of monitoring systems; (viii) surface access upon, over, through, across and in the Staging Easement Area to Parcels O and R, Central Place; and (ix) the right to grade the Staging Easement Area and take any other actions to prepare the Staging Easement Area for use for staging and the purposes set forth herein (all collectively, "Staging Operations"). The legal rights described in and conveyed herein are collectively hereinafter referred to as the "Temporary Staging Easement".

- B. The Temporary Staging Easement shall commence on the Effective Date. Unless otherwise provided in Section C. below, the Temporary Staging Easement shall automatically terminate effective sixty (60) days after receipt by the County of written final acceptance of the RSAI by WMATA.
- C. Notwithstanding any provision in this Agreement to the contrary, if the County and Central Place agree to a change in the location of the Staging Easement Area, then the Temporary Staging Easement conveyed herein shall automatically terminate sixty (60) days following the full execution by Central Place or an affiliate of Central Place and the County of a new easement conveying to the County such relocated staging easement area.
- D. No later than the effective date of termination of the Temporary Staging Easement as provided in subsections B. and C. above, the County shall (i) cease all Staging Operations within the Staging Easement Area; (ii) remove all of its improvements, personal property and equipment from the Staging Easement Area (except for a Chiller installed in the Alternate Chiller Easement Area by the County pursuant to Section 2 below); (iii) restore the Staging Easement Area to the condition thereof existing upon entry by the County; and (iv) vacate the Staging Easement Area; provided, however, that: (a) the County shall not be required to regrade the Staging Easement Area; and (b) if Central Place, by written notice, informs the County that construction of Phase II is to commence in the Staging Easement Area promptly after the termination of the Temporary Staging Easement, then the County shall not be required to seed or install sod on those portions of the Staging Easement Area that were used as a public park on the day prior to the County's entry onto such Staging Easement Area.

2. TEMPORARY EASEMENT FOR CONSTRUCTION AND PLACEMENT OF CHILLER IN ALTERNATE CHILLER EASEMENT AREA.

- A. McDonald's hereby grants and conveys to the County, for use by and for the benefit of the County and the Grantee Parties, a temporary easement for construction and placement of a chiller upon, over, through, across and under a portion of Parcel M depicted as Alternate Chiller Easement Area ("Alternate Chiller Easement Area") on the plat attached hereto as Exhibit 1 for the rights to, and the purposes of construction, location, placement, installation, access, testing, inspection, maintenance, repair, replacement, relocation, reconstruction and/or removal of a Chiller, a protective structure around the Chiller and all utilities and connections (including wires, cables, pipes, ducts, chases and conduits) to construct, locate, operate and maintain the Chiller.
- B. In addition, if the Chiller is located in the Alternate Chiller Easement Area, the County shall have the right: (i) to install utility connections and utility lines across, under and through the Staging Easement Area to the Chiller to operate the Chiller; (ii) an access road between the Chiller and North Moore Street; and (iii) for the purposes described herein, the right of vehicular and pedestrian ingress and egress to and from the Chiller in the Alternate Chiller Easement Area. The legal rights described in and conveyed by Section 2 A. above and this Section 2 B. are collectively hereinafter referred to as "Chiller Easement".
- C. The Chiller Easement shall commence on the Effective Date and shall automatically terminate effective sixty (60) days after receipt by the County of written final acceptance of the RSAI by WMATA.
3. **Representations and Warranties.** Each Party represents and warrants to the other Parties that said Party (i) legally exists, (ii) is in good standing under Federal and/or local laws, as applicable, (iii) is authorized to conduct the business or activities in which it is engaged, and (iv) has all requisite power and authority to enter into this Agreement and to complete the transactions contemplated hereby.
4. **Notices.** All notices required or permitted to be given pursuant to this Agreement shall be in writing and shall be hand-delivered, to the Parties and WMATA hereto at their respective addresses set forth below:

If to McDonald's:

McDonald's Corporation
2915 Jorie Boulevard
Oak Brook IL 60523-1900
Attention: Dept. #091
Director, US Legal Department
LC: 45-0154

with a copy to:

McDonald's Corporation
6903 Rockledge Drive
Suite 1100
Bethesda MD 20817
Attention: Development Director
LC: 45-0154

And a copy to:

Elizabeth A. Karmin, Esq.
DLA Piper (US) LLP
500 Eighth Street, N.W.
Washington, D.C. 20004

If to the County:

Director of Transportation
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 900
Arlington, Virginia 22201

With a copy to:

Capital Project Senior Manager/RSAIP Project Manager
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 900
Arlington, Virginia 22201

With a copy to:

Office of County Attorney
2100 Clarendon Boulevard
Arlington, Virginia 22201
Attention: County Attorney

5. **No Rights in Third Parties.** The Parties mutually agree that no provisions of this Agreement shall create in the public, or in any person or entity other than those signing this Agreement as parties hereto, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for personal injury, property damage, or breach of contract pursuant to the terms of this Agreement or otherwise.
6. **Easement Rights.** The easement rights granted pursuant to this Agreement will be fully exercisable by the County and are not inconsistent with any rights or permissions previously granted by McDonald's or its predecessors in title. Notwithstanding anything to the contrary contained in this Agreement concerning termination of the Agreement, the Agreement shall terminate when Central Place, or

an affiliate of Central Place, commences construction of the residential building depicted in the Site Plan which contains Parcel M.

