



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of September 17, 2010**

DATE: August 16, 2011

SUBJECT: Approval of a Deed of Easement from Buchanan Gardens Limited Partnership to the County Board of Arlington County, Virginia, as Grantee, subordinating the lien of a County Affordable Housing Investment Fund Deed of Trust to the Deed of Easement on Property Known as Lots B and C, Property of C.J. Arnett, Arlington, Virginia (RPC #23006002, 23006161).

C. M. RECOMMENDATION:

1. Approve a Deed of Easement from Buchanan Gardens Limited Partnership to the County Board of Arlington County, Virginia, as Grantee, subordinating the lien of a County Affordable Housing Investment Fund (“AHIF”) Deed of Trust to the Deed of Easement on Property Known as Lots B and C, Property of C.J. Arnett, Arlington, Virginia (RPC #23006002, 23006161); and
2. Authorize Louise DiMatteo and/or Julie Massie, Trustee(s), to execute the Deed of Easement, for the purpose of subordinating the lien of the AHIF Deed of Trust on the Property to the Deed of Easement being dedicated, granted and conveyed to the County, subject to approval of the Deed of Easement as to form by the County Attorney.

ISSUES: This is a request for authorization to subordinate the lien of an AHIF Deed of Trust on property owned by Buchanan Gardens (“Property”) to a Deed of Easement from Buchanan Gardens dedicating, granting and conveying an easement for public sidewalk and utilities purposes on the Property to the County. There are no outstanding issues.

SUMMARY: In order to comply with the conditions of Use Permit U-3228-09-1 approved by the County Board on November 14, 2009, Buchanan Gardens Limited Partnership (“Buchanan Gardens”), as owner/developer of the Property, must convey all required public deeds of easement to the County. All lien holders and trustees under deeds of trust on the Property must agree to subordinate their interests to the Deed of Easement prior to its recordation in the land

County Manager:

County Attorney:

20.

Staff: Linda Eichelbaum Collier, Real Estate Bureau, DES

records. The County is a second lien holder on the Property under an AHIF Deed of Trust and Capital One National Association is the first lien holder on the Property.

BACKGROUND: The subject parcel is located on South Buchanan Street, near its intersection with Columbia Pike (see Attachments 1 and 2, Vicinity Maps) and is part of Use Permit U-3228-09-1, approved by the County Board on November 14, 2009. The Use Permit is for additions to and an expansion of an existing apartment complex.

Buchanan Gardens purchased the project that is the subject of the Use Permit by special warranty Deed dated April 25, 2011, and recorded on April 26, 2011 in Deed Book 4456 at Page 231 among the land records of Arlington County, Virginia ("Land Records").

DISCUSSION: In order to comply with the Use Permit conditions, Buchanan Gardens must convey and record the proposed Deed of Easement to the County in the Land Records. The Deed of Easement is attached hereto as Exhibit A.

The AHIF Deed of Trust securing Arlington County, recorded on April 26, 2011 in Deed Book 4456 at Page 300, appointed Louise DiMatteo or Julie Massie, either of whom may act, as Trustees. The County Board is being requested to authorize the Trustee(s) to subordinate the lien of the AHIF Deed of Trust to the public easements being conveyed to the County and to release the lien of the AHIF Deed of Trust on the portion of the property being dedicated, granted and conveyed to the County. The AHIF Deed of Trust must be subordinated to the easement so that the County's interest in the easement would not be affected in the event of a default under the AHIF Deed of Trust. The existence of the easement will not materially reduce the value of the secured property under the AHIF Deed of Trust.

FISCAL IMPACT: None.

CONCLUSION: It is recommended that the County Board approve a Deed of Easement from Buchanan Gardens Limited Partnership to the County Board of Arlington County, Virginia, as Grantee, subordinating the lien of the AHIF Deed of Trust to the Deed of Easement on property known as Lots B and C, Property of C.J. Arnett, Arlington, Virginia (RPC #23006002, 23006161); and authorize Louise DiMatteo and/or Julie Massie, Trustee(s), to execute the Deed of Easement, for the purpose of subordinating the lien of the AHIF Deed of Trust on the Property to the Deed of Easement, subject to approval of the Deed of Easement as to form by the County Attorney.

