



## ARLINGTON COUNTY, VIRGINIA

### County Board Agenda Item Meeting of May 14, 2011

**DATE:** April 20, 2011

**SUBJECT:** Approval of a Third Amendment to Lease Agreement between the County Board of Arlington County, Virginia, as Landlord, and the Lucky Seven Food Mart Inc., as Tenant, for Real Property and Improvements known as 2406 Shirlington Road, Arlington, Virginia (RPC # 31035002).

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

1. Approve the attached Third Amendment to Lease Agreement by and between the County Board of Arlington County, Virginia, as Landlord, and the Lucky Seven Food Mart Inc., as Tenant, concerning the extension of the lease term for real property and improvements known as 2406 Shirlington Road, Arlington, Virginia (RPC # 31035002).
2. Authorize the Real Estate Bureau Chief, Department of Environmental Services, or his designee, to execute, on behalf of the County Board, the Third Amendment, subject to approval as to form by the County Attorney.

**ISSUE:** This is a proposed Third Amendment to Lease Agreement permitting the Lease term to be extended for three separate additional one month terms, the last one expiring August 31, 2011, at the discretion of the County Manager. These term extensions will allow the tenant time to complete the build out of its new space and relocate its business, which is necessary following the County's purchase of the subject property in July, 2010. No issues have been identified.

**SUMMARY:** As part of the purchase of the property by the County in July, 2010, the County agreed with the seller to allow the existing tenant, Lucky Seven Food Mart Inc., to remain in the property until October 31, 2010. The County and Lucky Seven, the tenant, entered into a Lease Agreement dated July 30, 2010, setting forth the terms and conditions allowing the tenant to temporarily remain in the subject property. On October 23, 2010, the County and the tenant entered into a "First Amendment to Lease Agreement," which allowed Lucky Seven to extend the lease term through February 28, 2011. On February 28, 2011, the County and the tenant entered into a "Second Amendment to Lease Agreement," which allowed Lucky Seven to extend the lease term through May 31, 2011. Arlington Housing Corporation, landlord of Lucky

County Manager:

County Attorney:

13.

Staff: Hank Leavitt, CPHD, and Linda Collier, DES-Real Estate Bureau

Seven's new space, approved Lucky Seven's building plans on April 8, 2011 and Lucky Seven applied to the County for its building permit on April 15, 2011. To date, Lucky Seven has not started to build out the new space. In order to allow build out and completion of their new space, Lucky Seven is requesting a "Third Amendment to Lease Agreement" permitting the County, in the County Manager's discretion, to extend the lease term for three additional one month periods, the last month term to expire August 31, 2011. All other terms and conditions of the Lease, as amended, will remain the same.

**BACKGROUND:** The Property was purchased by the County in July, 2010, as part of the consolidation of the three properties that will form the Nauck Village Center. The Nauck Village Center is contemplated by the Nauck Village Center Action Plan as a mixed-use, pedestrian friendly town square for Nauck (see Vicinity Maps attached hereto as **Exhibits B-1 and B-2**). As part of the Agreement of Sale with the seller, the County agreed to rent back the property to Lucky Seven, a convenience store and take-out chicken business, in order to allow the tenant time to prepare new space located at 3215 24<sup>th</sup> Street South ("New Business Space") and to relocate its business into such New Business Space. The final term of the Lease, as amended by the Third Amendment to Lease Agreement, expires on May 31, 2011.

**DISCUSSION:** As part of the acquisition of the subject property by the County, Lucky Seven agreed to terminate its existing lease with the seller. At settlement, the County entered into a new lease with Lucky Seven for a term of three months, for the sum of one dollar a month. On October 23, 2010, the County and Lucky Seven also entered into a "First Amendment to Lease Agreement," which extended the term of the lease through February 28, 2011 and on February 28, 2011, the County and Lucky Seven entered into a "Second Amendment to Lease Agreement," which extended the term of the lease through May 31, 2011. As additional consideration, upon expiration of the term, the tenant will convey to the County certain designated equipment and personal property. If the lease term is extended by the proposed Third Amendment after May 31st, then Lucky Seven will continue to be responsible for all maintenance and expenses relating to the property, the insurance for the contents and business personal property, and the real estate taxes for the property.

