



## ARLINGTON COUNTY, VIRGINIA

### County Board Agenda Item Meeting of October 23, 2010

**DATE:** September 14, 2010

**SUBJECT:** Approval of the Appointment of Substitute Trustees under an Affordable Housing Investment Fund/ Home Program Deed of Trust naming Arlington County, Virginia, as Lender, and Authorization of the County Manager and the Substitute Trustees to Subordinate the Affordable Housing Investment Fund/ Home Program Deed of Trust to a Deed of Public Storm Sewer Easement to be Conveyed to the County on Property known as 4439 North Pershing Drive, Arlington, Virginia (RPC #20024239).

#### **C. M. RECOMMENDATION:**

1. Approve the appointment of substitute trustees for an Affordable Housing Investment Fund/Home Program (“AHIF”) Deed of Trust, subject to approval of the substitution document as to form by the County Attorney, on property now known as 4439 North Pershing Drive, Arlington, Virginia (RPC #20024239).
2. Authorize the County Manager, or his designee, to execute the document appointing Stephen A. MacIsaac and Ara Tramblian, as Substitute Trustees, either of whom may act, under the AHIF Deed of Trust, subject to approval as to form by the County Attorney.
3. Authorize the County Manager, or his designee, and the Substitute Trustees to execute the Deed of Easement to subordinate the lien of the AHIF Deed of Trust on the subject property to the Deed of Easement, subject to approval as to form by the County Attorney.

**ISSUES:** This is a request for the approval of the appointment of substitute trustees under the AHIF Deed of Trust, and authorization of the County Manager and the Substitute Trustees to subordinate the AHIF Deed of Trust to a Deed of Public Storm Sewer Easement to be conveyed to the County, on property on which the County is a lien holder under the AHIF Deed of Trust. Substitute trustees must be appointed because the original trustees are no longer associated with Arlington County. There are no outstanding issues.

**SUMMARY:** The appointment of substitute trustees is necessary to replace the original trustees under the AHIF Deed of Trust on the property for the purpose of consenting to the

County Manager:

County Attorney:

Staff: Betsy Herbst, Real Estate Bureau, DES

17.

subordination of the lien of the AHIF Deed of Trust to the conveyance to the County of a public storm sewer easement on the property. The storm sewer easement is a required off-site easement to be conveyed to the County under the conditions of Site Plan #405. In order for the easement to be in an acceptable form to the County, the lien holders and trustees under the deeds of trust on the property, including the County as a lien holder and the County's trustee(s) under an AHIF Deed of Trust, must approve and consent to the subordination of their lien interests to the Deed of Easement, prior to its recordation in the land records.

**BACKGROUND:** The subject property is located on the northwest side of N. Pershing Drive adjacent to Buckingham Village 1, between 3<sup>rd</sup> Street N. and 2<sup>nd</sup> Street N. (see Attachments 1 and 2, Vicinity Maps). On April 20, 1999, Culpepper Garden, III, Incorporated ("Culpepper Garden") executed an AHIF Deed of Trust in favor of Arlington County, as lender, dated April 20, 1999, recorded in Deed Book 2976, Page 684 among the Arlington County land records, securing repayment of a promissory note and other loan program requirements. The AHIF Deed of Trust provides that the Lender may remove the original trustees and appoint successor trustee(s) to any trustee appointed thereunder.

**DISCUSSION:** The current owner of the subject property, Culpepper Garden, was recently contacted by the developer of Buckingham Village I, Paradigm Development Co., for the purpose of requesting a sewer easement on the property that will benefit the new development. As provided in the site plan conditions, the developer is required to obtain easements necessary for the development of the Site Plan, which in this case included an off site easement on the subject Culpepper Garden property. The Deed of Easement, attached hereto as Exhibit A, must be signed by the owners and all lien holders on the property.

The AHIF Deed of Trust (attached hereto as Exhibit B) securing Arlington County, dated April 20, 1999, appointed Barbara S. Drake and Peter H. Maier as Trustees, both of whom are no longer employed by Arlington County, and are not available to act in the capacity of trustee. The AHIF Deed of Trust permits substitution of the trustees as necessary from time to time in the County's discretion. The substitution of trustees is necessary at this time so that the successor trustees can consent to the conveyance to the County of a sewer easement on the subject property, which is being required to be obtained as an off-site easement under Site Plan #405.

The County Board is being requested to approve the appointment of Stephen A. MacIsaac and Ara Tramblian as substitute trustees under the AHIF Deed of Trust, and to authorize the substitute trustees, either of whom may act, to execute the Deed of Easement, subordinating the lien of the Deed of Trust to the public storm sewer easement being conveyed to the County. The Deed of Trust must be subordinated to the easement so that the County's interest in the easement is not affected by a default under the Deed of Trust. The easement does not materially detract from the value of the secured property under the AHIF Deed of Trust.

**FISCAL IMPACT:** None.

**CONCLUSION:** It is recommended that the County Board approve the appointment of substitute trustees and authorize the County Manager and the substitute trustees to execute the

Deed of Easement, for the purpose of subordinating the lien of the AHIF Deed of Trust to the public storm sewer easement being conveyed to the County by Culpepper Garden III, Inc.

EXHIBIT A  
Deed of Easement

EXHIBIT B  
AHIF Deed of Trust

RPC # 20024239

Return original document to:  
Richard T. Lunger III, Esq.  
Bean, Kinney & Korman, P.C.  
2300 Wilson Boulevard, 7<sup>th</sup> Floor  
Arlington, Virginia 22201

**DEED OF PUBLIC STORM SEWER EASEMENT**

THIS DEED OF PUBLIC STORM SEWER EASEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by **CULPEPPER GARDEN III, INC.**, a Virginia non-stock corporation (hereinafter "Owner"), GRANTOR, **CHARLES C. FAMULINER, SUBSTITUTE TRUSTEE** and/or **JAMES B. PELUSO, SUBSTITUTE TRUSTEE**, either of whom may act (the "First Deed of Trust Trustee"), **ARLINGTON COUNTY**, a body corporate and politic (the "Second Deed of Trust Lender"), **STEPHEN A. MACISAAC, SUBSTITUTE TRUSTEE** and **ARA TRAMBLIAN, SUBSTITUTE TRUSTEE** (either of whom may act (the "Second Deed of Trust Trustees")) and **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body corporate and politic (the "County"), GRANTEE.