Prepared by and return to:
H. Mark Goetzman, Esq.
Walsh Colucci Lubeley Emrich & Walsh PC
2200 Clarendon Blvd., Suite 1300
Arlington, VA 22201

RPC Nos.: 23006002 & 23006161

DEED OF EASEMENT

This Deed of Easement ("Deed") is made this ____ day of _____, 2011, by and between **BUCHANAN GARDENS LIMITED PARTNERSHIP**, a Virginia limited partnership, Grantor (hereinafter "Owner"); **CAPITAL ONE, NATIONAL ASSOCIATION**, Grantor (hereinafter "Capital One"); **AMY B. CONNELLY and JOHN E. VIHSTADT, TRUSTEES**, either of whom may act, Grantor (hereinafter the "Capital One Trustees"); **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body politic, Grantor (hereinafter "County"); **LOUISE DI MATTEO and JULIE MASSIE, TRUSTEES**, either of whom my act, Grantor (hereinafter "Arlington Trustees"); and **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body corporate and politic, Grantee (the "County").

****WITNESSETH****

WHEREAS, Owner is the sole owner of certain parcels or tracts of real property situate and located in Arlington County, Virginia by virtue of a Special Warranty Deed from Buchanan Gardens II, LLC, Owner's predecessor in interest, recorded in Deed Book 4456 at Page 231 (the "Property"), among the land records of Arlington County, Virginia (the "Land Records"); and

WHEREAS, by virtue of that certain Credit Line Deed of Trust, Deed of Trust, Assignment of Leases and Rents and Security Agreement recorded in Deed Book 4456 at Page 250 ("Capital One Trust"), among the Land Records, the Property was conveyed in trust to Capital One Trustees, to secure an indebtedness to Capital One; and

WHEREAS, by virtue of that certain Affordable Housing Investment Fund (AHIF) Amended and Restated Deed of Trust, Assignment of Rents and Leases and Security Agreement recorded in Deed Book 4456 at Page 300 (“Arlington Trust”), the Property was conveyed in trust to the Arlington Trustees; to secure an indebtedness to the County arising under the Agreement; and

WHEREAS, the Capital One Trust and the Arlington Trust are sometimes hereinafter collectively referred to as the “Deeds of Trust”; and

WHEREAS, Capital One and the County are sometimes hereinafter collectively referred to as the “Lenders”; and

WHEREAS, the Capital One Trustees and the Arlington Trustees are sometimes hereinafter collectively referred to as the “Trustees”; and

WHEREAS, on November 14, 2009, the County Board of Arlington County, Virginia, adopted an Ordinance (“Ordinance”) as follows: BE IT ORDAINED that, pursuant to application U-3228-09-1 on file in the Office of the Zoning Administrator for a special exception for a use permit for additions to and expansion of existing nonconforming buildings or uses and modification of coverage, yard, setback, parking and/or density regulations for existing apartment buildings for the parcel of real property known as 914-934 S. Buchanan Street (RPC: 23-006-161 and 23-006-002). Such Ordinance was adopted subject to the conditions, set forth in the document entitled “Addendum 11-14-09-B, U-3228-09-1” (“Addendum”), attached to the County Board minutes of November 14, 2009; and

WHEREAS, Condition 23 of the Addendum requires, among other things, that the Owner agrees that, for each phase, as phase is defined in the phasing plan, all required

plats, deeds of conveyance, deeds of dedication, and deeds of easement associated with, and/or required by the final approved site engineering plans, for the construction of any public street, public infrastructure, public utility, public facility or public improvement (jointly, "Public Improvements"), shall be: a) submitted by the Owner to the Department of Environmental Services for review and approval prior to the issuance of any Above Grade Building Permit for such phase; and b) approved by the County; and c) recorded by the Owner, among the Land Records, all before the issuance of the first Certificate of Occupancy for the buildings or any portion thereof for such phase; and

WHEREAS, it is the desire of Owner, with the consent and approval of the Lenders, Trustees and Guarantor, to grant and convey unto the County an Easement for Public Sidewalk and Utilities Purposes, as hereinafter set forth, described and shown on a plat entitled "Plat Showing Easement for Public Sidewalk and Utilities Purposes on Lots B and C Property of C.J. Arnett Deed Book 883, Page 194 Arlington County, Virginia," prepared by Bowman Consulting Group, Ltd., dated March 30, 2011, last revised July 12, 2011, and approved by the Arlington County Department of Environmental Services, Division of Transportation, Subdivision and Bonds Administrator on August 2, 2011 (the "Plat"), attached hereto and made a part hereof.

