



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of January 26, 2008

DATE: January 7, 2008

SUBJECT: Approval of a Crane Swing License Agreement, a Tieback License Agreement, and Authorization to Convey A Deed of Temporary Parking Easement and a Deed of Temporary Easement and Construction Agreement, Each Between the County Board of Arlington County, Virginia (the "County Board") and North Tract Apartments LLC ("NTA") Affecting Portions of County Property Known as Parcel 15, Potomac Yard Arlington, Arlington County, Virginia, RPC # 34024347.

C. M. RECOMMENDATIONS:

1. Approve the Crane Swing License Agreement ("Crane Swing Agreement"), attached hereto as Attachment 1, and the Tie-back License Agreement ("Tie-back Agreement"), attached hereto as Attachment 2, between the County and NTA, concerning the entry over, under, and upon portions of the County Parcel, known as Parcel 15, Potomac Yard Arlington, Arlington County, Virginia, RPC #34024347;
2. Authorize the conveyance of the Deed of Temporary Parking Easement ("Parking Easement"), attached hereto as Attachment 3, and the Deed of Temporary Easement and Construction Agreement ("Construction Easement"), attached hereto as Attachment 4, from the County to NTA, within portions of the County Parcel, known as Parcel 15, Potomac Yard Arlington, Arlington County, Virginia, RPC #34024347;
3. Authorize the Real Estate Bureau Chief, Department of Environmental Services, to execute, on behalf of the County, the Crane Swing Agreement, the Tieback Agreement, the Parking Easement, and the Construction Easement, and all related documents, subject to approval as to form by the County Attorney.

ISSUE: Should the County Board enter into the Crane Swing Agreement and Tie-back Agreement, and convey the Parking Easement and Construction Easement to NTA?

SUMMARY: Pursuant to Site Plan SP #390, previously approved by the County Board, NTA will develop a parcel of land known as Parcel A, Sebastian Springs, Parcel A and B, Lots 3B1 and 3B, Burke & Smiths Cullinane Subdivision, RPC # 34024457 ("Apartments Parcel"). In furtherance of this development, NTA has requested from the County the Crane Swing Agreement, the Tie-back Agreement, the Parking Easement, and the Construction Easement (collectively, the "Agreements"), as shown in the Vicinity Maps attached hereto as Exhibit "A",

County Manager: _____
County Attorney: _____
Staff: Michael Halewski, DES – Real Estate Bureau

for the temporary use of portions of an adjacent parcel of land known as Parcel 15, Potomac Yard Arlington, RPC #34024347, owned by the County (“County Parcel”).

BACKGROUND: The County approved Site Plan SP #390 on July 12, 2005, approving the development of a mid-rise residential building, presently known as North Tract Lofts, on the Apartments Parcel. Subsequently, the Apartments Parcel was conveyed to NTA, which is now pursuing the development pursuant to Site Plan SP #390. The Apartments Parcel is adjacent to the County Parcel, and NTA has requested permission to temporarily enter and/or use portions of the County Parcel in furtherance of its development, as reflected in the attached Agreements.

The Arlington County Department of Parks, Recreation and Cultural Resources (“DPRCR”) is currently planning the development of the County Parcel. The respective expiration dates for the Agreements have been established to minimize any impact NTA’s development of the Apartments Parcel may have on the County’s development of the County Parcel. The County also reserves the right to enter the license and easement areas subject to the Agreements during the respective terms of the Agreements for purposes related to the County’s development of the County Parcel. In addition, the County has reserved the right to terminate the Parking Easement and the Construction Easement at any time during the term if the County’s development of the County Parcel requires exclusive control of the County Parcel, thereby necessitating NTA’s vacation therefrom.

Portions of the Crane Swing Agreement, Tie-back Agreement, and Construction Easement areas are subject to a Fire Separation Agreement between NTA and the County pursuant to Condition 76 of Site Plan SP #390.

The Crane Swing Agreement, Tie-back Agreement, Parking Easement, and Construction Easement are substantially similar to four documents approved and authorized by the County Board at its June 9, 2007 meeting (the “Prior Documents”). The Prior Documents were for longer term lengths than the present agreements and easements, and thus contained higher compensation amounts. Subsequent to the approval and authorization of the Prior Documents by the County Board, NTA encountered financing complications resulting in a delay in its ability to pay the consideration for the Prior Documents. As a result, NTA only paid the consideration for one of the Prior Documents, which was then executed on behalf of the County Board. The terms of the Prior Documents have expired, necessitating approval of the current Crane Swing Agreement and Tie-back Agreement, and authorization of the current Parking Easement and Construction Easement, with new specified term lengths. NTA has resolved the prior financing difficulties, and has stated, in writing, that it has the present ability to pay the consideration for the current Crane Swing Agreement, Tie-back Agreement, Parking Easement, and Construction Easement.

DISCUSSION: The attached Agreements are necessary to facilitate the development and construction of the Apartments Parcel pursuant to and in accordance with the approved Site Plan SP #390.

