



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of July 21, 2012

DATE: June 25, 2012

SUBJECT: Approval of a Second Amendment to Rosslyn Theater Lease Between the County Board, as Tenant, and Paris Associates Limited Partnership, as Landlord, for the Lease of 7,480 Square Feet of Space in the Building Located at 1601 N. Kent Street, RPC # 16-039-033.

C. M. RECOMMENDATIONS:

1. Approve the Second Amendment to Rosslyn Theater Lease for the lease of space by the County Board of Arlington County, Virginia from Paris Associates Limited Partnership in the Building located at 1601 N. Kent Street, Arlington, Virginia; and
2. Authorize the County Manager, or her designee, to execute, on behalf of the County Board, the above referenced Amendment, and all related documents, including any future subordination, non-disturbance and attornment or tenant estoppels documents, all subject to approval as to form by the County Attorney.

ISSUES: As part of the lease approval process, the County Board is being requested to approve and authorize the execution of the Second Amendment to Rosslyn Theater Lease. There are no outstanding issues related to this item.

SUMMARY: The County Board currently leases 7,480 square feet of space in the building located at 1601 N. Kent Street for the Rosslyn Spectrum. The existing lease, as amended, will expire on July 31, 2012. By entering into the Second Amendment to Rosslyn Theater Lease ("Second Amendment"), attached hereto as Attachment 1, the term of the existing lease will be extended by five years, until July 31, 2017. The Second Amendment also preserves the County Board rights as a local government, and has been signed on behalf of Paris Associates Limited Partnership.

BACKGROUND: The subject leased premises, known as the Spectrum Theater, is located within the retail lower level of the building located at 1601 N. Kent Street in Rosslyn. The subject site is located within the North Rosslyn Civic Association. The site is more particularly shown on the vicinity maps attached as Attachments 2, 3, and 4.

County Manager:

BMD/mjs

County Attorney:

[Signature] *BAK*

24.

Staff: Michael Halewski, DES – Real Estate Bureau

The County and Paris Associates Limited Partnership entered into the original Rosslyn Theater Lease on February 5, 1997. The original lease was amended on April 23, 2001 to extend the term of the lease, and provide the County with a five-year extension option. On April 26, 2006, the County notified Paris Associates Limited Partnership of its exercise of the option to renew the term of the lease through July 31, 2012.

DISCUSSION: The Second Amendment extends the term of the existing lease (as amended and extended) for five years; if approved, the term of the lease will expire on July 31, 2017, unless terminated early.

When the parties entered into the first amendment of the lease in 2001, the parties agreed to an early termination provision that would allow Paris Associates Limited Partnership to terminate the lease if the building was to be demolished as part of any approved development on the site on which the building is located. The termination provision required Paris Associates Limited Partnership to provide the County with a 180-day prior written notice. This Second Amendment expands the termination provision in two material ways: 1) it allows either party to terminate the lease by providing the other party with 180 days prior written notice of such termination; and 2) termination may be for any reason (i.e. it is not limited to the development of the site).

The Second Amendment eliminates one type of rent (i.e. Bonus Rent) previously payable by the County pursuant to the first amendment to this lease. The Bonus Rent was an additional rent obligation of the County based upon the County's income generated by the rental of the Spectrum Theater to third parties.

The County currently pays base rent equal to \$63,190.48 and additional rent equal to \$20,000 per year. The new base rent for the first lease year (through July 31, 2013) is \$85,072.64, payable in equal monthly installments of \$7,089.34. Base rent escalations do not exceed 2.34% per year for each lease year during the renewal term. All utilities are separately metered, and not part of the monthly rent payment.

FISCAL IMPACT: The total rent amounts for FY 2013 is \$84,915.80 (one month at the current base rent and additional rent, and eleven months at the new base rent). The rent costs are included in the FY 2013 adopted budget for the Artisphere in the General Fund (101.436813.71910.).