EASEMENT FOR PUBLIC SIDEWALK AND UTILITIES PURPOSES

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner, with the consent and approval of the Lenders and the Trustees, does hereby dedicate, create, grant and convey unto the County, its successors and assigns, an Easement for Public Sidewalk and Utilities Purposes (the

"Easement"), over, under, across and through the Property, depicted as "Easement for Public Sidewalk and Utilities Purposes Hereby Granted (450 S.F. or 0.01033 AC.)" in the locations and dimensions as shown on the Plat ("Easement Area"), for the purposes of construction, maintenance, removal, repair, reconstruction, replacement and relocation of present or future public sidewalks and utilities 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 Area for the purposes named in this Deed, and shall have all rights and privileges reasonably necessary to exercise the use of the Easement, including the right of access to and from the Easement Area, and the right to use the adjoining land of the Owner where necessary; provided, however, that this right to use adjoining land shall be exercised only during periods of actual construction, maintenance, removal, repair, reconstruction, replacement 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 Area; 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 and the reseeding 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 which is not inconsistent with the rights herein conveyed, or does not interfere with the use of the Easement for the purposes named in this Deed.

4. The Owner covenants that 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

FURTHER WITNESSETH that for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Trustees, as authorized to act by the Lenders, as evidenced by their signatures affixed hereto do hereby consent to and subordinate the liens of the Deeds of Trust to the Easement granted in this Deed.

It is expressly understood that the subordination of the liens of the Deeds of Trust to the Easement granted herein shall not otherwise affect the liens of the Deeds of Trust, which remain in full force and effect.

COVENANTS REAL

The Owner, with the consent and approval of the Lenders and the Trustees, 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.

FREE CONSENT

This Deed is made with the free consent and in accordance with the desire of the undersigned Owner of the Property, and of the Lenders and Trustees, executing solely in their consent capacity, as holders of a security interest in the Property, and is in accordance with the statutes of Virginia and the ordinances in force in Arlington County, and is approved by the proper authorities as is evidenced by their endorsements on this Deed and on said Plat attached hereto and made a part hereof.

Owner, with the consent and approval of the Lenders and the Trustees, as evidenced by their signatures affixed hereto, covenants that the Owner is seized of the Property and has the right to convey this Deed.

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

The recitals are hereby incorporated into this Deed.

[Signatures begin on the following page]

WITNESS the following signatures and seals:

BUCHANAN GARDENS LIMITED PARTNERSHIP, a Virginia limited partnership

By: Buchanan Gardens Development Corporation, a Virginia corporation, its Managing and Sole General Partner

By: Arlington Partnership for Affordable Housing, Inc., a Virginia corporation, its Member, Manager

By: _____

Name: _____

Its: _____

COMMONWEALTH OF VIRGINIA:
COUNTY OF _____ : to-wit

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____, _____ of Arlington Partnership for Affordable Housing, Inc., Member Manager of Buchanan Gardens Development Corporation, Managing and Sole General Partner of BUCHANAN GARDENS LIMITED PARTNERSHIP.

Notary Public

My Commission Expires: _____
Virginia Notary Registration #: _____

CAPITAL ONE, NATIONAL ASSOCIATION

By: _____
Name: _____
Its: _____

STATE OF _____:
COUNTY OF _____: to-wit

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____, _____ of CAPITAL ONE, NATIONAL ASSOCIATION.

Notary Public

My Commission Expires: _____
Virginia Notary Registration #: _____

AMY B. CONNELLY, TRUSTEE

COMMONWEALTH OF VIRGINIA:

COUNTY OF _____ : to-wit

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by AMY B. CONNELLY, Trustee.

Notary Public

My Commission Expires: _____

Virginia Notary Registration #: _____

JOHN E. VIHSTADT, TRUSTEE

COMMONWEALTH OF VIRGINIA:
COUNTY OF _____: to-wit

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by JOHN E. VIHSTADT, Trustee.

Notary Public

My Commission Expires: _____
Virginia Notary Registration #: _____

**COUNTY BOARD OF
ARLINGTON COUNTY, VIRGINIA**

By: _____
Name: _____
Its: _____

COMMONWEALTH OF VIRGINIA:
COUNTY OF ARLINGTON: to-wit

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____, _____ on behalf of the County Board of Arlington County, Virginia.

Notary Public

My Commission Expires: _____
Virginia Notary Registration #: _____

LOUISE DI MATTEO, TRUSTEE

COMMONWEALTH OF VIRGINIA:

COUNTY OF _____: to-wit

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by LOUISE DI MATTEO, Trustee.