\*\*\* RECITALS \*\*\*

R-1: The Owner is the sole owner of certain real property located in Arlington County, Virginia, by virtue of a Deed recorded in Deed Book 2976, at Page 661, among the land records of Arlington County, Virginia ("Land Records") (hereinafter referred to as the "Property"); and

R-2: By virtue of a certain Deed of Trust recorded in Deed Book 2976 at Page 665 (the "First Deed of Trust") among the Land Records, the Property was conveyed in trust to Michael Klion, Trustee, to secure an indebtedness to First Deed of Trust Lender; and

R-3: By Deed of Removal of Trustee and Appointment of Substitute Trustee, the First Deed of Trust Lender removed Michael Klion as Trustee and substituted and appointed John W. Shanley as Substitute Trustee under the First Deed of Trust in the place and stead of Michael Klion; and

R-4: By Substitution of Trustee Under Deed of Trust recorded in Deed Book \_\_\_\_\_ at Page \_\_\_\_\_ among the Land Records, Charles C. Famuliner and James B. Peluso were appointed as Substitute Trustee(s), either of whom may act, under the First Deed of Trust in the place and stead of John W. Shanley; and

R-5: By virtue of a certain Affordable Housing Investment Fund/Home Program Deed of Trust recorded in Deed Book 2976 at page 684 (the "Second Deed of Trust") among the Land Records, the Property was conveyed in trust to the Second Deed of Trust Trustees to secure an indebtedness to Second Deed of Trust Lender (the First Deed of Trust Lender and the Second Deed of Trust Lender are collectively referred to as the "Lenders" and the First Deed of Trust Trustee and the Second Deed of Trust Trustees are collectively referred to as the "Trustees");

R-6: By Appointment of Substitute Trustee recorded in Deed Book \_\_\_\_\_ at Page \_\_\_\_\_

\_\_\_\_\_ among the Land Records, Stephen A MacIsaac and Ara Tramblian were appointed as Substitute Trustees, either of whom may act, under the Second Deed of Trust in the place and stead of Barbara S. Drake and Peter H. Maier, Trustees; and

R-7 It is the desire and intent of the Owner to create, establish, grant and convey unto the County, a public 10' storm sewer easement, over, under, across and through the Property, as shown on a plat attached hereto and made part hereof, entitled "PLAT SHOWING PUBLIC STORM SEWER EASEMENT ON PARCEL C CULPEPPER GARDENS DEED BOOK 2971, PAGE 1575 ARLINGTON COUNTY, VIRGINIA" prepared by Urban, Ltd., dated June, 2008, certified on December 11, 2008, and approved by the Arlington County Department of Environmental Services Transportation Division on January 13, 2009 (the "Plat").

**\*\*\* CONVEYANCES \*\*\***

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner does hereby dedicate, create, grant and convey unto the County, its successors and assigns, an easement for public storm sewer purposes over, under, across and through the Property described as "PUBLIC 10' STORM SEWER EASEMENT HEREBY GRANTED (Area = 215 S.F.)", in the location and dimensions shown on the Plat (the "Easement") for the purposes of construction, maintenance, removal, repair, reconstruction, replacement and relocation of present or future public storm sewer facilities within the said Easement area. The aforesaid Easement is subject to the following terms and conditions.

1. The County and its agents shall have full and free use of the Easement for the purposes named, and shall have all rights and privileges reasonably necessary to exercise the use of the Easement, including the right to access to and from the Easement, and the right to use adjoining land of the Owner where necessary; provided, however, that this right to use the adjoining land shall be exercised only during periods of actual construction, maintenance, reconstruction, repair, replacement, removal and relocation, and further, this right shall not be construed to allow the County to erect any building, structure or facility of a permanent nature on such adjoining land.
2. The County shall have the right to trim, cut and remove trees, shrubbery, fences, structures or other obstructions or facilities in or reasonably near the Easement; provided, however, that the County at its own expense, shall restore, as nearly as practicable, the premises to their original condition, such restoration to include the backfilling of trenches, the replacement of shrubbery, the reseeded or resodding of lawns, but not the replacement of structures, trees or obstructions.
3. The Owner reserves the right to use the Property in any manner not inconsistent with the Easement herein conveyed, or does not interfere with the use of the Easement for the purposes named.
4. The Owner covenants that the Owner is seized of and has the right to convey the Easement, and that Owner shall make no use of the Easement area which is inconsistent with the easement rights hereby granted.

## SUBORDINATION

THIS DEED FURTHER WITNESSETH, that in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Trustees, as authorized to act by the Lenders, as shown by their execution herein, do hereby subordinate the liens of both the First Deed of Trust and the Second Deed of Trust to the Easements granted herein as shown on the Plat.

## COVENANTS REAL

The Owner declares that the agreements and covenants stated in this Deed are not covenants personal to the Owner, but are covenants real, running with the land.

This Deed shall be construed, interpreted and applied according to the laws of the Commonwealth of Virginia.

The Recitals are incorporated into this Deed of Easement.

*[SIGNATURES APPEAR ON FOLLOWING PAGES]*

WITNESS the following signatures and seals:

**GRANTOR:**

CULPEPPER GARDEN III, INC.,  
a Virginia non-stock corporation

By: Kathleen Ross (SEAL)  
Name: Kathleen Ross  
Title: Vice President, Board of Directors

COMMONWEALTH OF VIRGINIA,  
COUNTY OF ARLINGTON:

The foregoing instrument was acknowledged before me this 23 day of December, 2009, by Kathleen Ross, as Vice President of CULPEPPER GARDEN III, INC., a Virginia non-stock corporation.

Clara M Cape  
Notary Public

My Commission expires: June 30, 2013

Notary Registration No: 303230

**FIRST DEED OF TRUST TRUSTEE:**

*James B. Peluso*

**JAMES B. PELUSO, SUBSTITUTE TRUSTEE**

STATE OF VIRGINIA:

COUNTY OF Richmond : to-wit  
City

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of August, 2010, by ~~CHARLES C. FAMULINER~~, Substitute Trustee.