The proposed Third Amendment to Lease Agreement, attached as **Exhibit A**, extends, at the discretion of the County Manager, the term of the Lease, as amended by the First Amendment and the Second Amendment, for three additional one month terms (each, "Renewal Term"), the last of which expires August 31, 2011. If the Third Amendment to Lease Agreement is approved by the County Board, then each renewal term will be subject to the consent and approval of the County Manager, in the County Manager's sole discretion, if it appears to the County Manager that: 1) Tenant has filed all applications for all permits required to build out the New Business Space in a timely manner; 2) Tenant is timely working toward completion of the renovations of the New Business Space; and 3) Tenant has provided immediate written responses to all County requests for information. Further, at any time during any Renewal Term extended by the County Manager, the County Manager, in her sole discretion, shall determine whether the renovations of the New Business Space are proceeding in a timely manner. If the renovations of the New Business Space are not proceeding in a timely manner, then the County Manager shall have the right to terminate the Lease, as amended, immediately. In any event, the Lease, as amended,

would expire no later than August 31, 2011. During the additional Renewal Term(s), other terms and conditions of the Lease, as amended, will remain the same.

Arlington Housing Corporation, the owner of the New Business Space, approved the tenant's plans for the new space on April 8, 2011 and Lucky Seven filed for its building permit with the County on April 15, 2011. In the event that Lucky Seven requests further extensions beyond the Third Amendment to Lease Agreement, staff will recommend that Lucky Seven be charged market rent for continued occupation of the County space.

Public Notice: Public notice of the proposed Third Amendment to Lease Agreement was given in accordance with the Code of Virginia. Notice was placed in the April 26, 2011 issue of the Washington Times for the County Board Meeting on May 14, 2011.

**FISCAL IMPACT:** None.

**CONCLUSION:** It is recommended that the County Board approve the attached Third Amendment to Lease Agreement between the County Board, as Landlord, and the Lucky Seven Food Mart Inc., as tenant, for real property and improvements located at 2406 Shirlington Road, Arlington, Virginia (RPC # 31035002), and authorize the Real Estate Bureau Chief, Department of Environmental Services, or his designee, to execute the Third Amendment to Lease Agreement on behalf of the County Board, subject to approval as to form by the County Attorney.

**THIRD AMENDMENT TO  
LEASE AGREEMENT**

**THIS THIRD AMENDMENT TO AGREEMENT OF LEASE** (“Third Amendment”) is made and entered into this \_\_\_\_ day of May, 2011, by and between the **COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body corporate and politic (hereinafter referred to as “Landlord”), and **LUCKY SEVEN FOOD MART INC.**, a Virginia corporation (hereinafter referred to as “Tenant”), (jointly, the “Parties”).

**WHEREAS**, the Landlord is the owner of the real property and improvements known as 2406 Shirlington Road, Arlington, Virginia (RPC #31025002), further described in Exhibit A attached hereto and further known as the Lucky Seven Food Mart (“Premises”);

**WHEREAS**, on July 30, 2010, the Landlord and Tenant entered into a Lease Agreement for the Premises which expired at midnight on October 31, 2010 (the “Original Lease”);

**WHEREAS**, on August 2, 2010, Tenant entered into a Lease with AHC Inc. to rent new space for its business at 3215 24<sup>th</sup> Street, South, Arlington, Virginia (“New Business Space”);

**WHEREAS**, on October 23, 2010, the Landlord and Tenant entered into a First Amendment to Lease Agreement, extending the term of the Original Lease, on a month to month basis, until February 28, 2011 (“First Amendment”);

**WHEREAS**, on February 28, 2011, the Landlord and Tenant entered into a Second Amendment to Lease Agreement, extending the term of the Original Lease, on a month to month basis, until May 31, 2011 (“Second Amendment”);

**WHEREAS**, by this Third Amendment to Lease Agreement, the Landlord and Tenant desire to amend certain terms and conditions of the Original Lease, and the Landlord and Tenant desire to extend the term of the Original Lease, as amended, as set forth in this Third Amendment (collectively, the “Lease, as amended”);

**NOW, THEREFORE**, the Parties hereto agree as follows:

For and in consideration of the amount of One Dollar (\$1.00), the covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties amend the Original Lease as follows:

1. Paragraph 1 of the Original Lease, as amended by the First Amendment and the Second Amendment, is hereby further amended by revising the second sentence of the paragraph to read as follows:

“The term of this Lease shall commence on the 30<sup>th</sup> day of July, 2010 (“Commencement Date”) and ends on the 31st day of May, 2011 (“Term”), unless terminated sooner, or renewed as provided for in Subparagraph 2A of this Lease.”