Notary Public

My Commission Expires: _____

Virginia Notary Registration #: _____

JULIE MASSIE, TRUSTEE

COMMONWEALTH OF VIRGINIA:

COUNTY OF _____: to-wit

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by JULIE MASSIE, Trustee.

Notary Public

My Commission Expires: _____

Virginia Notary Registration #: _____

APPROVED AS TO FORM:

COUNTY ATTORNEY

Accepted this ____ day of _____, 2011, on behalf of the County Board of Arlington County, Virginia, pursuant to an Ordinance of the said County Board duly adopted on November 14, 2009.

**THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA**

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON, to-wit:

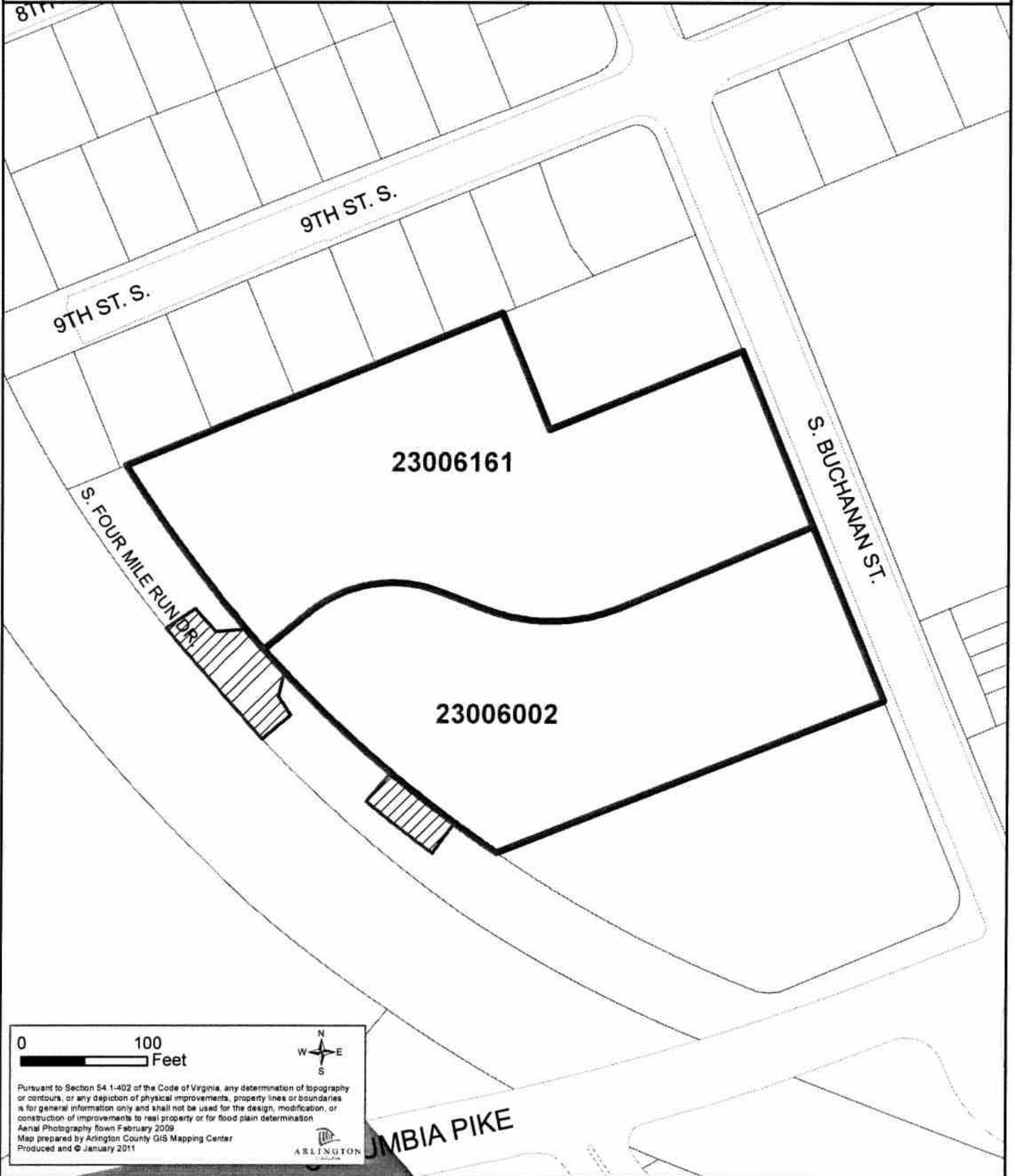
The foregoing instrument was acknowledged before me by _____, on behalf of THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, this ____ day of _____ 2011.