7. **Governing Law.** This Agreement shall be interpreted and construed in accordance with the laws of the Commonwealth of Virginia (without reference to conflicts of laws principles). All legal actions instituted by the Parties concerning this Agreement shall be filed solely in the Arlington County General District or Circuit Court.
8. **Captions.** Captions in this Agreement are for convenience of reference only and shall not be considered in the interpretation of this Agreement.
9. **Number.** Whenever required by the context, the singular shall include the plural and vice versa.
10. **Severability.** In the event that one or more of the provisions of this Agreement shall be held to be illegal, invalid or unenforceable, each such provision shall be deemed severable and the remaining provisions of this Agreement shall continue in full force and effect.
11. **No Oral Modifications or Waivers.** No modification of this Agreement shall be valid or effective unless the same is in writing and signed by each Party hereto. No purported waiver of any of the provisions of this Agreement shall be valid or effective unless the same is in writing and signed by the Party against whom it is sought to be enforced.
12. **Exhibits.** All exhibits referenced in this Agreement are incorporated in this Agreement by this reference as if fully set forth herein.
13. **Recitals.** The Recitals are fully incorporated into this Agreement.
14. **Recordation; Binding Effect.** This Agreement may be recorded among the Land Records, by any of the Parties hereto. All of the rights and obligations of this Agreement shall run with the land to which such rights and obligations pertain. This Agreement shall be binding upon, and inure to the benefit of the County and its successors, in title and interest, and assigns.
15. **Effective Date.** The Effective Date of this Agreement shall be the date that this Agreement is last signed by the Parties hereto.

EXHIBITS

Exhibit 1 "Plat Showing A Staging Easement and Alternate Chiller Easement Area on Parcel M, Central Place, Deed Book 4233, Page 774, Arlington County, Virginia," Dated March 15, 2010, last revised, July 27, 2010.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

GRANTOR:

MCDONALD'S USA LLC,
a Delaware limited liability company

By: *Bruce Neumann*
Name: Bruce Neumann
Title: Senior Counsel

STATE OF ILLINOIS

SS:

COUNTY OF DUPAGE

The foregoing instrument was acknowledged before me on this 3rd day of August,
2010, by Bruce Neumann,
Senior Counsel on behalf of McDonald's USA LLC.

Notary Public: *Laura Jo Marzec*
My Commission Expires: January 25, 2014



CONSENTED TO AND ACCEPTED this _____ day of _____,
20____, on behalf of The County Board of Arlington County, Virginia, pursuant to a
motion of the said Board duly adopted on _____, 2010.