James B. Peluso

Brad Everett Rader  
Notary Public 7095622  
Commonwealth of Virginia  
My Commission Expires 02/28/2011

*Brad Everett Rader*  
Notary Public

My Commission expires: 02/28/2011  
Virginia Notary Registration #: 7095622

**SECOND DEED OF TRUST LENDER:**

**ARLINGTON COUNTY, a body corporate and politic**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_:  
COUNTY OF \_\_\_\_\_: to-wit

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_ the \_\_\_\_\_ of ARLINGTON COUNTY, a body corporate and politic.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_  
Virginia Notary Registration #: \_\_\_\_\_

**SECOND DEED OF TRUST TRUSTEE:**

**STEPHEN A. MACISAAC, SUBSTITUTE TRUSTEE**

STATE OF VIRGINIA:

COUNTY OF \_\_\_\_\_: to-wit

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010, by **STEPHEN A. MACISAAC**, Substitute Trustee.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

Virginia Notary Registration #: \_\_\_\_\_

**SECOND DEED OF TRUST TRUSTEE:**

\_\_\_\_\_  
**ARA TRAMBLIAN, SUBSTITUTE TRUSTEE**

STATE OF VIRGINIA:

COUNTY OF \_\_\_\_\_: to-wit

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010, by **ARA TRAMBLIAN**, Substitute Trustee.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

Virginia Notary Registration #: \_\_\_\_\_

**GRANTEE:**

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2010, on behalf of the County Board of Arlington County, Virginia, pursuant to a resolution, motion, or action of the said Board duly adopted on November 14, 2009.

By: \_\_\_\_\_  
For the County Board of Arlington County, Virginia

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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: \_\_\_\_\_

Notary Registration No: \_\_\_\_\_

APPROVED AS TO FORM: \_\_\_\_\_  
COUNTY ATTORNEY

**CURVE TABLE**

NO.	RADIUS	ARC	DELTA	TANGENT	CHORD	BEARING
1	20.00'	31.42'	90°00'00"	20.00'	28.28'	S02°18'30"W
2	50.00'	38.49'	44°06'26"	20.26'	37.55'	N69°21'44"E

**LINE TABLE**

NO.	BEARING	LENGTH
L1	S42°22'27"E	9.43'
L2	N42°41'30"W	9.55'
L3	N47°34'22"E	17.32'
L4	N42°41'30"W	9.37'
L5	N47°34'22"E	15.00'

**NOTES**

1. THE PROPERTY DELINEATED HEREON APPEARS ON ARLINGTON COUNTY REAL PROPERTY IDENTIFICATION MAP NO.'S 62-12 AND 63-9 AS RPC #20024239.
2. THIS PROPERTY IS SUBJECT TO THE CONTROL OF SITE PLAN #88 APPROVED BY THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA ON JULY 15, 1998, AND APPROVAL OF THIS PLAT NEITHER ENLARGES NOR REDUCES THE OBLIGATIONS IMPOSED BY THIS SITE PLAN, AND ANY AMENDMENTS AS THEY RELATE TO THIS PROPERTY. SITE PLAN #88 IS ON FILE IN THE OFFICE OF THE ZONING ADMINISTRATOR OF ARLINGTON COUNTY, VIRGINIA.
3. OWNER(S): CULPEPPER GARDEN III, INC.  
DB. 2976 PG. 661

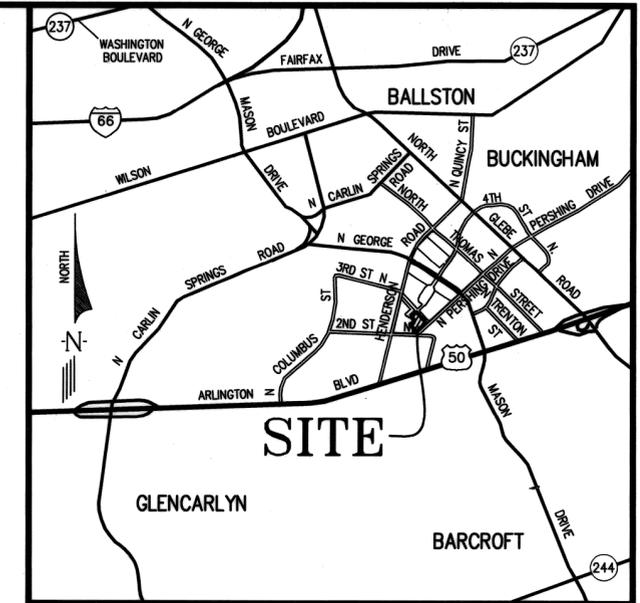
**SURVEYOR'S CERTIFICATE**

I, PHILLIP A. BLEVINS, A DULY CERTIFIED LAND SURVEYOR IN THE COMMONWEALTH OF VIRGINIA, DO HEREBY CERTIFY THAT THE LAND EMBRACED WITHIN THIS PLAT IS NOW IN THE NAME OF