Notary Public

My Commission Expires: _____
Virginia Notary Registration ID #: _____

Buchanan Gardens Easement

Attachment 1



0 100 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 © January 2011

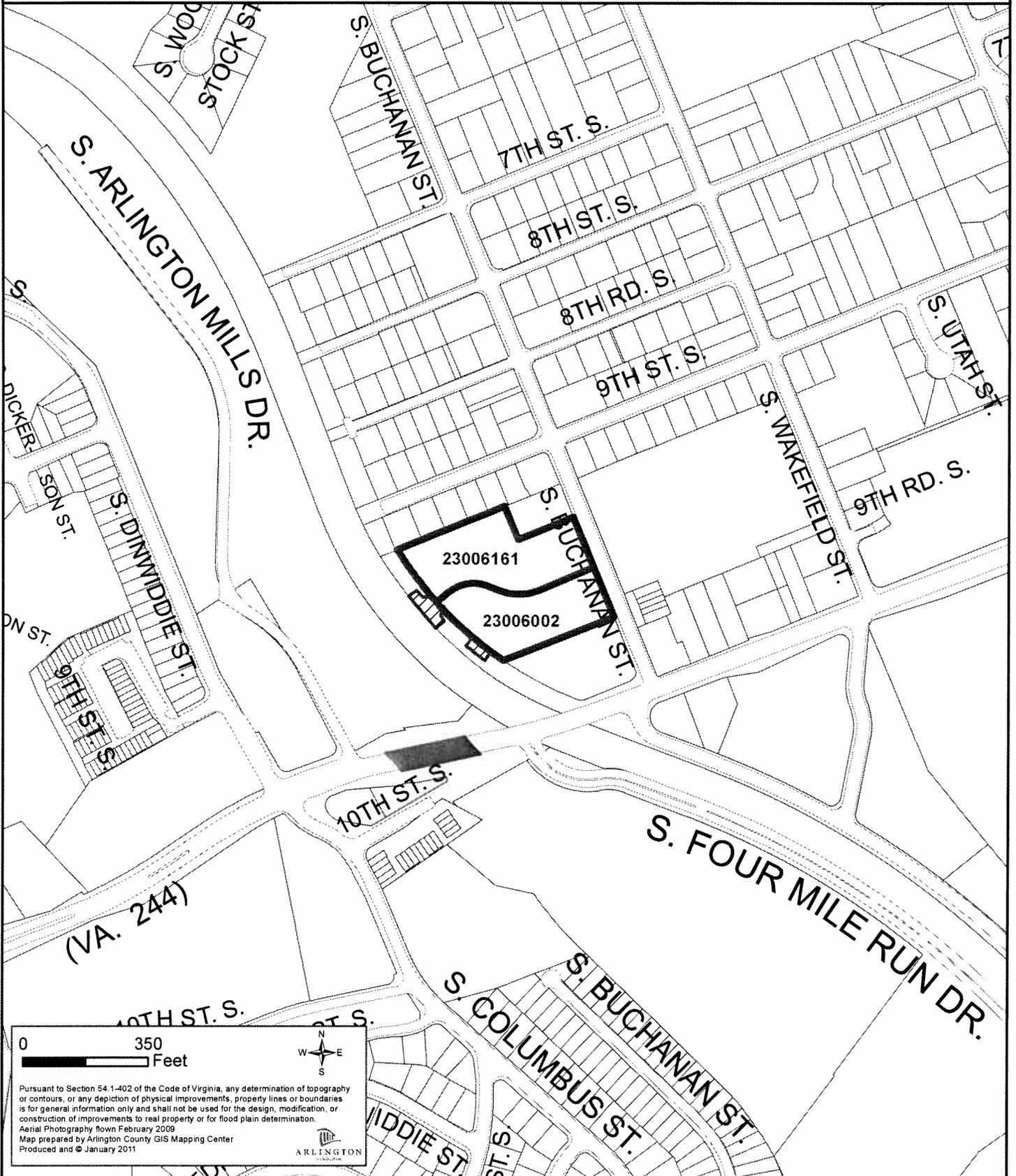


COLUMBIA PIKE

Buchanan Gardens

Vicinity Map

Attachment 2



0 350 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.
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