SECOND AMENDMENT TO ROSSLYN THEATER LEASE

THIS SECOND AMENDMENT TO ROSSLYN THEATER LEASE (the "Second Amendment") made this 18th day of JULY, 2012, by and between PARIS ASSOCIATES LIMITED PARTNERSHIP, a Virginia limited partnership (hereinafter "Landlord"), and THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate (hereinafter "Tenant" or "County") (jointly "Parties").

RECITALS:

WHEREAS, Landlord is the owner of that certain land and the building known as Rosslyn Plaza C, together with improvements thereon, situated at 1601 North Kent Street, Arlington, Virginia 22209; RPC 16039033 (VNO/CES Property #629).

WHEREAS, Landlord and Tenant entered into a lease agreement dated February 5, 1997 (the "Original Lease"), as amended by a First Amendment to Rosslyn Theater Lease dated April 23, 2001 (the "First Amendment"), which provide for the leasing of the Rosslyn Theater, as shown on Exhibit A attached hereto, consisting of approximately 7,840 rentable square feet of retail space measured in accordance with the Modified Washington D.C. Association of Realtors standard floor area measure ("Modified WDCAR") (the "Demised Premises"), in the building known as Rosslyn Plaza C (the "Building"), located at 1601 North Kent Street, Arlington, Virginia 22209, for a Term which expired on July 31, 2007;

WHEREAS, by letter from the County dated April 26, 2006 to the Landlord, the Tenant provided notice of its election to exercise its Option to Renew the Lease (VNO/CES Lease #133289) for a Five (5) year term, commencing on August 1, 2007 and expiring on July 31, 2012 (the "Option Renewal Letter");

WHEREAS, the Original Lease, the First Amendment, and the Option Renewal Letter are collectively referred to hereinafter as the "Lease".

WHEREAS, the Parties desire to further extend the Term of the Lease and amend certain terms and conditions thereof; and

WHEREAS, the Lease, as amended by this Second Amendment is hereinafter referred to jointly as the "Lease, as Amended".

NOW THEREFORE, the Parties hereto agree as follows:

For and in consideration of the amount of One and 00/100 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 agree as follows:

1. **Recitals.** The above recitals are incorporated by reference as if fully set forth herein.
2. **Term of Extension.** The Lease is hereby extended for a further period of Five (5) years, commencing on August 1, 2012 (the "Second Extended Term Effective Date"), and expiring on July 31, 2017 (the "Second Extended Term").

3. **Base Annual Rent.**

(a) For the Second Extended Term set forth in Paragraph 2 above, Tenant shall pay Base Annual Rent for the Demised Premises as follows commencing on the Second Extended Term Effective Date:

Period	Base Annual Rent	Monthly Base Rent
8/1/2012 – 7/31/2013	\$85,072.64	\$7,089.34
8/1/2013 – 7/31/2014	\$87,024.29	\$7,252.02
8/1/2014 – 7/31/2015	\$89,034.92	\$7,419.58
8/1/2015 – 7/31/2016	\$91,105.99	\$7,592.17
8/1/2016 – 7/31/2017	\$93,239.12	\$7,768.93

(b) The Base Annual Rent set forth in Paragraph 3(a) above includes the sum of \$20,000 per annum (which amount is not subject to annual increases) as a replacement for the payment of Additional Rent previously provided for in Paragraph 2 of the First Amendment to Lease.

4. **Additional Rent and Bonus Rent.** Tenant shall have no obligation for Additional Rent and Bonus Rent as provided in Paragraph 2 of the First Amendment to Lease during the Second Extended Term.