CULPEPPER GARDEN III, INC.,  
AS ACQUIRED IN DEED BOOK 2976 AT PAGE 661,

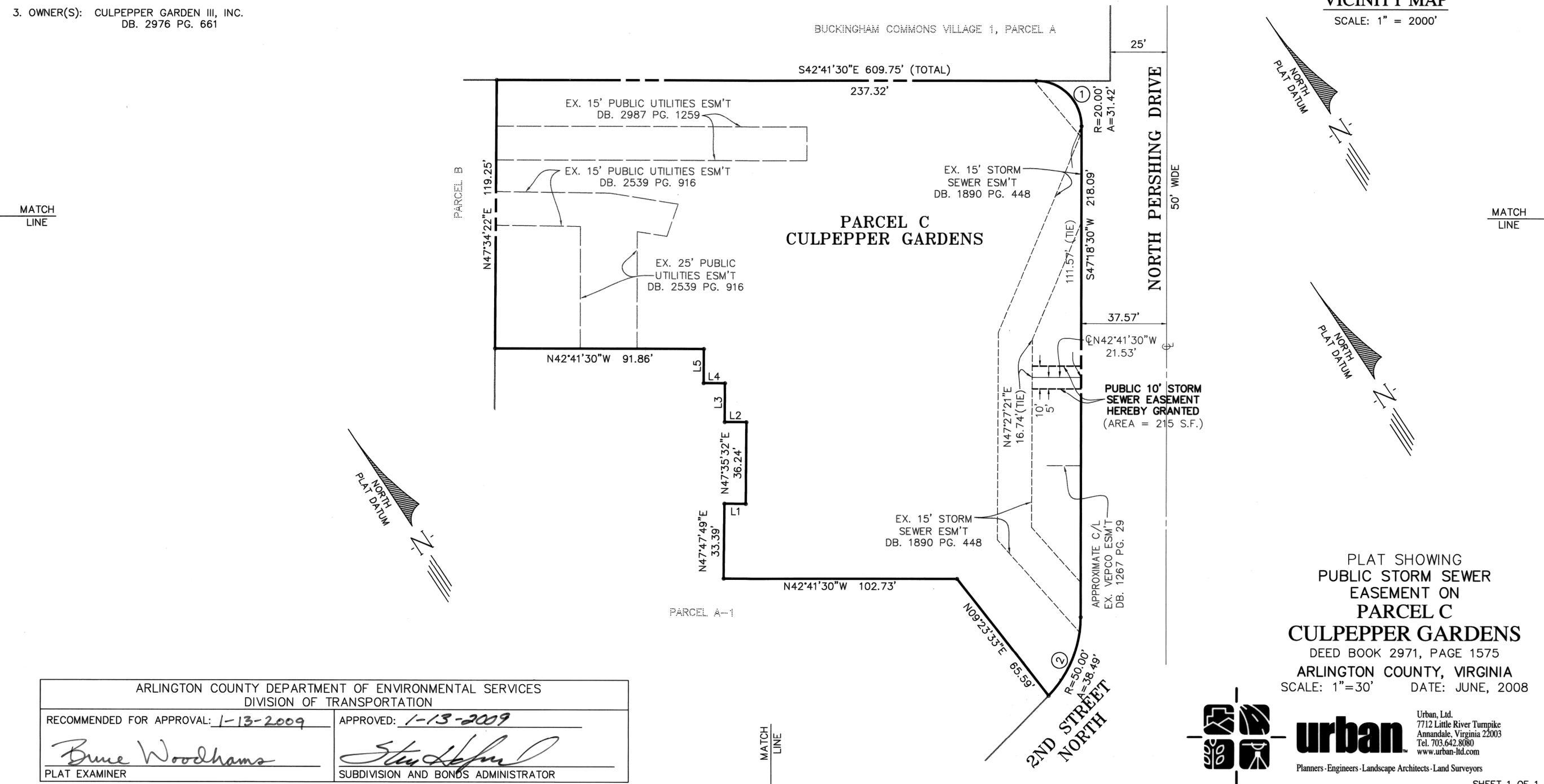
AMONG THE LAND RECORDS OF THE COUNTY OF ARLINGTON, VIRGINIA AND THAT THIS PLAT IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

*Phillip A. Blevins*  
PHILLIP A. BLEVINS LS# 1364 DATE



**VICINITY MAP**

SCALE: 1" = 2000'



C:\Jobs\BUCKINGHAM APTS\PLATS\11EP-1680-OS STM 1.dwg, zcf

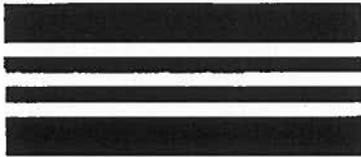
ARLINGTON COUNTY DEPARTMENT OF ENVIRONMENTAL SERVICES DIVISION OF TRANSPORTATION	
RECOMMENDED FOR APPROVAL: 1-13-2009 <i>Bruce Woodhams</i> PLAT EXAMINER	APPROVED: 1-13-2009 <i>Steve Hefner</i> SUBDIVISION AND BONDS ADMINISTRATOR

PLAT SHOWING  
PUBLIC STORM SEWER  
EASEMENT ON  
PARCEL C  
**CULPEPPER GARDENS**  
DEED BOOK 2971, PAGE 1575  
ARLINGTON COUNTY, VIRGINIA  
SCALE: 1"=30' DATE: JUNE, 2008

**urban**  
Urban, Ltd.  
7712 Little River Turnpike  
Annandale, Virginia 22003  
Tel. 703.642.8080  
www.urban-ltd.com

Planners · Engineers · Landscape Architects · Land Surveyors

SHEET 1 OF 1



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**Received and Recorded  
In the Office of the  
Clerk of the Circuit Court  
of Arlington County, Virginia  
David A. Bell, Clerk**

Document Number: 99110123 **Book/Page: 2976 /0684** Clerk ID: LSMITH  
Trans-Code: TRUST Trans-Name: DEED OF TRUST  
Date Recorded: 04/20/99 Time Recorded: 03:02 PM  
Total Pages: 12 Doc Date: Number RPCS: 0  
Received Of: WALKER TITLE In Re: CULPEPPER

Consideration: \$ 1,367,000.00

<input checked="" type="checkbox"/> (039) State Tax:	\$2,050.50	<input type="checkbox"/> (214) Falls Church Tax:	\$0.00
<input checked="" type="checkbox"/> (213) Arlington Co. Tax:	\$683.50	<input type="checkbox"/> (222) Falls Church Trf:	\$0.00
<input type="checkbox"/> (212) Arlington Trf:	\$0.00	<input type="checkbox"/> (223) Falls Church Grntr:	\$0.00
<input type="checkbox"/> (038) Va Grntr:	\$0.00		
<input type="checkbox"/> (220) Arlington Grntr:	\$0.00		
<input checked="" type="checkbox"/> (301) Clerk Fee:	\$20.00		
<input checked="" type="checkbox"/> (145) St Library:	\$1.00		
<input checked="" type="checkbox"/> (106) Tech Fee:	\$3.00		

Document Total: \$ 2,758.00

**READ THIS:  
IMPORTANT  
Do Not Detach This  
Page From This Document**

**This certificate annexed constitutes the Clerk's endorsement required by sections 17-59, 17-79, and 58.1-802 of the code of Virginia.**

**THE ATTACHED DOCUMENT HAS BEEN RECORDED**

**THIS IS NOT A BILL**

**AFFORDABLE HOUSING INVESTMENT FUND/HOME PROGRAM  
DEED OF TRUST**

NOTICE: The Debt Secured Hereby Is Subject To Call in Full or the Terms Thereof Being Modified in the Event of Sale, Conveyance or Change in Use of the Property Conveyed.