2. Subparagraph 2.A. of the Original Lease is hereby amended by deleting such subparagraph in its entirety and adding in its stead:

**“RENEWALS.** Tenant may renew this Lease for three (3) additional one (1) month terms (“Renewal Terms”), upon the same terms and conditions. Each such Renewal Term shall be subject, however, to the consent and approval of the County Manager of Arlington County, Virginia, in the County Manager’s sole discretion, if it appears to the County Manager that: 1) Tenant has filed applications for all permits required to build out the New Business Space in a timely manner; 2) Tenant is timely working toward completion of the renovations of the New Business Space; and 3) Tenant has provided immediate written responses to all County requests for information. Further, at any time during any Renewal Term granted by the County Manager, the County Manager, in her sole discretion, shall determine whether the renovations of the New Business Space are proceeding in a timely manner. If the renovations of the New Business Space are not proceeding in a timely manner, then the County Manager shall have the right to terminate the Lease, as amended, immediately. Any request to renew the Lease, as amended, for additional one (1) month terms shall be made by Tenant giving written notice to Landlord, not later than ten (10) days prior to the expiration of the Term or any Renewal Term thereafter, by the notice process provided in Paragraph 30 of the Lease, as amended. If the County Manager consents and approves the request for any additional extension, then the Landlord will thereafter notify Tenant of the approval for extension by giving written notice to Tenant, by the notice process provided in Paragraph 30 of this Lease, as amended. The Term and any Renewal Terms are jointly referred to as “Terms”. In any event, all Terms shall expire no later than August 31, 2011, unless terminated sooner as provided for in the Lease.”

3. **RATIFICATION AND CONFIRMATION OF LEASE.** Except as modified herein, all other terms and conditions of the Lease, as amended, remain in full force and effect. In the event the terms and conditions of this Third Amendment conflict with the terms of the Lease, as amended by the First Amendment and the Second Amendment, then the terms and conditions of the Third Amendment shall prevail and be controlling.
4. **FULL FORCE AND EFFECT.** Tenant and Landlord each represent and warrant to the other that the Lease, as amended, is in full force and effect and has not been assigned, modified, supplemented or further amended in any way.
5. **ENTIRE AGREEMENT.** The Lease, as amended, contains the entire agreement of the Parties hereto with respect to the subject matter hereof. No representations, inducements, or agreements, oral or otherwise, between the Parties not contained in the Lease, as amended, shall be of any force and effect. The Lease, as amended, may not be modified, changed or terminated, in whole or in part, in any manner other than

by an agreement in writing signed by duly authorized representatives of the Parties hereto.

6. **INCORPORATION OF RECITALS.** The above recitals are hereby incorporated into this Amendment.

**IN WITNESS WHEREOF,** the undersigned parties have duly executed this Third Amendment as of the day and year when last signed below by the parties.