5. **Address for Notices.** Section 1.9 of the Lease, as Amended, is hereby amended by deleting such Section 1.9 in its entirety and by adding in its stead:

“1.9 (a) ADDRESS FOR NOTICES TO TENANT

Arlington County Real Estate Bureau Chief
2100 Clarendon Boulevard, Suite 800
Arlington, Virginia 22201

With a copy to:

Artisphere Executive Director
1101 Wilson Boulevard, 9th Floor
Arlington, Virginia 22209

and

Director, Arlington County Department of
Parks, Recreation & Cultural Resources
2100 Clarendon Boulevard, Suite 414
Arlington, Virginia 22201

(b) ADDRESS FOR NOTICES TO LANDLORD

Paris Associates Limited Partnership
c/o Vornado/Charles E. Smith L.P.
2345 Crystal Drive, Suite 1000
Arlington, Virginia 22202
Attention: President

and to:

Paris Associates Limited Partnership
c/o Vornado Realty Trust
210 Route 4 East
Paramus, New Jersey 07652
Attention: Chief Financial Officer

With a copy to:

Paris Associates Limited Partnership
c/o Vornado/Charles E. Smith L.P.
2345 Crystal Drive
Suite 1000
Arlington, Virginia 22202
Attention: Chief Operating Officer

(c) ADDRESS FOR PAYMENT OF RENT

Paris Associates Limited Partnership
c/o Vornado/Charles E. Smith L.P.
P.O. Box 75239
Baltimore, Maryland 21275-5239".

6. **Supplemental Rent.** Pursuant to Section 2.2 of the Original Lease, Supplemental Rent shall be paid in accordance with the terms of the Lease and shall continue to be adjusted just as if the Extended Term were part of the original Term of the Lease.

7. **Amend Section 29 of the Lease.** Section 29 of the Original Lease is hereby deleted and replaced with the following new language:

"29. **Early Termination of the Lease.** Either party may terminate this Lease by providing the non-terminating party with at least one hundred and eighty (180) days prior written notice of such termination. If such termination notice is given, then this Lease shall terminate as of the date set forth in the termination notice ("Termination Date"), without the need for any further action by either Landlord or Tenant. If this Lease is terminated pursuant to this Section of the Lease, then Base Annual Rent shall be apportioned and paid through the Termination Date. Tenant shall vacate the Demised Premises on or before the Termination Date. Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease or the value of any leasehold improvements. Tenant shall have no claim against Landlord for the value of any unexpired portion of the Lease Term, or for the value of any renewal or extension option herein contained, or for the value of any Leasehold Improvements."

8. **REIT Limitations.** Notwithstanding any other provision of the Lease, as hereby extended, neither Tenant nor any direct or indirect assignee or subtenant of Tenant may enter into any lease, sublease, license, concession or other agreement for use, occupancy or utilization of space in the Demised Premises which provides for a rental or other payment for such use, occupancy or utilization based in whole or in part on the net income or profits derived by any person from the property leased, occupied or utilized, or which would require the payment of any consideration which would not fall within the definition of "rents from real property", as that term is defined in Section 856(d) of the Internal Revenue Code of 1986, as amended.

9. **No Outstanding Payments.** The Parties hereby agree that, as of the date of this Second Amendment, all sums payable by Tenant to Landlord pursuant to the Lease have been paid in full, there being no outstanding rent or other sums whatsoever owed by Tenant to Landlord.

10. **Exhibits: Special Provisions.** Section 20 of the Original Lease is hereby amended by adding thereto the following subsections 20.3 through 20.15 to read as follows:

“20.3 **Acceptance of Space.** Tenant accepts the Demised Premises in its existing “as is” condition and shall be obligated for the payment of rent hereunder, regardless of any time required to construct, alter or redecorate the Demised Premises to Tenant’s requirements. Tenant hereby acknowledges and agrees that there are no leasehold improvements or improvement concessions of any kind to be provided by Landlord as part of the Second Amendment.

20.4 **Effect of Second Amendment on Lease:** Except as amended hereby, all other terms and conditions of this Lease, as Amended, remain in full force and effect. In the event the terms and conditions of the Second Amendment conflict with the terms of the Lease, the terms and conditions of the Second Amendment shall prevail and be controlling.

20.5 **Binding Effect:** This Lease, as Amended, shall inure to the benefit of, and bind, the Parties and their respective successors and permitted assigns.

20.6. **Full Force and Effect:** The Parties each represent and warrant to the other that this Lease, as Amended, is in full force and effect and has not been assigned, modified, supplemented or further amended in any way, other than by the Second Amendment.