The proposed Crane Swing Agreement includes the following provisions:

- The County grants NTA a license to enter a Ten Thousand One Hundred Nine (10,109) square foot portion of the airspace over the County Parcel, said portion being more particularly shown in Exhibit “C” to the Crane Swing Agreement, with one (1) tower construction crane.
- The Crane Swing Agreement shall automatically terminate at 11:59 p.m. on September 30, 2008.
- As consideration for the Crane Swing Agreement, the Licensee agrees to pay the County a one-time, lump sum license fee of Eight Thousand Eighty-seven and 20/100 Dollars (\$8,087.20) for use of the airspace.

The proposed Tie-back Agreement includes the following provisions:

- The County grants NTA a license to enter an Eleven Thousand Four Hundred Fifty-four (11,454) square foot portion of the County Parcel, said portion being more particularly shown in Exhibit “C” to the Tie-back Agreement, to install, maintain, and repair subterranean earth anchors as a part of NTA’s sheeting and shoring operations on the Apartments Parcel.
- The Tie-back Agreement shall automatically terminate at 11:59 p.m. on June 30, 2008.
- As consideration for the Tie-back Agreement, the Licensee agrees to pay the County a one-time, lump sum license fee of Five Thousand Seven Hundred Twenty-seven and 00/100 Dollars (\$5,727.00).

The proposed Parking Easement includes the following provisions:

- The County grants NTA a temporary easement over and upon a Nineteen Thousand Three Hundred Forty-seven (19,347) square foot portion of the County Parcel, said portion being more particularly shown in Exhibit “C” to the Parking Easement, for vehicular parking purposes pursuant to Condition 30 of Site Plan SP #390.
- The Parking Easement shall automatically terminate at 11:59 p.m. on June 30, 2008.
- The County may terminate the Parking Easement prior to 11:59 p.m. on June 30, 2008 without any liability whatsoever by providing NTA with fifteen (15) days prior written notice of such termination.
- As consideration for the Parking Easement, NTA agrees to pay the County a one-time, lump sum amount of Nineteen Thousand Two Hundred Forty-nine and 89/100 Dollars (\$19,249.89).

The proposed Construction Easement includes the following provisions:

- The County grants NTA a temporary easement over and upon a Fifteen Thousand Twenty-eight (15,028) square foot portion of the County Parcel, said portion being more particularly described in Exhibit “C” to the Construction Easement, for purposes related and incidental to NTA’s development of the Apartments Parcel.
- The Construction Easement shall automatically terminate at 11:59 p.m. on June 30, 2008.
- The County may terminate the Construction Easement prior to 11:59 p.m. on June 30, 2008 without any liability whatsoever by providing NTA with fifteen (15) days prior written notice of such termination.
- NTA is required to pay any remobilization or other increased costs, not to exceed Fifty Thousand Dollars (\$50,000.00) incurred by the County as a part of its development of the County Parcel due to NTA’s occupation and use of the Construction Easement. The amount of such increased costs shall be based on the County’s sole determination.
- Prior to the commencement of the Construction Easement, NTA is required to deliver to the County an irrevocable standby letter of credit in the face amount of Fifty Thousand Dollars (\$50,000.00), securing faithful performance of all of NTA’s obligations under the Construction Easement, including, but not limited to, the payment of any remobilization or other increased costs incurred by the County as a part of its development of the County Parcel due to NTA’s occupation and use of the Construction Easement.
- As consideration for the Construction Easement, NTA agrees to pay the County Board a one-time, lump sum amount of Nine Thousand Four Hundred Eighty-one and 60/100 Dollars (\$9,481.60).

It is recommended that the County approve the attached Crane Swing Agreement and Tie-back Agreement, authorize the conveyance of the attached Parking Easement and Construction Easement, and authorize the Real Estate Bureau Chief, Department of Environmental Services, to execute, on behalf of the County, the Agreements and all related documents, simultaneously, subject to approval as to form by the County Attorney.

FISCAL IMPACT: The County will receive the total sum of Forty-two Thousand Five Hundred Forty-five and 68/100 Dollars (\$42,545.68) for the Crane Swing Agreement, Tie-back Agreement, Parking Easement, and Construction Easement, which amount will be deposited with the County’s general capital fund (Fund 313, Source 0649).

January 3, 2008

CRANE SWING LICENSE AGREEMENT

THIS CRANE SWING LICENSE AGREEMENT (the "Agreement") is made as of the ___ day of _____, 2008, by and between, **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body corporate and politic (the "Licensor" or the "County"); and **NORTH TRACT APARTMENTS LLC**, a Delaware limited liability company authorized to do business in the Commonwealth of Virginia (the "Licensee").