THIS DEED OF TRUST is made 24<sup>th</sup> of April 1999 (date) among CULPEPPER GARDEN III,

INCORPORATED, (the "Grantor"), BARBARA S. DRAKE, a resident of Arlington County, Virginia, and PETER H. MAIER, a resident of Arlington County, Virginia, trustees (either of whom may act and who are referred to herein as "Trustees"), and the Beneficiary, Arlington County ("Lender").

Grantor, in consideration of the indebtedness herein recited and the trust herein created, hereby grants and conveys to Trustees, in trust, with General Warranty and English Covenants of Title, with power of sale, the following described property located in Arlington, Virginia:

**Legal Description: Parcel "C"**

BEGINNING at a pipe found on the northerly right-of-way line of 2<sup>nd</sup> STREET NORTH, on the southerly property line of the land of ARLINGTON RETIREMENT HOUSING CORPORATION, A VIRGINIA CORPORATION, said pipe being at the end of a curve in the northerly right-of-way line of NORTH PERSHING STREET;

Thence departing said right-of-way of 2<sup>nd</sup> STREET NORTH and running through the land of ARLINGTON RETIREMENT HOUSING CORPORATION, A VIRGINIA CORPORATION, on the following courses and distances: N 15°05'03" E, 65.59 feet to a point; N 37°00'00" W, 102.73 feet to a point; N 53°29'19" E, 33.39 feet to a point on the face of the existing building; S 36°40'57" E, 9.43 feet along the face of the existing building to a building corner; N 53°17'02" E, 36.24 feet along the face of the existing building to a building corner; N 37°00'00" W, 9.55 feet to a point on the face of the existing building; N 53°15'52" E, 17.32 feet to a point; N 37°00'00" W, 9.37 feet to a point; N 53°15'52" E, 15.00 feet to a point; N 37°00'00" W, 91.86 feet to a point; N 53°15'52" E, 119.25 feet to a point lying on the southwesterly property line of BUCKINGHAM, SECTION 9. Thence, proceeding along said southwesterly property line of BUCKINGHAM, SECTION 9, S 37°00'00" E, 237.32 feet to a pipe; Thence along the arc of a circle 20.00 feet in radius, curving to the right, an arc distance of 31.41 feet, the chord of said arc running S 08°00'11" W, 28.28 feet to a pipe on the northerly right-of-way line of NORTH PERSHING DRIVE; Thence with said northerly right-of-way line of NORTH PERSHING DRIVE S 53°00'00" W, 218.09 feet to a pipe; Thence

RPC# 20024001

WALKER TITLE & ESCROW COMPANY, INC.  
WH# 9702728  
CL

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along the arc of a circle 50.00 feet in radius, curving to the right, an arc distance of 38.49 feet, the chord of said arc running S 75°03'11" W, 37.55 feet to the point of BEGINNING, and containing for the parcel 48,030 SQUARE FEET or 1.1026 ACRES OF LAND.

The property covered by this Deed of Trust is more particularly described as follows: 4435 North Pershing Drive, Arlington, Virginia. Together with all the improvements now or hereafter erected on the property, and all easements, rights, privileges, appurtenances, rents (subject however to the rights and authorities given herein to Borrower to collect and apply such rents), and fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property are herein referred to as the "Property".

This conveyance is made to secure to the Lender (a) the repayment of the indebtedness evidenced by a Promissory Note dated April 20, 1999 (herein "Note") made by Culpepper Garden III, Incorporated (the "Borrower"), in the principal sum of One Million Three Hundred Sixty-seven Thousand dollars (\$1,367,000); (b) the performance of the covenants and agreements herein contained and/or as set forth in the Affordable Housing Investment Fund/HOME (AHIF/HOME) Program Agreement dated April 20, 1999 and (c) the repayment of any future advances made to Borrower by Lender, pursuant to paragraph 16 hereof ("Future Advances").

The Deed of Trust shall also secure reimbursement to the Lender for any and all costs, attorney's fee and other expenses of whatever kind incurred by the Trustees or the Lender in connection with enforcement of grantor's obligations under this Deed of Trust or related documents, including by way of illustration and not limitation obtaining possession of the Property, the protection and/or preservation of the Property, and the collection of any sum or sums secured thereby, any litigation concerning the Property or this Deed of Trust, releasing this Deed of Trust and any additional examination of title or execution of further assurances or physical survey of the

Property which may be required by either the Trustees or the Lender for any reason in good faith, and all of which costs and expenses shall be the obligation of and be paid by the Grantor.

It is further covenanted:

1. **Charges; Liens.** Grantor shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property, which are capable of attaining a priority over this Deed of Trust. Grantor shall promptly furnish to Lender all notices of obligations referred to in this paragraph, and in the event Grantor shall make payment directly and promptly furnish to Lender receipts evidencing such payments. Except for liens identified in paragraph 19 of this Exhibit C, Grantor shall promptly discharge any lien which has priority over this Deed of Trust; provided that Grantor shall not be required to discharge any such lien so long as Grantor shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to Lender, or shall in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof.

Upon default in any such payment, the debt hereby secured shall immediately become due and payable; or, at the option of the Lender, Lender may make such payment and the expense shall be a charge hereby secured and bear compound interest at the rate of 10% per annum from the date of such payment; provided, that in the event the Lender demands reimbursement from the Grantor for any such advance, and reimbursement be not immediately made, then the entire debt secured hereby shall immediately become due and payable at the option of the Lender.

2. **Protection of Lender's Security.** If Grantor fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property including but not limited to, proceedings for eminent domain, proceedings for insolvency, actions to enforce applicable laws, or arrangements or proceedings involving bankruptcy, then Lender at Lender's option, upon notice to the U.S.

Department of Housing and Urban Development ("HUD"), may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including but not limited to, disbursement of reasonable attorney's fee and entry upon the Property to make repairs. Any amounts disbursed by Lender pursuant to this paragraph shall become additional indebtedness of Grantor secured by this Deed of Trust. Unless the Lender agrees to other terms of payment, such amounts shall be payable upon notice from Lender to Grantor requesting payment thereof. Nothing contained in this paragraph shall require Lender to incur any expense or take any action hereunder.