**LANDLORD:**

**COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**TENANT:**

**LUCKY SEVEN FOOD MART INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
COUNTY ATTORNEY

## **Exhibit A**

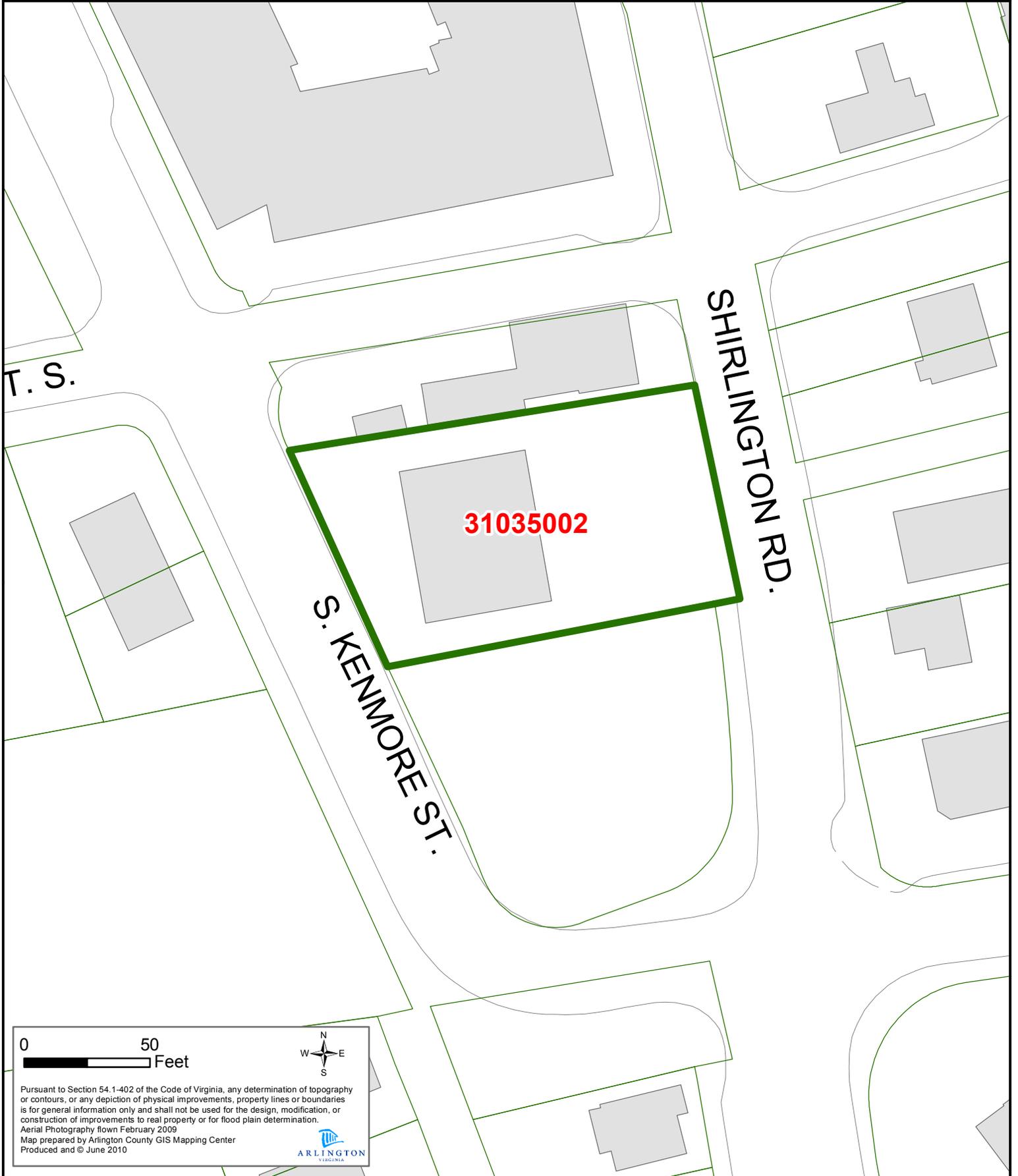
All that certain piece or parcel of land with all its improvements and appurtenances thereunto belonging, situate, lying and being in Arlington County, Virginia, and being more particularly described as follows:

That parcel known as “first tract” east of the railway and being more particularly described as follows:

Parcel #1: Beginning at a point in the west line of the Glebe Road which is S. 6 degrees 27' E. 148.79 feet from the original northeast corner of Leonard Gray's property; thence with the west line of the said Glebe Road, S. 6 degrees 27' E. 86.21 feet to a point; thence departing from said Glebe Road S. 85 degrees 9' 30" W. 135.19 feet to a point; thence N. 19 degrees 43' 30" W. 89.17 feet to a point; thence N. 85 degrees 9' 30" E. 156.08 feet to the point of beginning and containing 12, 657 square feet, more or less.

Parcel #2: A parcel of land containing 523.26 sq. ft., more or less, designated “Parcel 1” and shown on plat attached to a deed recorded in Deed Book 1631, at page 421 among the land records of Arlington County, Virginia as “Plat - Right of Way Vacated from S. Kenmore Street and Easement Acquired for Shirlington Road at 24th Street.”