20.7. **Entire Agreement, Amendment:** This 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 this Lease, as Amended, shall be of any force and effect. This 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. All terms used herein but not defined herein which are defined in this Lease, as Amended, shall have the same meaning for purposes hereof as they do for purposes of this Lease, as Amended.

20.8. **Counterparts:** The Second Amendment may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

20.9. **Incorporation of Recitals:** The foregoing recitals are fully incorporated into this Lease, as Amended, by this reference.

20.10. **Brokers.** Tenant represents and warrants that it did not retain any broker, agent or real estate salesperson with respect to carrying out negotiations or any other dealings related to this Lease, as Amended. Landlord represents and warrants that it retained Vornado/Charles E. Smith L.P. as its broker (“Broker”). Landlord, and not Tenant, shall compensate Broker according to a separate agreement. Landlord shall hold Tenant harmless from any claims arising out of Landlord’s agreement with Broker. Additionally, Landlord agrees to pay all commissions and costs to any and all other brokers or agents entitled to any commission or compensation in connection with this Lease, as Amended, pursuant to the terms of separate agreements, and Landlord shall hold Tenant harmless therefrom.

20.11. **Limitation of Landlord's Liability.** The obligations of Landlord under this Lease, as Amended, do not constitute personal obligations of the individual partners, members, directors, officers, shareholders, trustees or beneficiaries of Landlord, and Tenant shall not seek recourse against the partners, members, directors, officers, shareholders, trustees or beneficiaries of Landlord, or any of their personal assets for satisfaction of any liability with respect to this Lease, as Amended. In the event of any default by Landlord under this Lease, as Amended, Tenant's sole and exclusive remedies shall be against Landlord's interest in the Property, and any applicable insurance proceeds, condemnation awards, and other funds. The provisions of this paragraph are not designed to relieve Landlord from the performance of any of its obligations under this Lease, as Amended, but rather to limit Landlord's liability in the case of the recovery of a judgment against it, as aforesaid, nor shall any of the provisions of this paragraph be deemed to limit or otherwise affect Tenant's right to obtain injunctive relief or specific performance or availability of any other right or remedy which may be accorded Tenant by law or this Lease, as Amended. In the event of sale or other transfer of Landlord's right, title and interest in the Property, Landlord shall be released from all liability and obligations thereafter accruing under this Lease, as Amended; provided, that this paragraph shall inure to the benefit of any such purchaser or transferee, and further provided that the purchaser or transferee shall be deemed the Landlord hereunder, and further provided that the purchaser or transferee has assumed all of the Landlord's obligations under this Lease, as Amended.

20.12. **Relationship of Landlord and Tenant and Landlord's Liability.** Nothing in this Lease, as Amended, shall be interpreted or construed as creating any partnership, joint venture, agency or any other relationship between the parties, other than that of landlord and tenant.

20.13 **Role of Tenant/Tenant's Decisions; No Waiver.** Tenant's execution of this Lease shall not constitute the granting of governmental approval to Landlord for any governmental approval or consent required to be obtained by Landlord. Nothing in this Lease shall be construed to waive any of Tenant's powers, rights, or obligations as a governing authority or local governmental body, including, but not limited to, its police powers, right to grant or deny permits, right to collect taxes or fees, or any other power, right or obligation whatsoever.

20.14 **No Rights in Third Parties.** The Parties agree that no provision of this Lease shall create in the public, or in any person or entity other than the Parties, any rights as a third party beneficiary hereunder.

20.15 **No Indemnification or Hold Harmless.** Notwithstanding any other term or provision of this Lease to the contrary, Tenant shall have no obligation to explicitly or implicitly indemnify or hold harmless Landlord or any third party or parties from any liability whatsoever.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto have caused multiple counterparts of this Second Amendment to be signed in their respective names by their respective authorized signatories, effective as of the dates indicated below.