3. **Hazard Insurance.** Grantor shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire and other hazards, casualties and contingencies as Lender may require and in such amounts and for such periods as Lender may require, but at no time shall such hazard insurance be in an amount less than \$1,500,000 or to the maximum insurable value thereof. Such insurance policies shall designate the Lender as an additional insured and shall provide for 30 days advance notice to Lender of cancellation or nonrenewal of the policy.

The insurance carrier providing the insurance shall be chosen by Grantor and approved by Lender.

All insurance policies and renewals thereof shall be in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, and Grantor shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. In the event of loss, Grantor shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Grantor.

If Grantor fails to maintain the required insurance coverage, the Lender may, at its option, obtain the insurance in any form and amount and with any insurance carrier Lender chooses. Any

such sums expended shall become additional indebtedness of the Grantor secured by this Deed of Trust.

Unless Lender and Grantor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to the Grantor.

In the event of foreclosure under this Deed of Trust, any right, title and interest of the Grantor in and to any insurance policy then in force, or the proceeds of any insurance policy resulting from damage to the Property prior to the foreclosure sale, or any refund of unearned premium, shall pass to the Lender who may receive on behalf of the Grantor the cancellation value or proceeds and may apply the same to the extinguishment of the indebtedness secured by this Deed of Trust.

If the Property is abandoned by Grantor, or if Grantor fails to respond to Lender within 30 days from the date notice is sent by Lender to Grantor that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized, in conjunction with HUD, to collect and apply the insurance proceeds at Lender's option, subject to HUD's approval, either to restoration or repair of the Property or to the sums secured by this Deed of Trust. All sums due and collectible by the Lender under this paragraph will not exceed the total indebtedness secured by this Deed of Trust.

**4. Preservation and Maintenance of the Property.** The Grantor shall keep the Property in good repair, and shall not commit waste or permit the impairment or deterioration of the Property.

5. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Grantor notice prior to any such inspection.

6. **Event of Default.** If any payment with respect to any obligation secured under this Deed of Trust, together with any related late charge, is not paid within 15 days of when it is due this shall constitute an event of default. In addition, each of the events set forth below shall constitute an event of default under this Deed of Trust if not corrected within 30 days after Lender notifies Grantor in writing that it considers any of the following to have occurred: (1.) Grantor has failed to meet or perform any of its obligations secured by this Deed of Trust; (2.) Grantor has failed to meet or perform any provision or covenant of the contract documents as defined in paragraph 1 of the Affordable Housing Investment Fund/HOME Program Agreement between Grantor and Lender; (3.) any provision, agreement or covenant of this Deed of Trust or of the Deed of Easement and Declaration of Restrictive Covenants is not met or performed as provided herein; or, (4.) any material representation or warranty given by or on behalf of the Grantor proves to have been false when given.

7. **Remedies.** In any event of default, the Lender may declare, any one, several or all obligations secured under this Deed of Trust to be in default, and all monetary obligations are then declared to be immediately due and payable in full. In addition, upon declaration of default the Lender or the Trustees, upon the demand of the Lender, by agent or in person, shall be entitled: to take immediate possession of the Property; to enter upon or into the Property with or without force or process of law; to manage or hire another person to manage the Property; to collect rents of the Property, including those past due; to rent the Property at such rental and for such term and upon such conditions as the Lender or Trustee, whoever is acting, shall deem proper; to make any

commercially reasonable and/or necessary repairs to the Property or to replace all or any part of the same; to apply any rents actually collected to the amount due under this Deed of Trust.

8. **Waiver and Forbearance.** Any forbearance by Lender in exercising any right or remedy either hereunder or otherwise afforded by applicable law, shall not constitute a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

Any waiver by the Lender or Trustee will be effective only if in writing executed by the Lender or Trustee and only for the specific purpose and instance granted, and delay in the enforcement or requirement of any provision will not be a waiver or preclude the exercise of any such right or remedy or event of default. Such waiver shall be effective only for the specific instance and duration given, and shall not apply to any other instance or longer period unless new consent is given by Lender in writing. Acceptance by the Lender of any payment will not be deemed a waiver of any default, including any failure to make such payment on time, unless the Lender expressly states in writing that the particular event of default is waived.

9. **Transfer of the Property; Assumption.** If all or any part of the Property or any interest therein is sold or transferred by the Borrower without Lender's prior written consent, excluding the grant of any leasehold or sharehold interest permitted under any agreement with the Lender, Lender may, at Lender's option, declare all the sums secured by this Deed of Trust to be immediately due and payable.

10. **Compliance with Laws.** Grantor shall maintain the premises and improvements thereon in compliance with applicable statutes, municipal laws, building codes and such other rules,

regulations, legally binding conditions or contracts, and orders as may from time to time be issued by proper public authority. Upon Grantor's failure so to do or to make such changes or repairs to the property as may be required by such rules, regulations and orders within the time allowed or prescribed by said rules, regulations and orders, or such extensions thereof as may be granted by proper public authority, the debt hereby secured shall immediately become due and payable; or at the option of the Lender, it may have said changes or repairs, as approved in a timely manner by HUD, made at the Grantor's expense. The expense of all changes or repairs shall be a charge hereby secured, and bear interest at the rate of 10% per annum from the date of such payment; provided that if Lender demands reimbursement from the Grantor for any such advance, and reimbursement be not immediately made, then the entire debt hereby secured shall immediately become due and payable.

11. **Chattels.** All awnings, door and window screens, mantels, cabinets, stoves, shades, mechanical refrigerators, oil and/or fuel burning system and equipment, water heaters, radiator covers, and all plumbing, heating, lighting, cooking, ventilating, cooling, air conditioning and refrigerating apparatus and equipment and each and every one of the interior improvements and fixtures, movable or immovable, of every kind and description whatsoever in and upon said land and premises or used in connection therewith, and all additions and replacements thereto, are and shall be deemed to be fixtures and shall be an accession to the freehold and a part of the realty, and same are covered by this Deed of Trust and included in the terms "Property," "Premises" and "Land" wherever used herein.

12. **Substitute Trustee.** Lender may from time to time in Lender's discretion remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. The successor Trustee

shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law without conveyance of the Property.

13. **Successors and Assigns Bound.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Grantor.

14. **Remedies Cumulative.** All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.