RECITALS:

R-1 WHEREAS, the County is the owner of certain real property in Arlington County, Virginia, known as Parcel 15, Potomac Yard Arlington, being further described in Exhibit "A-1" and Exhibit "A-2", attached hereto and incorporated herein, RPC #34024347, and having been acquired by the County in a deed dated October 31, 2002, and recorded in Deed Book 3400 at page 734, among the land records of Arlington County, Virginia (the "County Parcel"); and

R-2 WHEREAS, the Licensee is the owner of certain real property in Arlington County, Virginia, known as Parcel A, Sebastian Springs, Parcel A and B, Lots 3B1 and 3B, Burke & Smiths Cullinane Subdivision, being further described in Exhibit "B-1" and Exhibit "B-2", attached hereto and incorporated herein, RPC #34024457, and having been acquired by the Licensee in a deed dated December 21, 2006, and recorded in Deed Book 4054 at page 402, among the land records of Arlington County, Virginia (the "Apartments Parcel"); and

R-3 WHEREAS, the Licensee plans to develop the Apartments Parcel pursuant to the approved Administrative Rule 4.1 Site Plan, SP #390, as a mid-rise residential building; and

R-4 WHEREAS, the Licensee requires, as part of its development of the Apartments Parcel, a construction crane swing license above a portion of the County Parcel; and

R-5 WHEREAS, a portion of the Licensed Premises, as hereinafter defined, also is the subject of a Fire Separation Agreement, dated March 27, 2006, by and between the County Board of Arlington County, Virginia, and Ameriton Properties Incorporated; and

R-6 WHEREAS, a portion of the Licensed Premises, as hereinafter defined, also is the subject of a Tie-Back License Agreement by and between the County Board of Arlington County, Virginia, and North Tract Apartments LLC, for the installation, maintenance, and repair of sheeting tie-backs, said License Agreement may be executed contemporaneously herewith; and

R-7 WHEREAS, a portion of the Licensed Premises, as hereinafter defined, also is the subject of a Temporary Parking Easement by and between the County Board of Arlington County, Virginia, and North Tract Apartments LLC, said easement may be executed contemporaneously herewith; and

R-8 WHEREAS, a portion of the Licensed Premises, as hereinafter defined, also is the subject of a Temporary Construction Easement by and between the County Board of Arlington County, Virginia, and North Tract Apartments LLC, said easement may be executed contemporaneously herewith; and

R-9 WHEREAS, subject to the terms and conditions of this Agreement, the County grants a construction crane swing license to the Licensee in connection with the Licensee's development of the Apartment Parcel.

WITNESSETH:

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00), cash in hand paid, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the mutual benefits to be received by the parties hereto, the parties hereby agree as follows:

1. Licensed Premises. The County hereby grants to the Licensee, a revocable license to enter into the airspace above a portion of the County Parcel measuring Ten Thousand One Hundred and Nine (10,109) square feet in area (the "Licensed Premises"), subject to the terms and restrictions of this Agreement. The Licensed Premises is further depicted in Exhibit "C," entitled, "Plat Showing Temporary Crane Swing License on the Property of Arlington County Board, Deed Book 3400 Page 734, Arlington County, Virginia," prepared by VIKA Incorporated, dated April 10, 2007, revised April 19, 2007, attached hereto and incorporated herein.

2. Permitted Uses. The license hereby granted permits the Licensee, during the Term, as hereinafter defined, to assemble, operate, maintain, disassemble and remove, one tower crane within the Licensed Premises, as necessary for the Licensee to construct improvements on the Apartments Parcel; provided, however, that such entry into the Licensed Premises by the Licensee's tower crane shall in no way restrict the Licensor's construction, repair, reconstruction, renovation, operation or redevelopment on the County Parcel.

3. Term. The term of this Agreement ("Term") shall begin at 12:01 a.m. on January 30, 2008 (the "Commencement Date"), and shall expire upon the earlier of the completion of the construction of the mid-rise residential building on the Apartments Parcel pursuant to SP #390 or 11:59 p.m. on September 30, 2008.

4. License Fee. Licensor permits Licensee to use the Licensed Premises for a one-time, lump-sum payment of Eight Thousand Eighty-seven and 20/100 Dollars (\$8,087.20), to be paid by Licensee to Licensor upon the execution of this Agreement.

5. Insurance. The Licensee shall, and hereby agrees to, maintain, and cause its crane owner and its crane operator to maintain, a policy or policies of broad form comprehensive general liability insurance with a limit of not less than Two Million Dollars (\$2,000,000) in the aggregate (\$1,000,000 per occurrence), and not less than One Million Dollars (\$1,000,000) for bodily injury or death in the aggregate and Five Hundred Thousand Dollars (\$500,000) with respect to damage or destruction of property, death or bodily injury arising out of any one

occurrence. Such insurance coverage shall protect the persons and entities indemnified under Section 9 of this Agreement from liability. Licensee shall maintain such insurance coverage in full force and effect continuously at all times while this Agreement is in effect. The insurance policy and policy limits shall neither operate as a limit of Licensee's liability to Licensor under this Agreement, nor as a limit of Licensee's duty of indemnification hereunder. Prior to the beginning of this Agreement, Licensee shall furnish Licensor with certificates of insurance indicating that the insurance is prepaid for the entire Term, that it insures all activity contemplated under this Agreement, and that it contains a thirty (30) day notice provision prior to termination, cancellation, non-renewal, material change, or reduction of coverage. The policy shall provide, among other things, that the actions or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any insured party under the policy. No provision contained in this Agreement shall act as a waiver of any rights of subrogation of the insurance company which is the primary insurer for Licensor. The insurance required to be carried by Licensee herein shall be with an insurance company licensed to do business in the Commonwealth of Virginia and rated not lower than A-X in the A.M. Best Rating Guide. Such insurance shall:

(i) contain an endorsement that such policy shall remain in full force and effect notwithstanding that the insured has released its right of action against any party before the occurrence of a loss; and

(ii) name Licensor and others listed hereinafter as additional insureds and loss payee; and

(iii) provide that the policy shall not be canceled, failed to be renewed or materially amended without at least thirty (30) days' prior written notice to Licensor. On or before the Commencement Date and, thereafter, not less than thirty (30) days before the expiration date of the insurance policy, a certificate of insurance, together with evidence satisfactory to Licensor of the payment of all premiums for such policy, shall be delivered to Licensor. Licensor, its elected and appointed officials, officers, employees, contractors and agents shall be named as additional insureds under all coverage maintained by Licensee hereunder and the certificate of insurance must so state. Coverage afforded under this section shall be primary as respects the Licensor, its elected and appointed officials, officers, employees, contractors and agents. The following definition of the term "Licensor" applies to all policies issued under this Agreement:

"The County Board of Arlington County, Virginia and any affiliated or subsidiary Board, Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board, Authority, Committee, or Independent Agency is either a Body Politic created by the County Board of Arlington County, Virginia, or one in which controlling interest is vested in Arlington County; or Arlington County Constitutional Officers."

All insurance policies and certificates of insurance required of Licensee hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, material change, or reduction in coverage until thirty (30) days prior written notice has been given to Arlington County, Virginia." Therefore, the words "endeavor to" and "but failure to mail such notice shall impose no obligation of liability of any kind upon

the company, its agents or representatives" are to be eliminated from the cancellation provision of any standard ACORD certificates of insurance.

6. No Permanent Rights. Licensor and Licensee acknowledge that the intention of this Agreement is for Licensor to grant a license only (permission) to Licensee for Licensee's sole use and benefit, and that there is no intention whatsoever to grant to Licensee, its successors, or to any other person or entity, any permanent rights or legal interests, of any kind, in Licensor's real or personal property.

7. Default. This Agreement shall, at the sole option of Licensor, cease and terminate if Licensee shall violate or fail to perform any of the conditions, covenants or agreements of this Agreement, provided that any such violation or failure to perform any of such conditions, covenants or agreements shall continue for a period of thirty (30) days after written notice thereof has been delivered by Licensor to Licensee. In such event Licensee shall however remain liable to Licensor for all monetary and other damages arising from such default. Upon the termination or expiration of this Agreement, Licensor shall have the right to prevent Licensee's entry to or access upon the Licensed Premises and the County Parcel, and to immediately remove any property of Licensee located upon the Licensed Premises and the County Parcel at Licensee's sole risk and expense.

8. Notice. Every notice, demand, request, or other communication which any party is required or desires to give to the other shall be in writing, properly addressed, and shall be given by (i) personal delivery, (ii) established overnight commercial courier (such as FedEx) for delivery on the next business day with delivery charges prepaid or duly charged or (iii) by registered or certified mail (return receipt requested, first class postage prepaid), as follows:

If to County:

Arlington County, Virginia
Engineering and Capital Projects Division
Real Estate Section, Suite 900
Arlington, VA 22201
Attn: Real Estate Bureau Chief

With copies to:

Arlington County, Virginia
Office of the County Manager
2100 Clarendon Boulevard
Suite 302
Arlington, VA 22201
Attn: County Manager

If to Licensee:

NORTH TRACT APARTMENTS LLC
C/O One Overton Park
3625 Cumberland Boulevard, Suite 680
Atlanta, Georgia 30339
Attn: Gerald R. Massey, III

With copies to:

York Residential, Mid Atlantic Region
2011 Crystal Drive, Suite 400
Arlington, Virginia 22202
Attn: Michael K. George, Development Services Manager

Any party may, by like notice given at least ten (10) days before such change becomes effective, designate a new address to which such notices shall be sent. Notice shall be deemed effective when personally delivered, or one business day after having been delivered to a recognized overnight courier, or three (3) business days after mailing, if said notice is by mail. An acknowledgment signed by the party getting notice shall constitute conclusive evidence that the notice has been received.

9. Licensee's Liability and Indemnification of Licensor. The Licensee hereby agrees that it shall be fully liable for any and all direct damages, losses, expenses, or injuries to persons or property to the extent caused by it or its employees, agents, contractors, or affiliates arising from the exercise of the rights granted under the terms of this Agreement, or the breach of any terms of this Agreement, whether or not such damages, losses, expenses or injuries are as result of the negligence or any misconduct of the Licensee or its employees, agents, contractors, or affiliates. The Licensee hereby agrees to indemnify, defend and hold harmless the County, and its elected and appointed officials, officers, employees, contractors, agents, successors and assigns, from any and all claims, demands, debts, actions, causes of action, suits, obligations, losses, costs, expenses, fees (including reasonable attorneys' fees, disbursements, and litigation costs) and liabilities arising from or in connection with the Licensee's breach of any of the terms of this Agreement or injury or death to persons or damage to property resulting from the activities of the Licensee or its employees, agents, contractors, or affiliates arising from the exercise of rights granted under the terms of this Agreement.

