



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of July 9, 2011**

DATE: June 30, 2011

SUBJECT: Approval of a Fourth 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 Fourth 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 Fourth Amendment, subject to receipt of documents evidencing the Tenant's corporate existence, and approval as to form of the Fourth Amendment by the County Attorney.

ISSUE: County Board approval is required for an amendment to the Lease Agreement. The amendment contains requirements for timely progress by the Tenant toward completion of its new space. There are no issues.

SUMMARY: As part of the purchase of the property by the County in August, 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 August 2, 2010, setting forth the terms and conditions allowing the tenant to temporarily remain in the property. There have been a number of lease amendments since then and Tenant has made some progress toward building out its new space so it can move. However, the build out has taken longer than anticipated and a Fourth Amendment is required to extend the Lease Agreement. Under the Fourth Amendment, the Tenant will be charged rent and be required to make renovations to the new space in a timely manner.

County Manager:

County Attorney:

31.

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

BACKGROUND: The property was purchased by the County in July, 2010, as part of the purchase and 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, to allow the tenant time to prepare new space located at 3215 24th Street South (“New Business Space”) and to relocate its business into such New Business Space. The current term of the Lease, as amended by the Third Amendment to Lease Agreement, would expire on August 31, 2011.

DISCUSSION: As part of the acquisition of the 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 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. On May 14, 2011, the County and the tenant entered into a “Third Amendment to Lease Agreement,” permitting extension of the lease term, at the discretion of the County Manager, through August 31, 2011. As additional consideration for the extension of the term by the Third Amendment to Lease Agreement, upon expiration of the term, the tenant is required to convey to the County certain designated equipment and personal property. If the lease term is extended by the proposed Fourth Amendment, 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 Fourth 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, the Second Amendment, and the Third Amendment, one month at a time, for four additional one month terms (each, “Renewal Term”), the last of which expires December 31, 2011. If the Fourth Amendment to Lease Agreement is approved by the County Board, then each renewal term will be subject to, and conditioned upon, the consent and approval of the County Manager. Such consent and approval is based upon the County Manager’s determination, in her sole discretion that, among other things: 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 consented to and approved by the County Manager, the County Manager, in her sole discretion, may 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 is authorized to, and shall have the right, to terminate the Lease, as amended, immediately. In any event, the Lease, as amended, would expire no later than December 31, 2011.

In addition to the discretionary renewal terms, the Fourth Amendment requires Lucky Seven to pay the County \$3,500 in monthly rent, during the extended term. Staff is recommending that

the Board require Lucky Seven to pay rent for any additional lease term extensions granted under the Fourth Amendment because, as of August 2, 2011, Lucky Seven will have remained in the County space rent free for a year, as part of the consideration for the County's acquisition of the property. It is staff's opinion that the past year has been sufficient time for Lucky Seven to gain approval of its plans and build out its new space. The amount of rent (\$3,500) was determined based upon the rent figure of \$3,200, plus yearly escalation, in Lucky Seven's lease with the prior property owner. During the additional Renewal Term(s), all 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. Lucky Seven submitted its third revision of the plans, addressing County review comments, on June 23, 2011. The Tenant recently discovered that its corporate status was terminated by the Virginia State Corporation Commission for failure to file the required annual report. The Tenant has advised staff that the Tenant is filing the report and applying for reinstatement.

In order to help a small business move and continue operating in the County, staff has offered and continues to offer assistance with the permit approval process for the build out of its new space to the Tenant.

Public Notice: Public notice of the proposed Fourth Amendment to Lease Agreement was given in accordance with the Code of Virginia. Notice was placed in the June 21, 2011 issue of the Washington Times for the County Board Meeting on July 9, 2011.

FISCAL IMPACT: Any monthly rent collected will be deposited into a Pay-As-You-Go (PAYG) account for further improvements to the Nauck Town Square.

CONCLUSION: It is recommended that the County Board approve the attached Fourth 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 Fourth Amendment to Lease Agreement on behalf of the County Board, subject to receipt of documents evidencing the Tenant's corporate existence, and subject to approval as to form by the County Attorney.