15. **Release.** Upon payment of all sums secured by this Deed of Trust, and fulfillment of all other obligations secured by this Deed of Trust, Lender shall request Trustee to release this Deed of Trust and shall surrender all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall release this Deed of Trust without charge to Grantor. Grantor shall pay all costs of recordation, if any.

16. **Future Advances.** Upon request of Grantor, Lender, at Lender's option prior to release of this Deed of Trust, may make Future Advances to Grantor. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby.

17. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or any part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to the

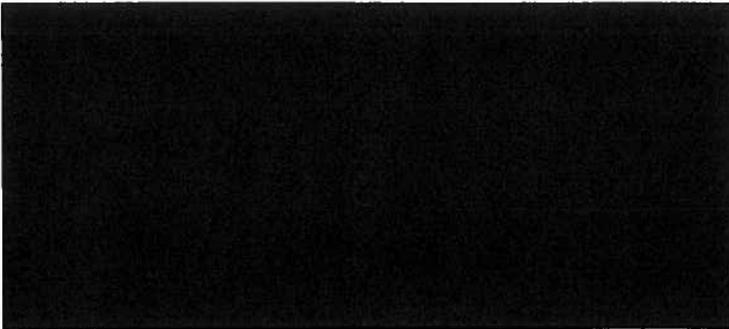
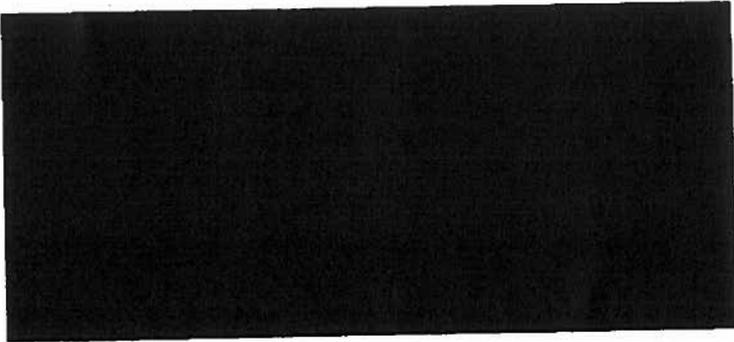
Lender with HUD's approval. The Lender shall pay any funds in excess of the outstanding principal balance and accrued interest thereon to the Grantor.

**18. Assignment of Rents; Appointment of Receiver; Lender in Possession.** As additional security hereunder, Grantor hereby assigns to Lender, with HUD's approval, the rents of the Property provided that Grantor shall, prior to any event of default or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon any event of default or abandonment of the Property, Lender in person, by agent or by judicially appointed receiver, shall be entitled, with HUD's approval, to enter upon, take possession of and manage the Property and to collect the rents of the Property, including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including but not limited to receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

**19. Subordination of Deed of Trust.** As long as the Secretary of Housing and Urban Development, or his successors or assigns, is the holder of the First Deed of Trust for the Section 202 project known as Culpepper Garden III, Project No. 000-EE041-WAH, then indebtedness under this Deed of Trust is and shall be subject and subordinate in the right of payment to the First Deed of Trust between the Borrower and the U.S. Department of Housing and Urban Development in the original principal amount of \$5,183,900. The Deed of Trust is and shall be subject and subordinate in all respects to the First Deed of Trust and HUD Regulatory Agreement. The rights and remedies of the Lender or its assigns are subordinate in all respects to the First Deed of Trust

and HUD Regulatory Agreement. Furthermore, such assignee shall be deemed to have agreed to observe all the terms, covenants and conditions of the subordination.



WITNESS the following signature and seal:

By: Culpepper Garden III, Incorporated

Attest:

Erica Wood  
Erica Wood, Secretary

Edward Wright  
Edward Wright, President

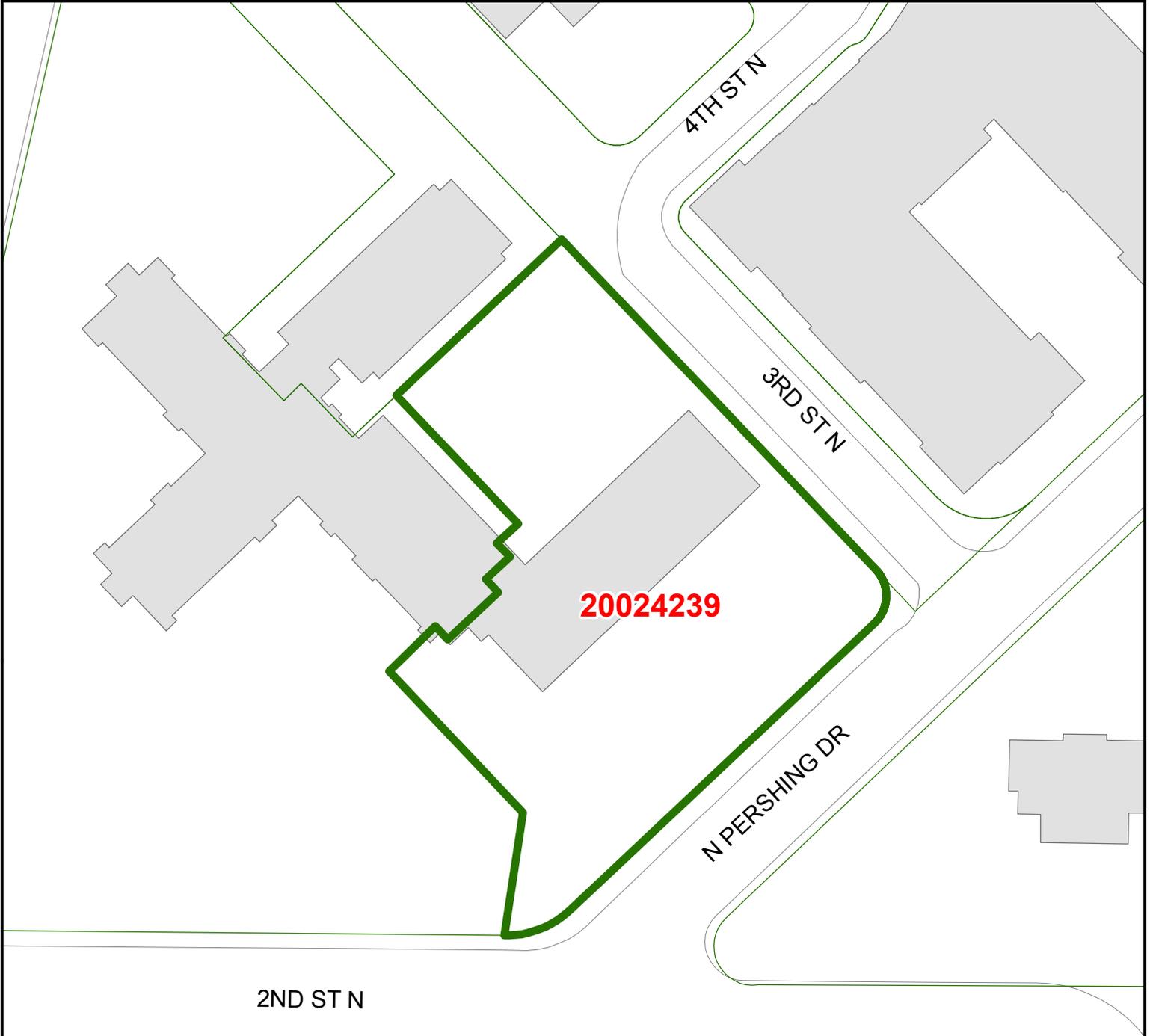
~~STATE OF VIRGINIA~~  
DISTRICT OF COLUMBIA  
~~COUNTY OF ARLINGTON~~ to wit:

The foregoing Deed of Trust was acknowledged before me  
this 9<sup>th</sup> day of Nov, 1999, by Edward Wright, President of Culpepper Garden III,  
Incorporated, a Virginia Corporation.

Juanita M. Adams  
Notary Public  
JUANITA M. ADAMS  
Notary Public, District of Columbia  
My Commission Expires June 30, 2002

My Commission Expires: \_\_\_\_\_

Vicinity Map  
Culpepper Garden - 4439 N Pershing Dr  
RPC# 20024239



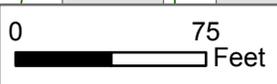
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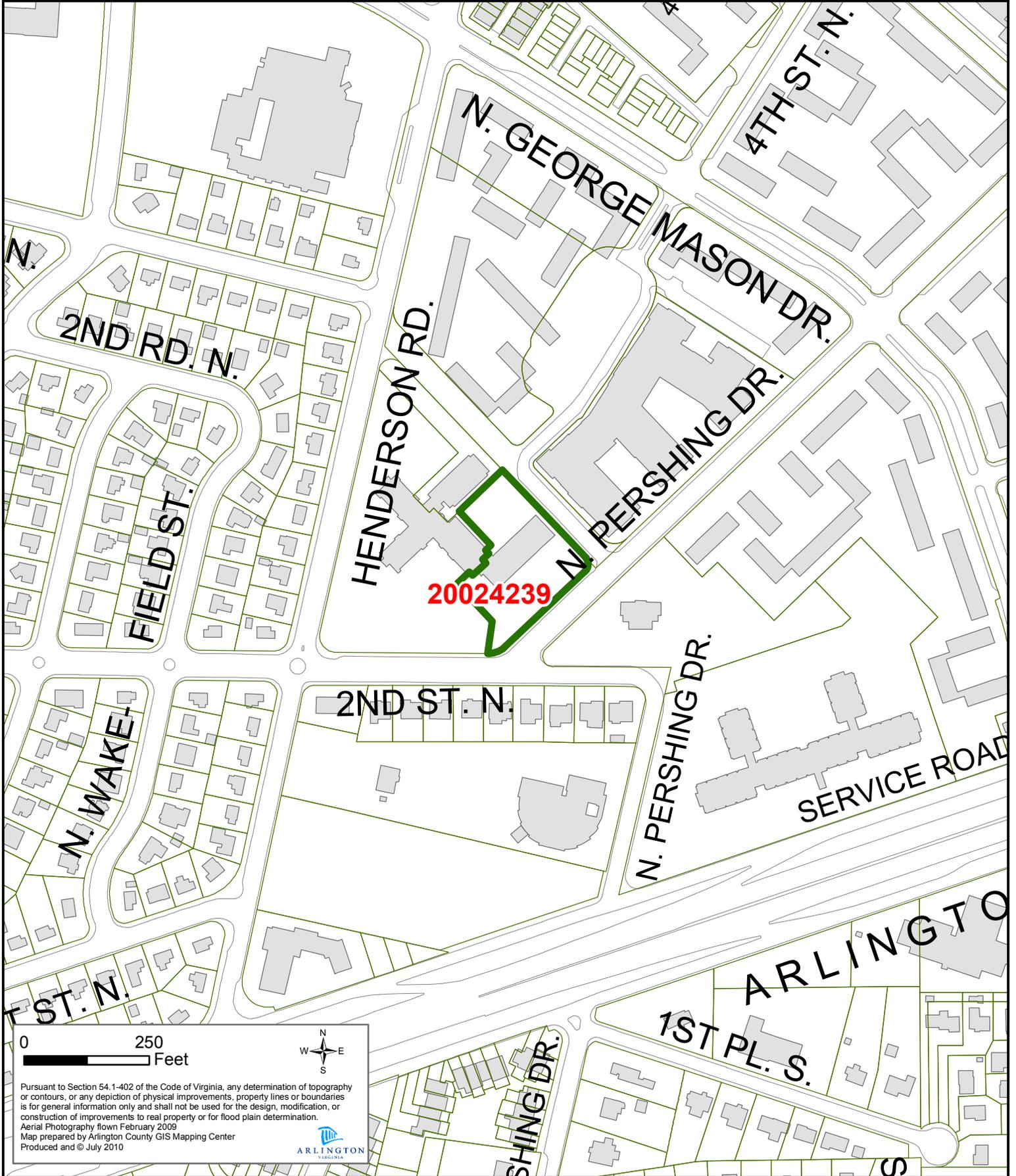
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Pursuant to Section 54.1-402 of the Code of Virginia, any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination.  
Aerial Photography flown February 2009  
Map prepared by Arlington County GIS Mapping Center  
Produced and © July 2010



Vicinity Map  
Culpepper Garden - 4439 N Pershing Dr  
RPC# 20024239



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