10. No Partnership, Joint Venture, Lease, or Easement; Use by Licensor. The parties hereby agree that nothing contained in this Agreement shall be deemed or construed as creating a partnership; joint venture; the relationship of landlord and tenant between Licensor and Licensee; a leasehold interest; or an easement in any portion of the County Parcel. Licensor has the right to

enter upon and use the Licensed Premises during the Term, so long as such entry or use is not inconsistent with Licensee's use hereunder.

11. Role of the Licensor/Licensor Decisions; No Waiver. The Licensor's execution of this Agreement shall neither constitute nor be deemed to be governmental approval for any actions or interests contemplated herein, or for any other governmental approval or consent required to be obtained by Licensor. Whenever, in this Agreement, Licensor is required to join in, consent, give its approval, or otherwise act under this Agreement, it is understood that such obligations are meant to apply to the Licensor acting in its capacity as a Licensor and not in its capacity as a governing authority. Nothing in this Agreement shall be construed to waive any of Licensor's powers, rights or obligations as a governing authority of local governing body, whether or not affecting the Licensed Premises, including, but not limited to its police power, right to grant or deny permits, right to collect taxes or fees, or any other power, right or obligation whatsoever.

12. No Waiver of Sovereign Immunity by Licensor. Nothing in this Agreement nor any action taken by Licensor pursuant to this Agreement, nor any document which arises out of this Agreement, shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of the Licensor, or of its elected and appointed officials, officers and employees.

13. No Rights in Third Parties. The parties hereto mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than those signing this Agreement as parties hereto, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for personal injury, property damage, or breach of contract pursuant to the terms of this Agreement or otherwise.

14. No Indemnification or Hold Harmless. Notwithstanding any other term or provision of this Agreement to the contrary, Licensor shall have no obligation to explicitly or implicitly indemnify or hold harmless the Licensee or any third party or parties from any liability whatsoever.

15. No Assignment or Transfer. This Agreement is non-assignable and non-transferable by the Licensee.

16. Severability. If any term or provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement, other than those terms or provisions which are held to be invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

17. Approval of Agreement by Licensor. This Agreement shall not become effective unless and until the Licensor approves this Agreement and it is signed on behalf of the Licensor. If this Agreement is not approved by the Licensor and executed by an authorized person, then no liability whatsoever shall accrue to the Licensor or Licensee and the Licensor and Licensee shall have no obligations whatsoever to each other.

18. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without reference to choice of law principles. All legal actions instituted by the Licensor or the Licensee concerning this Agreement shall be filed solely in the Arlington County General District or Circuit Court.

19. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original.

20. Entire Agreement/Amendment. No representation or statements have been made which would modify, add to or change the terms of this Agreement. This Agreement may be amended only by a written document signed by the County and the Licensee, or their respective successors and assigns. Any such amendment shall become effective only upon recordation among the land records of Arlington County, Virginia.

21. Incorporation of Recitals. The foregoing recitals are fully incorporated into this Agreement by this reference.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WITNESS the following signatures:

LICENSOR: THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

BY: _____

NAME: _____

TITLE: _____

DATE: _____

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____

I, THE UNDERSIGNED Notary Public, in and for the commonwealth and city/county aforesaid, hereby certify that _____, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same as his/her act and deed and the act and deed of THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate and politic.

Given under my Hand and Seal this ____ day of _____, 200 ____.

Notary Public

My commission expires: _____

LICENSEE: NORTH TRACT APARTMENTS LLC, a Delaware limited liability company registered to do business in Virginia

BY: North Tract, LLC, a Georgia limited liability company, its Manager

BY: York North Tract, LLC, a Georgia limited liability company, its Manager

BY: York Residential – North Tract, LLC, a Georgia limited liability company, its Manager

BY: [Signature]

NAME: GERALD R. MASSEY, III

TITLE: MANAGING MEMBER

DATE: 1.4.2008

STATE/Commonwealth of Georgia
CITY/COUNTY OF Douglas

I, THE UNDERSIGNED Notary Public, in and for the state/commonwealth and city/county aforesaid, hereby certify that Gerald R. Massey, III, Managing Member of York Residential - North Tract, LLC, itself the Managing Member of York North Tract, LLC, itself the Managing Member of North Tract, LLC, itself the Managing Member of NORTH TRACT APARTMENTS LLC, a Delaware limited liability company authorized to do business in Virginia, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same as his/her act and deed and the act and deed of the foregoing limited liability company.

Given under my Hand and Seal this 4th day of January, 2008.

Laurie Harris
Notary Public

My commission expires: 1/31/09

Approved as to form: _____
County Attorney

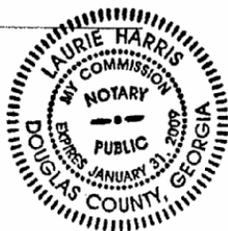


Exhibit "A-1"
COUNTY PARCEL
Legal Description

AIA:

AREA 1:

Beginning at the northeasterly corner of the land of Davis Industries, said point also being in the easterly right-of-way line of Old Jefferson Davis Highway, U.S. Route 1;

Thence, with said easterly right-of-way line of Old Jefferson Davis Highway, U.S. Route 1, the following three (3) courses:

- 1) N 51° 18' 22" E, a distance of 820.11 feet to a point of curvature;
- 2) With a curve to the left having a central angle of 33° 55' 36", a radius of 324.37 feet, an arc distance of 192.07 feet, and a chord length of 189.28 feet which bears N 34° 20' 34" E;
- 3) thence N 17° 22' 46" E a distance of 70.77 feet to a point on the southerly line of the land of Equitable Life Assurance Society of the U.S.;

Thence, with the southerly and easterly line of the land of Equitable Life Assurance Society of the U.S. the following two (2) courses:

- 1) With a curve to the left having a central angle of 16° 49' 29", a radius of 1,136.28 feet, an arc distance of 333.67 feet, and a chord length of 332.47 feet which bears N 71° 19' 50" E;
- 2) N 33° 04' 26" E, a distance of 861.25 feet to a point in the southerly line of the land of the United States of America;

Thence with said southerly line of the land of the United States of America the following three (3) courses:

- 1) S 53° 12' 34" E, a distance of 57.10 feet;
- 2) N 33° 04' 26" E, a distance of 156.86 feet;
- 3) N 74° 33' 17" E, a distance of 49.98 feet to a point in the westerly line of the land of Commonwealth Atlantic Land V Inc;

Thence, with said westerly line of the land of Commonwealth Atlantic Land V Inc. the following four (4) courses:

- 1) S 33° 04' 26" W, a distance of 1,986.38 feet to a point of curvature;

A
R
L
C
D

- 2) With a curve to the left having a central angle of $13^{\circ} 27' 23''$, a radius of 5,789.65 feet, an arc distance of 1,359.76 feet, and a chord length of 1,356.64 feet which bears $S 26^{\circ} 20' 44'' W$ to a point of tangency;
- 3) $S 19^{\circ} 37' 02'' W$, a distance of 74.06 feet to a point of curvature;
- 4) With a curve to the left having a central angle of $04^{\circ} 09' 51''$ a radius of 1,599.67 feet, an arc distance of 116.26 feet and a chord length of 116.24 feet which bears $S 17^{\circ} 32' 07'' W$ to a point in the westerly line of Parcel JA of the land of Third Crystal Park Associates L.P.;

Thence, with said line of Parcel JA of the land of Third Crystal Park Associates L.P., and the northerly line of Parcel JB of the land of Third Crystal Park Associates L.P., the following two (2) courses:

- 1) $S 22^{\circ} 11' 51'' W$, a distance of 196.87 feet;
- 2) $N 69^{\circ} 33' 09'' W$, a distance of 36.99 feet to the southeasterly corner of the land of CESC Crystal/Rossllyn LLC;

Thence, with the easterly lines of CESC Crystal/Rossllyn LLC, Richard C. and Jeanne T. Morauer and the northerly right-of-way line of 6th Street South, the following five (5) courses:

- 1) With a curve to the right having a central angle of $01^{\circ} 47' 00''$, a radius of 5,844.60 feet, an arc distance of 181.92 feet, and a chord length of 181.91 feet which bears $N 16^{\circ} 39' 08'' E$;
- 2) $N 07^{\circ} 32' 04'' W$, a distance of 82.76 feet;
- 3) $N 19^{\circ} 07' 54'' E$, a distance of 139.82 feet to a point of curvature;
- 4) With a curve to the right having a central angle of $03^{\circ} 15' 33''$, a radius of 5,879.65 feet, an arc distance of 334.45 feet, and a chord length of 334.41 feet which bears $N 21^{\circ} 19' 57'' E$, to the point of reverse curvature;
- 5) With a curve to the left having a central angle of $73^{\circ} 02' 19''$, a radius of 45.00 feet, an arc distance of 23.66 feet, to the southeasterly corner of the land of Davis Industries;

Thence, with the easterly line of Davis Industries, the following fourteen (14) courses:

- 1) $N 82^{\circ} 48' 57'' E$, a distance of 25.00 feet;
- 2) $N 22^{\circ} 04' 11'' E$, a distance of 133.67 feet;

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- 3) N 30° 05' 00" W, a distance of 137.27 feet;
 - 4) N 44° 44' 48" E, a distance of 21.46 feet;
 - 5) N 21° 55' 20" W, a distance of 105.29 feet;
 - 6) N 47° 04' 16" W, a distance of 90.33 feet;
 - 7) N 24° 44' 41" W, a distance of 33.42 feet;
 - 8) N 05° 31' 22" W, a distance of 49.44 feet;
 - 9) N 05° 36' 33" E, a distance of 116.40 feet;
 - 10) N 75° 21' 51" W, a distance of 18.22 feet;
 - 11) N 25° 23' 15" E, a distance of 101.00 feet;
 - 12) N 61° 59' 51" W, a distance of 22.69 feet;
 - 13) N 29° 13' 30" E, a distance of 65.72 feet;
 - 14) N 34° 14' 14" W, a distance of 63.34 feet to the point of beginning.
- Containing 774.782 Square Feet or 17.7865 Acres, More or Less.