Vicinity Map  
Lucky Seven Lease Extension  
RPC# 31035002



T. S.

SHIRLINGTON RD.

S. KENMORE ST.

31035002

0 50 Feet



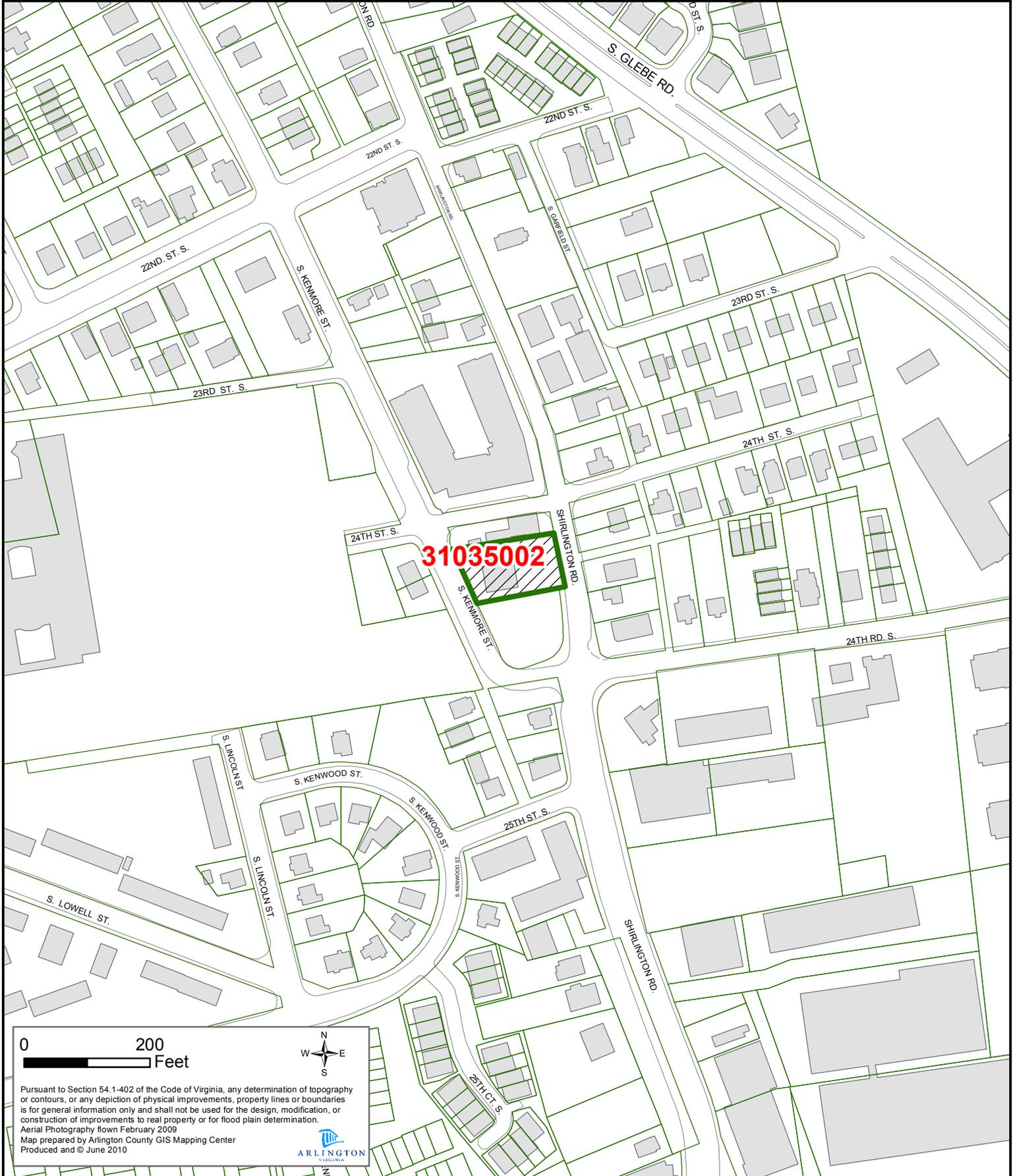
Pursuant to Section 54.1-402 of the Code of Virginia, any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property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



# Vicinity Map

## Lucky Seven Lease Extension

### RPC# 31035002



31035002

0 200 Feet



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