**FOURTH AMENDMENT TO
LEASE AGREEMENT**

THIS FOURTH AMENDMENT TO AGREEMENT OF LEASE (“Fourth Amendment”) is made and entered into this ____ day of July, 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 August 2, 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 Tenant’s business at 3215 24th 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 Lease, as amended, on a month to month basis, until May 31, 2011 (“Second Amendment”);

WHEREAS, on May 31, 2011, the Landlord and Tenant entered into a Third Amendment to Lease Agreement, extending the term of the Lease, as amended, on a month to month basis, until August 31, 2011 (“Third Amendment”);

WHEREAS, the Original Lease, First Amendment, Second Amendment and Third Amendment are hereinafter referred to collectively as the “Lease, as amended”; and

WHEREAS, by this Fourth Amendment to Lease Agreement, the Landlord and Tenant desire to amend certain terms and conditions of the Lease, as amended, and the Landlord and Tenant desire to extend the term of the Lease, as amended, and amend the amount of rent charged to the Tenant by the Landlord.

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 Lease, as amended, as follows:

1. Paragraph 1 of the Lease, as amended, is hereby further amended:

A. By amending the second sentence of Paragraph 1 to read as follows:

“The term of this Lease shall commence on the 2nd day of August, 2010 (“Commencement Date”) and, if the Lease is renewed through August 31, 2011 by the County Manager, as provided for in the Third Amendment, then this Lease shall expire on the 31st day of August, 2011 (“Term”), unless terminated sooner, or unless renewed as provided for in Subparagraph 2A of this Lease.”

B. By amending the third sentence of Paragraph 1 to read as follows:

“Tenant agrees to pay, to the Landlord, rent in the sum of Three Thousand Five Hundred Dollars (\$3,500.00) per month for each month of the Term (hereinafter referred to as the “Basic Monthly Rent”), payable in advance on the first (1st) day of each month, at the Real Estate Bureau, Suite 800, 2100 Clarendon Boulevard, Arlington, Virginia 22201 Attn: Bureau Chief or such other place as may be designated in writing.

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

RENEWALS. Provided that the Tenant is not in default of this Lease, beyond any applicable cure period, Tenant may renew this Lease, separately, one month at a time, each month by separate notices as hereinafter provided, for four (4) additional one (1) month terms (“Renewal Term(s)”), upon the same terms and conditions. Each request by the Tenant to renew the Lease for an additional one (1) month Term shall be made by Tenant giving written notice to Landlord, not later than ten (10) days prior to the expiration of the then existing Term or any Renewal Term thereafter, by compliance with the notice process provided in Paragraph 30 of the Lease. Each such Renewal Term shall be subject to, and conditioned upon, the written consent and approval of the County Manager of Arlington County, Virginia, in the County Manager’s sole discretion, if the County Manager determines, among other things, 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 consented to, and approved by, the County Manager, the County Manager, in her sole discretion, may 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 is authorized, and shall have the right, to terminate the Lease

immediately. If the County Manager consents and approves the request for any additional Renewal Term, then the Landlord will thereafter notify Tenant of the approval for renewal by giving written notice to Tenant, by the notice process provided in Paragraph 30 of this Lease. The Term and any Renewal Terms are jointly referred to as "Term(s)". In any event, all Terms shall expire no later than December 31, 2011, unless terminated sooner as provided for in the Lease."

3. **RATIFICATION AND CONFIRMATION OF LEASE.** Except as amended by this Fourth Amendment, 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 Fourth Amendment conflict with the terms and conditions of the Lease, as amended by the First Amendment, Second Amendment and Third Amendment, then the terms and conditions of the Fourth 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, including this Fourth Amendment, 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, including this Fourth Amendment, 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, including this Fourth Amendment, shall be of any force and effect. The Lease, as amended, including the Fourth Amendment, 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 Fourth Amendment.