WITNESS FOR LANDLORD:

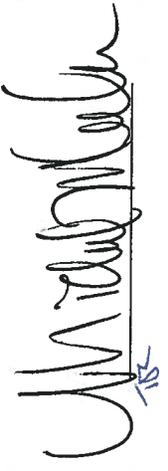
LANDLORD:

PARIS ASSOCIATES LIMITED PARTNERSHIP

By: Paris LLC
General Partner

By: Vornado Rosslyn LLC
Manager

By: Vornado Realty L.P.
Sole Member



By: Vornado Realty Trust
General Partner

By:  (SEAL)
Mitchell N. Shear, President
Vornado/Charles E. Smith
Washington, D.C. Office Division
Date: 02/18/12

WITNESS FOR TENANT:

TENANT: THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

By: _____ (SEAL)

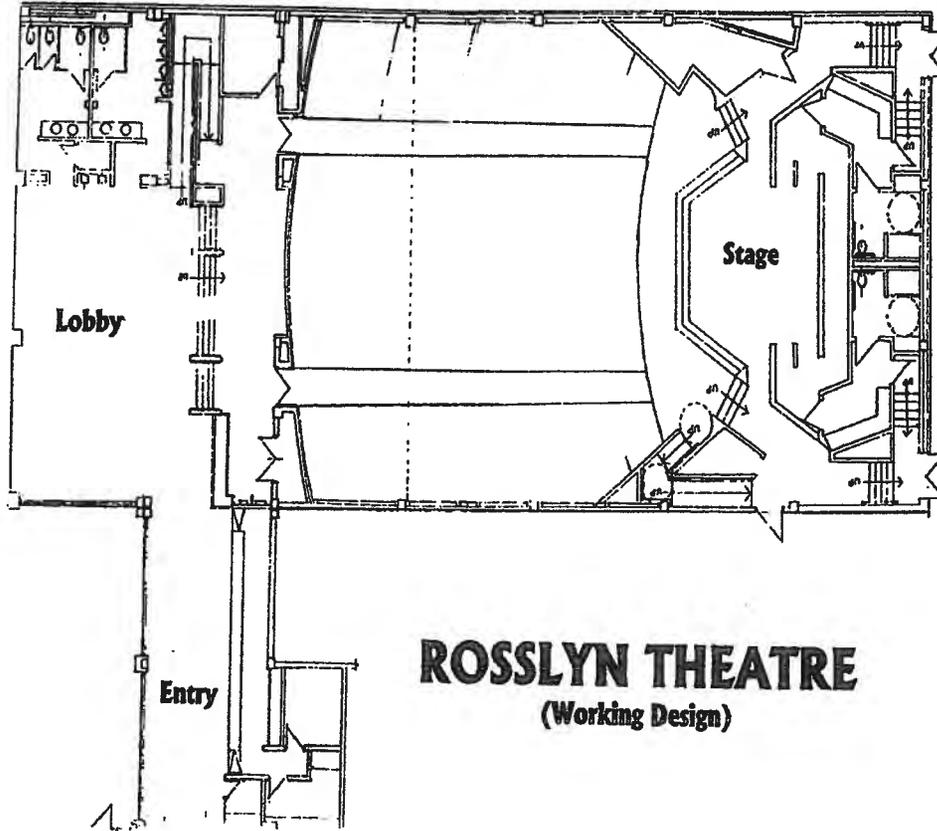
Name: Uri Arkin
Title: Real Estate Bureau Chief

Approved as to form:

County Attorney

EXHIBIT A
DEMISED PREMISES FLOOR PLAN

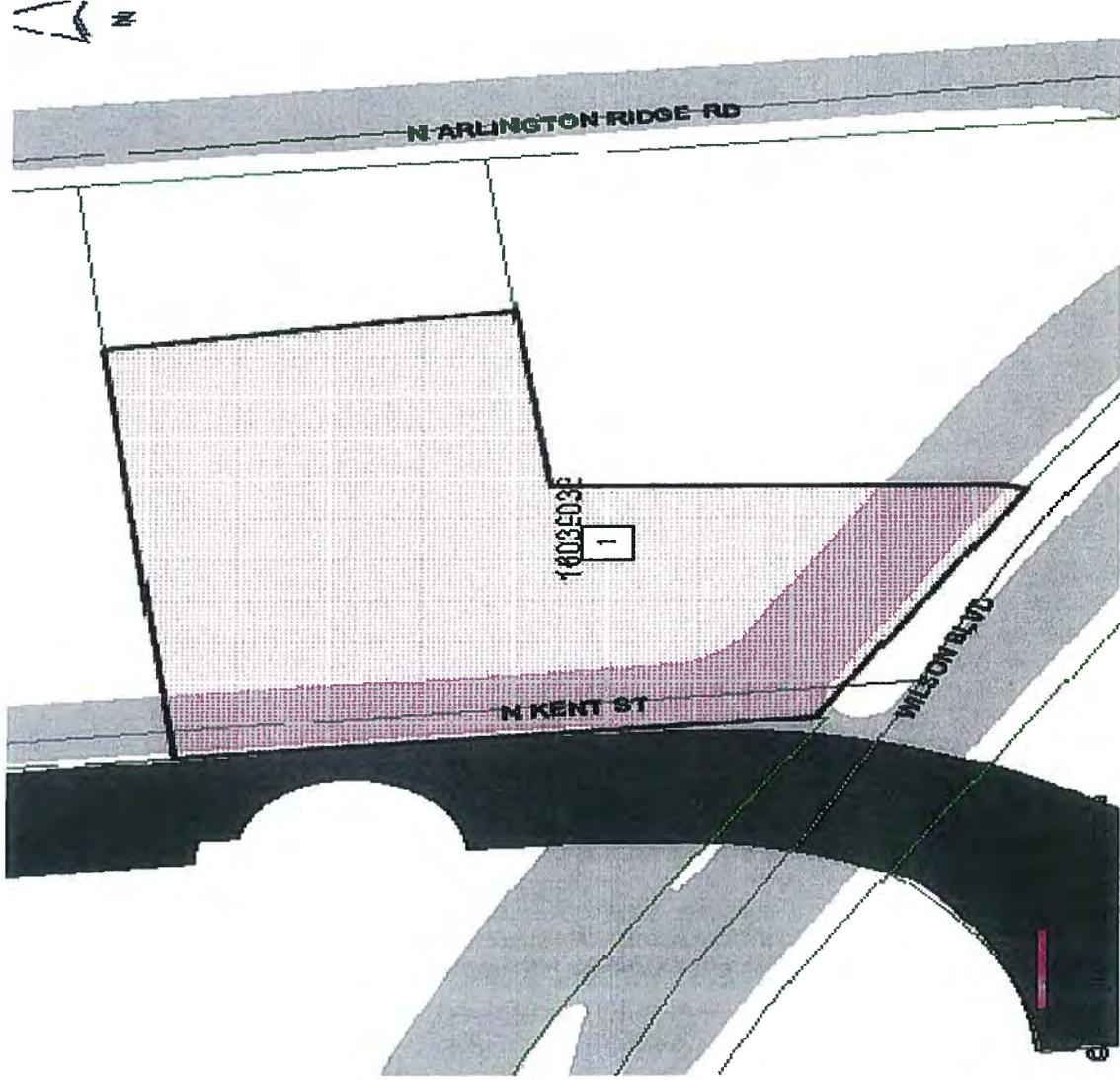
FLOOR PLAN



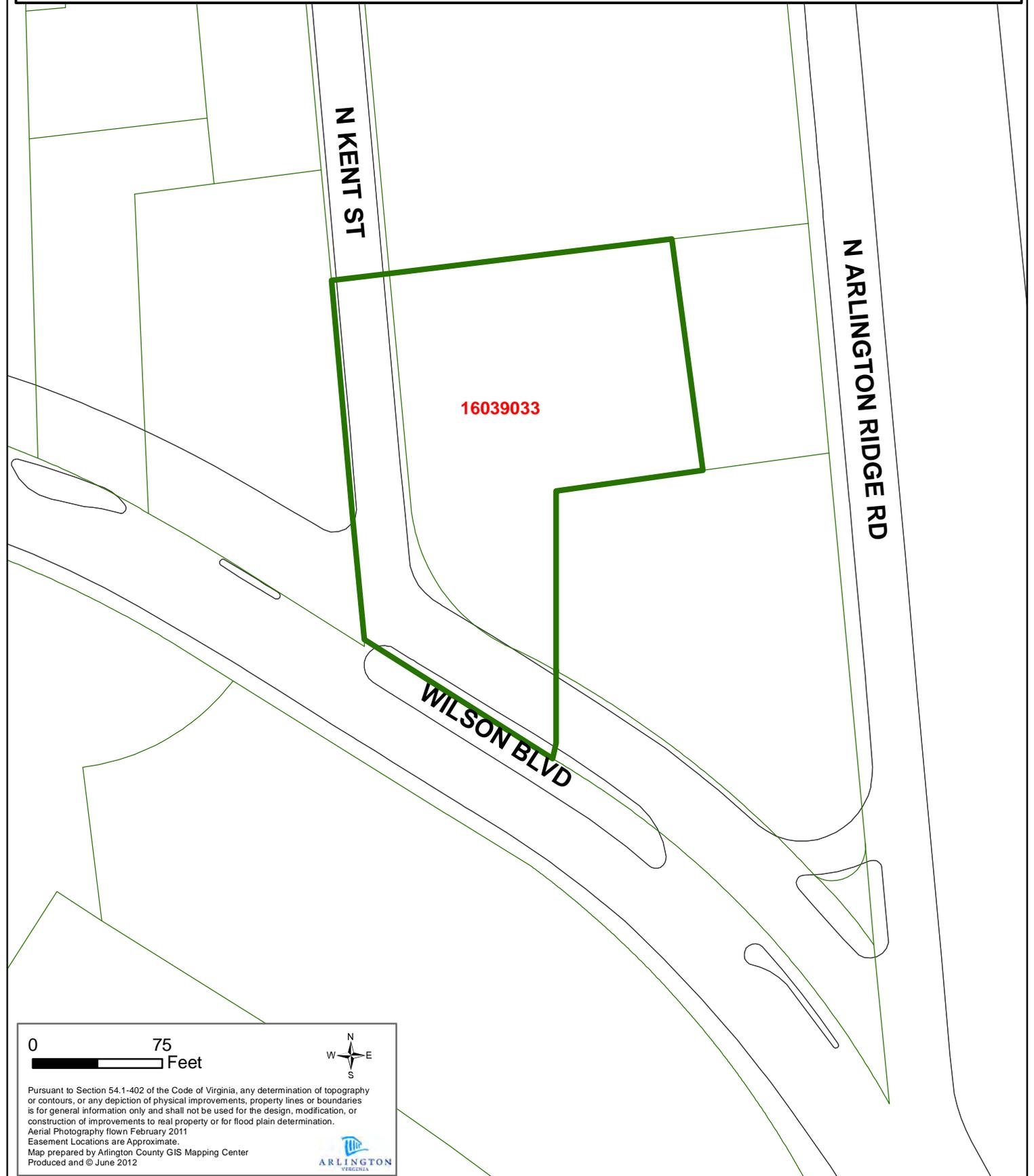
ROSSLYN THEATRE
(Working Design)

ATTACHMENT 1
VICINITY MAP

1601 N. Kent Street
Arlington, VA 22209



Vicinity Map
Spectrum Theater Lease Amendment
1601 N Kent Street
RPC # 16039033



0 75 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 2011
Easement Locations are Approximate.
Map prepared by Arlington County GIS Mapping Center
Produced and © June 2012



Vicinity Map
Spectrum Theater Lease Amendment
1601 N Kent Street
RPC # 16039033



0 75 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 2011. Easement Locations are Approximate. Map prepared by Arlington County GIS Mapping Center. Produced and © June 2012.