By: _____

Title: _____
For The County Board of Arlington County, Virginia

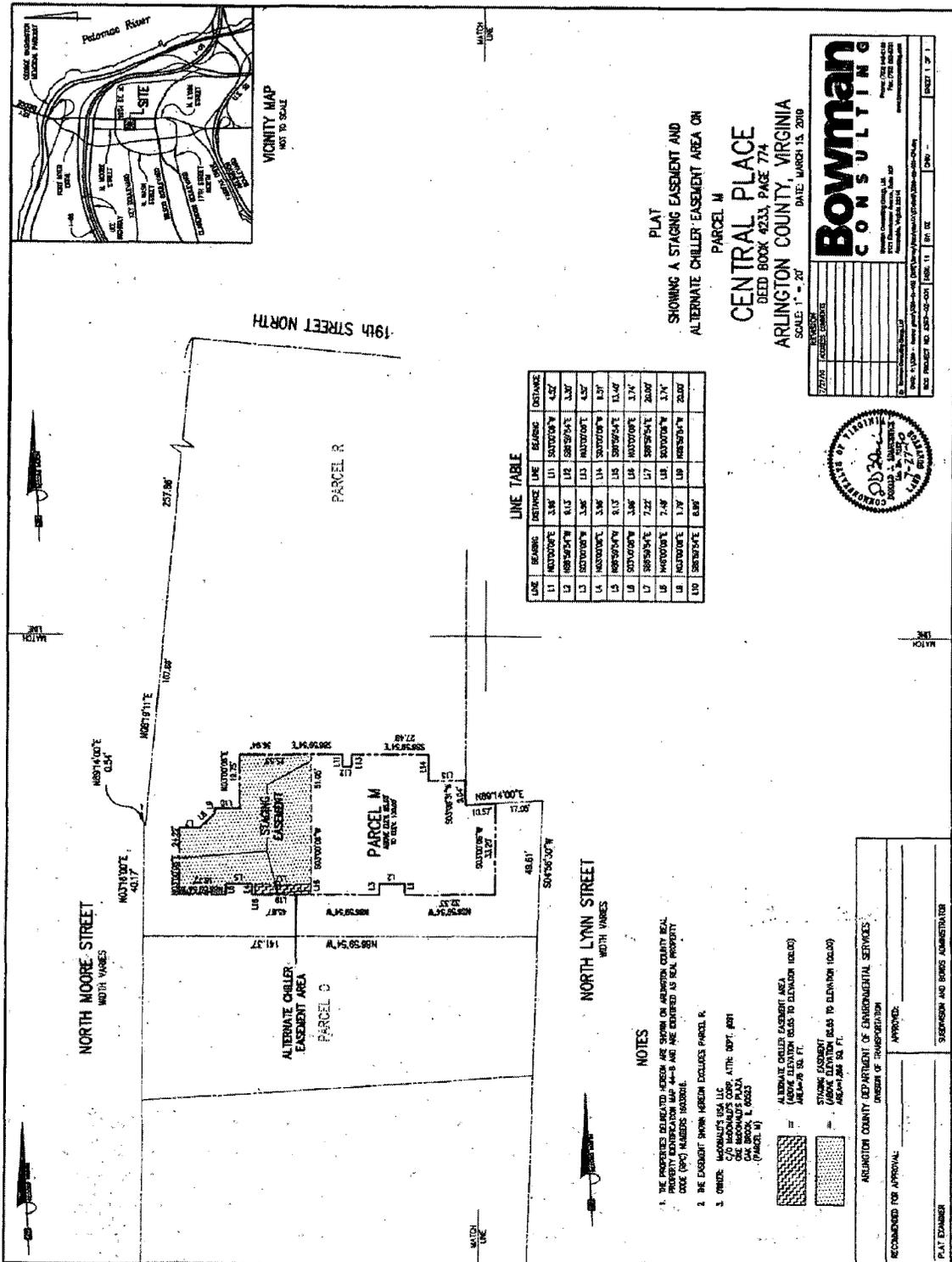
COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON, to-wit:

The foregoing instrument was acknowledged before me by _____
_____, on behalf of THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA, a body corporate, this ____ day of _____, 2010.

Notary Public: _____

My Commission expires: _____

APPROVED as to form: _____
COUNTY ATTORNEY



PLAT
SHOWING A STAGING EASEMENT AND
ALTERNATE CHILLER EASEMENT AREA ON
PARCEL M

CENTRAL PLACE
DEED BOOK 4233, PAGE 774
ARLINGTON COUNTY, VIRGINIA
SCALE: 1" = 20'
DATE: MARCH 15, 2018

Bowman CONSULTING
2017 Bowman Avenue, Suite 207
Arlington, Virginia 22204
Tel: 703.281.0022
www.bowmanconsulting.com

DATE: MARCH 15, 2018
SHEET 1 OF 1



- NOTES**
- THE PROPERTIES DELINEATED HEREON ARE SHOWN ON ARLINGTON COUNTY REAL PROPERTY IDENTIFICATION MAP 44-8 AND ARE COVERED AS REAL PROPERTY CODE (RPC) NUMBERS 1000000.
 - THE EASEMENT SHOWN HEREON EXCLUDES PARCEL R.
 - OWNER: US BANK, US LLC
C/O MORGAN STANLEY & CO. BANKING CORP., ATTN: 8071, 801
C/O MORGAN STANLEY & CO. BANKING CORP., ATTN: 1, 0005
(PARCEL M)

ALTERNATE CHILLER EASEMENT AREA
(AS SHOWN ELEVATION BEGINS TO DEVIATE FROM 100.00)

STAGING EASEMENT
(AS SHOWN ELEVATION BEGINS TO DEVIATE FROM 100.00)

ARLINGTON COUNTY DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF TRANSPORTATION

RECOMMENDED FOR APPROVAL: _____

APPROVED: _____

PREPARED BY: _____

DATE: _____

SUPERVISOR AND BOND ADMINISTRATOR: _____

PLAT EXAMINER: _____

Vicinity Map
Central Place
RPC # 16038016
Staging and Chiller Easement with McDonalds USA LLC



0 200 Feet

Pursuant to Section 54.1-402 of the Code of Virginia, any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for Flood plain determination. Variations from the Footprints are Approximate.

Aerial Photography from February 2009
Map prepared by Arlington County GIS Mapping Center
Produced on 08 August 2012

ARLINGTON VIRGINIA