IN WITNESS WHEREOF, the undersigned parties have duly executed this Fourth 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

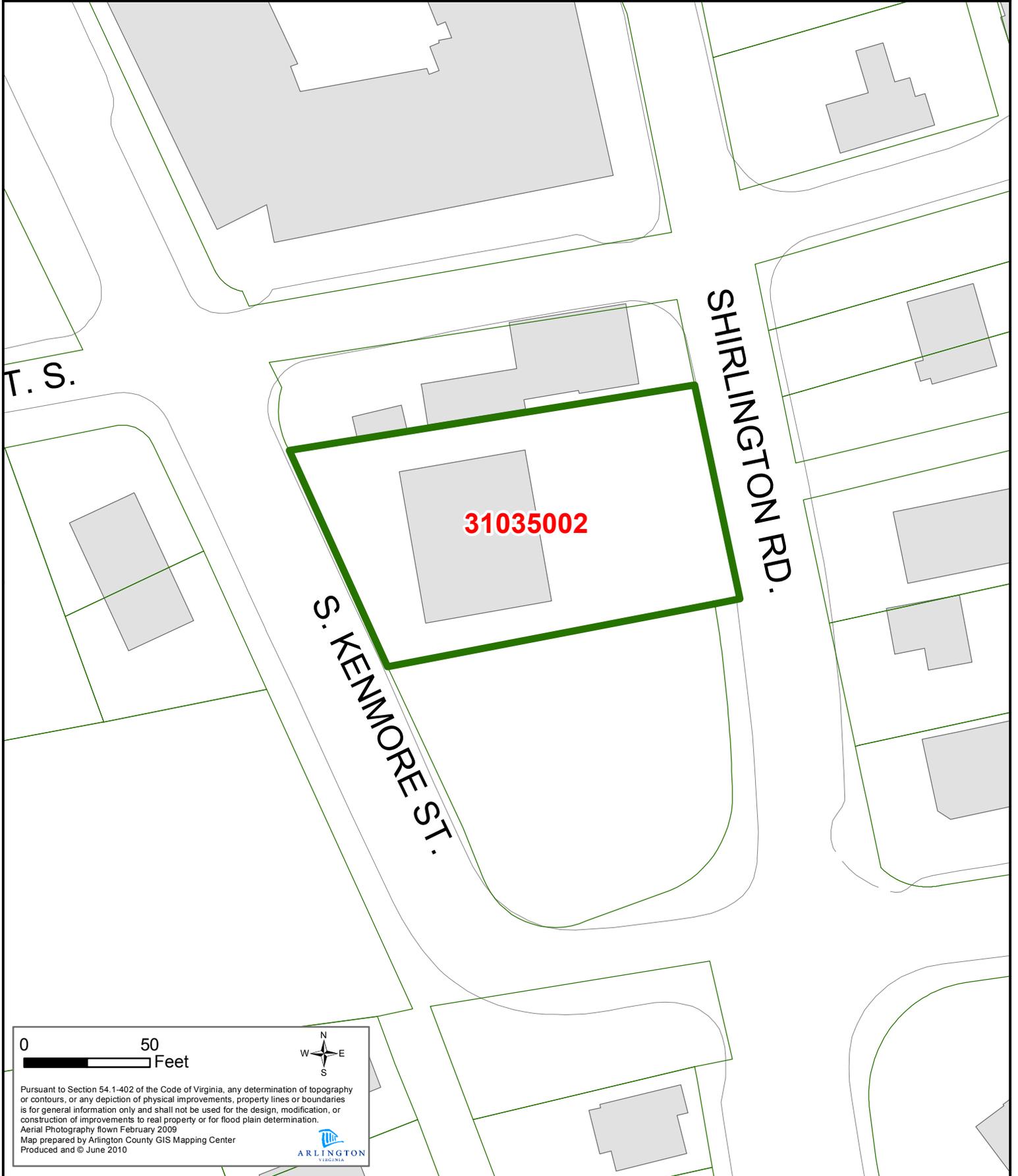
All that certain piece or parcel of land with all its improvements and appurtenances thereunto belonging, situate, lying and being in Arlington County, Virginia, and being more particularly described as follows:

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



0 50 Feet



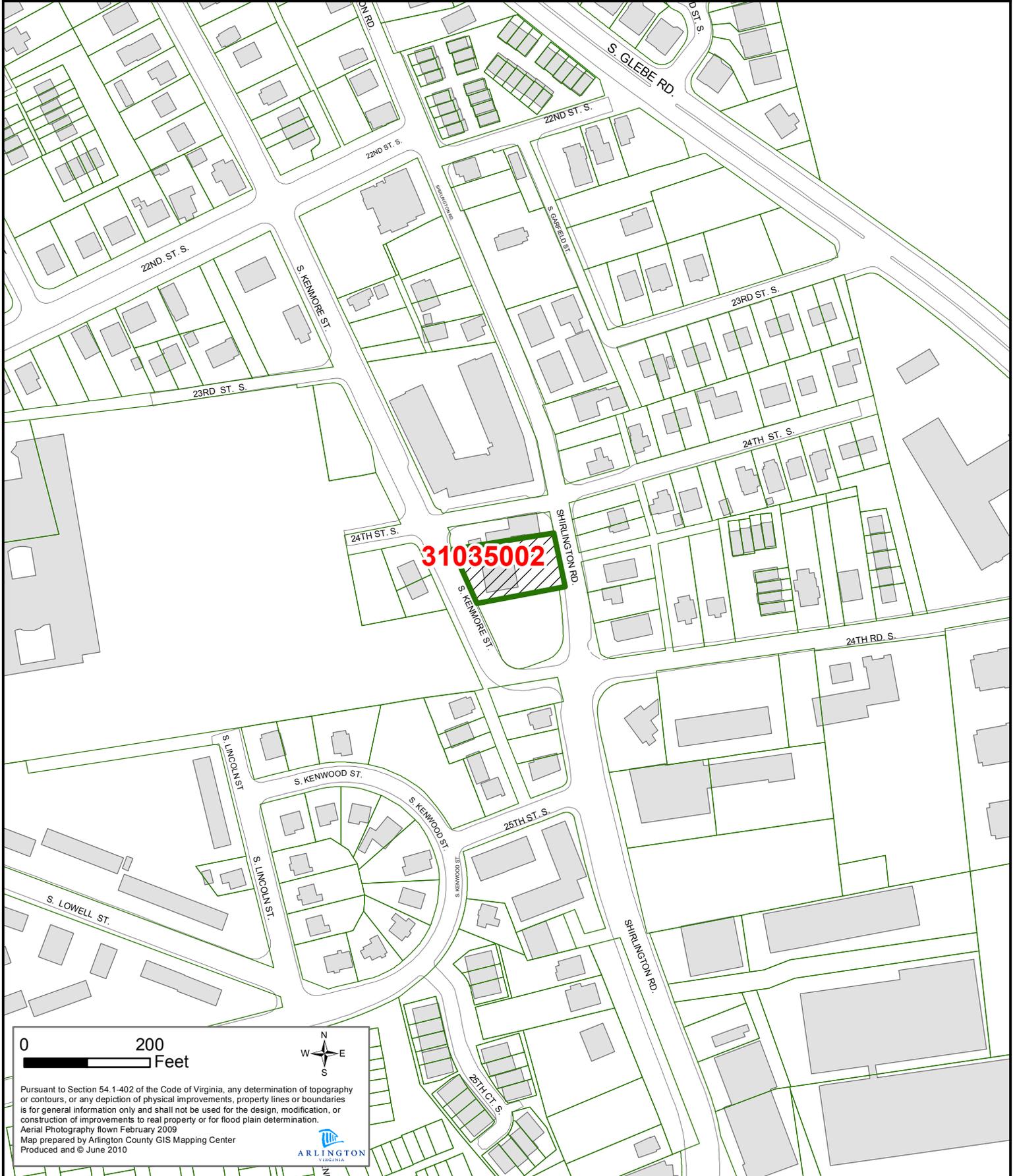
Pursuant to Section 54.1-402 of the Code of Virginia, any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property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