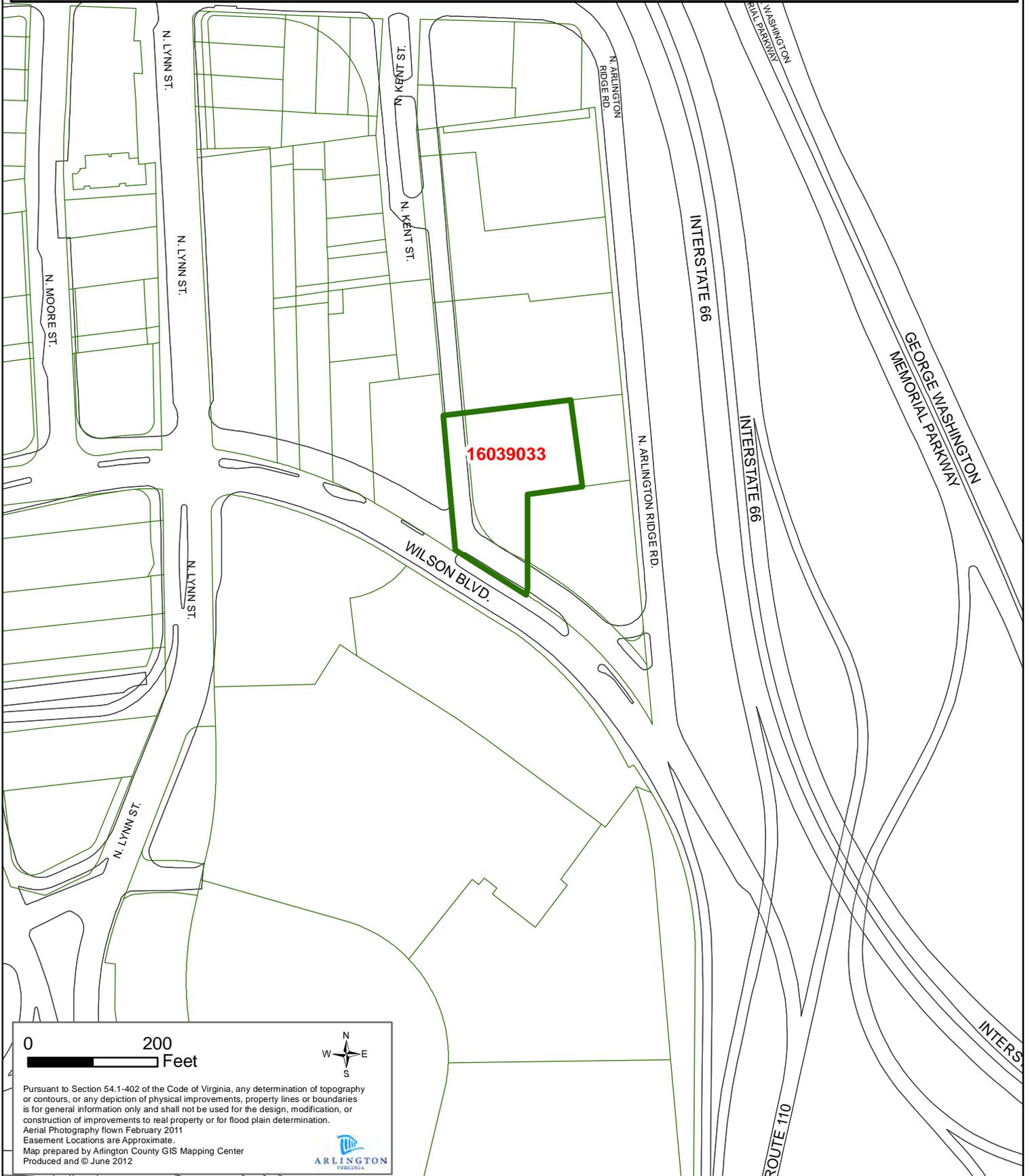


Vicinity Map

Spectrum Theater Lease Amendment

1601 N Kent Street

RPC # 16039033



0 200 Feet



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