APR 20 2011

Exhibit "A-2"
COUNTY PARCEL
Schematic

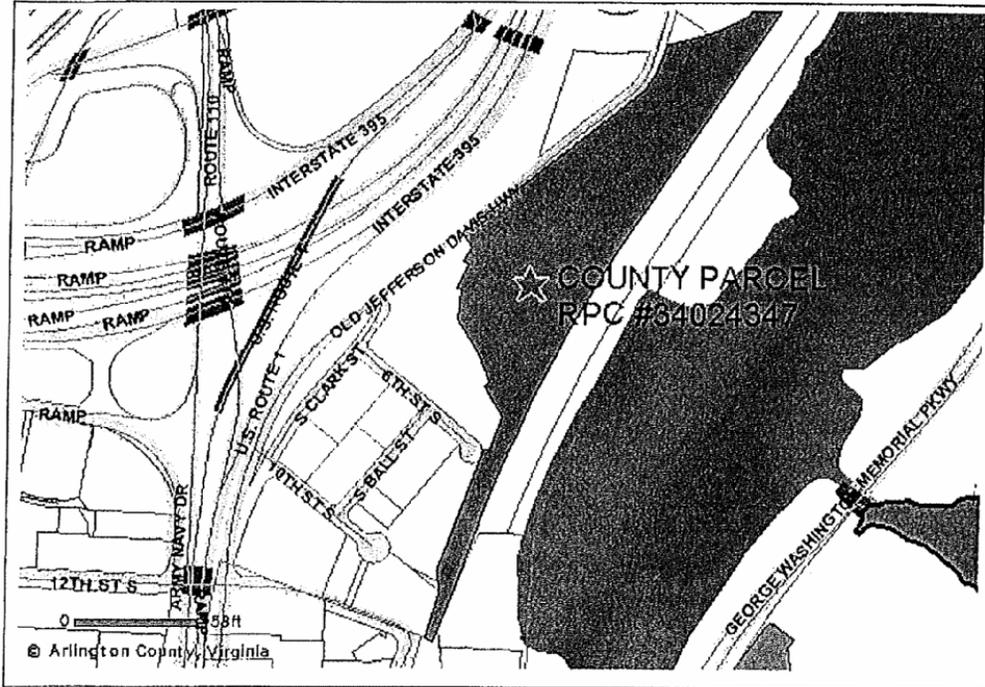


Exhibit "B-1"
THE APARTMENTS PARCEL
Legal Description

All of that certain lot or parcel of land situated, lying and being in Arlington County, Virginia and being more particularly described as follows:

Being all of the property described in a grant to Morauer Family Limited Partnership by deed dated December 19, 1996 and recorded in Deed Book 2810 at Page 457 all among the Land Records of Arlington County, Virginia.

Beginning for the same at an iron pipe found on the southeasterly curved right of way line of 10th Street South (50 feet wide), said point also marking the northwesterly end of the common line of division between the aforesaid Morauer property (D.B. 2810 PG. 457) and the property of CESC Crystal/Rosslyn LLC (D.B. 2857 PG. 1211); thence running with the right of way line of said 10th Street South, the following four (4) courses and distances.

- 1) 123.52 feet along the arc of curve to the left having a radius of 60.00 feet and a chord bearing and distance of North 43 degrees 25' 32" West, 102.83 feet to a point of curvature; thence
- 2) 27.40 feet along the arc of a curve to the right having a radius of 30.00 feet and a chord bearing and distance of North 76 degrees 14' 29" West, 26.45 feet to a point, thence
- 3) North 50 degrees 04' 50" West, 75.49 feet to a point of curvature; thence
- 4) 31.76 feet along the arc of a curve to the right having a radius of 20.00 feet and a chord bearing and distance of North 04 degrees 35' 30" West, 28.52 feet to an iron pipe found on the northeasterly right of way line of South Ball Street, width varies thence; running with South Ball Street
- 5) North 40 degrees 53' 50" East, 44.98 feet to a point on the southerly line of the property of Baljit S. and Pavitar P. Aulakh (D.B. 2668, PG. 717); thence running with the aforesaid southerly property line.
- 6) South 49 degrees 06' 10" East, 156.80 feet to a point; thence running with the northeasterly line of said Aulakh Property and continuing with the northeasterly lines of W.M.A.T.A (D.B. 2567 PG. 1344), the following two (2) courses and distances
- 7) North 40 degrees 53' 50" East, 356.79 feet to rebar found; thence
- 8) 92.89 feet along the arc of a curve to the left having a radius of 1,314.95 feet and a chord bearing and distance of North 38 degrees 53' 51" East, 92.87 feet to a point on the southwesterly right of way line of 6th Street South (width varies); thence running with said right of way, the following (2) courses and distances
- 9) 20.75 feet along the arc of a curve to the right having a radius of 45.00 feet and a chord bearing and distance of South 06 degrees 06' 42" East, 20.57 feet to a point; thence

10) 128.16 feet along the arc of a curve to the left having a radius of 45.00 feet and a chord bearing and distance of South 74 degrees 29' 35" East, 89.03 feet to a point on the westerly line of the Arlington County School Board (D.B. 3400 PG 734); thence running with said property, the following three (3) courses and distances

11) 334.53 feet along the arc of a curve to the left having a radius of 5,879.65 feet and a chord bearing and distance of South 22 degrees 04' 57" West, 334.48 feet to a point; thence

12) South 19 degrees 48' 20" West, 140.00 feet to a point; thence

13) South 06 degrees 36' 25" East, 47.02 feet to an iron pipe found on the aforesaid common line of division between Morauer and CESC Crystal/ Rosslyn LLC (DB 2857 Pg 1211); thence running with said common line of division, the following two (2) courses and distances

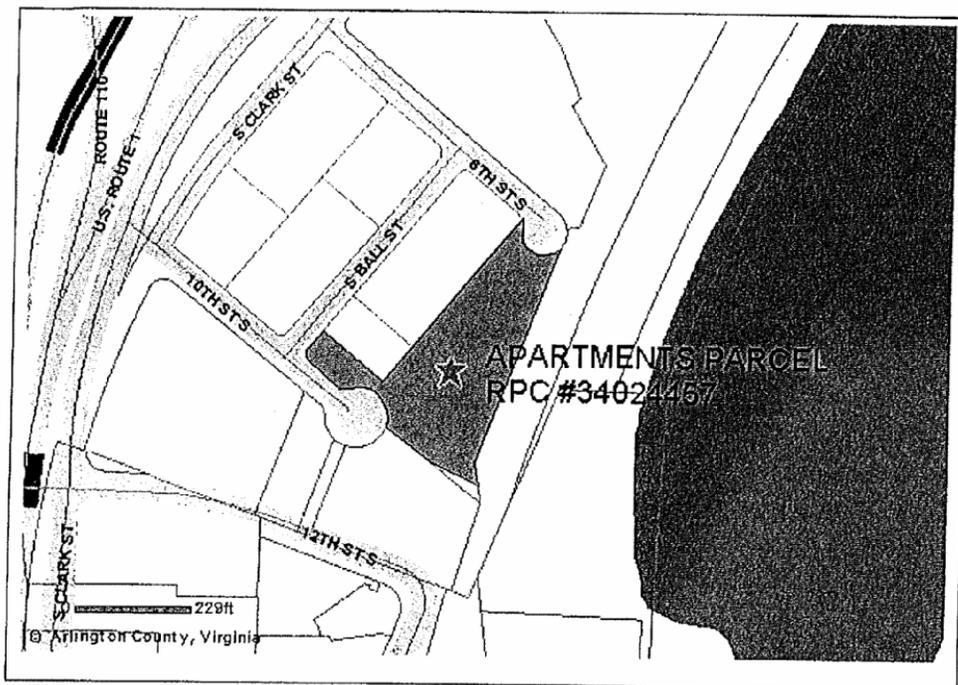
14) North 62 degrees 26' 40" West, 114.10 feet to an iron pipe found; thence running with the aforesaid common line of division of CESC Crystal/Rosslyn LLC (D.B. 2857 PG. 1211)

15) North 50 degrees 02' 35" West, 109.26 feet to the point of beginning containing 92,727 square feet or 2.12872 acres of land, more or less.

AND BEING the same property conveyed to Amerilon Properties Incorporated by deed from Morauer-Crystal City, LLC and Morauer Family Limited Partnership, dated September 22, 2005 and recorded September 23, 2005 in Deed Book 3904 at page 1244.

4004

Exhibit "B-2"
APARTMENTS PARCEL
Schematic



January 3, 2008

TIE-BACK LICENSE AGREEMENT

THIS TIE-BACK LICENSE AGREEMENT (the "Agreement") is dated as of the day of _____, 2008, by and between **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body corporate and politic (the "Licensor" or the "County"); and **NORTH TRACT APARTMENTS LLC**, a Delaware limited liability company authorized to do business in the Commonwealth of Virginia (the "Licensee").

RECITALS:

R-1 WHEREAS, the County is the owner of certain real property in Arlington County, Virginia, known as Parcel 15, Potomac Yard Arlington, being further described in Exhibit "A-1" and Exhibit "A-2", attached hereto and incorporated herein, RPC #34024347, and having been acquired by the County in a deed dated October 31, 2002, and recorded in Deed Book 3400 at page 734, among the land records of Arlington County, Virginia (the "County Parcel"); and

R-2 WHEREAS, the Licensee is the owner of certain real property in Arlington County, Virginia, known as Parcel A, Sebastian Springs, Parcel A and B, Lots 3B1 and 3B, Burke & Smiths Cullinane Subdivision, being further described in Exhibit "B-1" and Exhibit "B-2", attached hereto and incorporated herein, RPC #34024457, and having been acquired by the Licensee in a deed dated December 21, 2006, and recorded in Deed Book 4054 at page 402, among the land records of Arlington County, Virginia (the "Apartments Parcel"); and

R-3 WHEREAS, the Licensee plans to develop the Apartments Parcel pursuant to the approved Administrative Rule 4.1 Site Plan, SP #390, as a mid-rise residential building; and

R-4 WHEREAS, the Licensee desires, as a part of its development of the Apartments Parcel, permission to install, maintain and repair subterranean earth anchors and related facilities (jointly "Anchors") within a portion of the County Parcel to support a temporary retaining wall ("Wall") to be located on the Apartment Parcel; and

R-5 WHEREAS, a portion of the Licensed Premises, as hereinafter defined, also is the subject of a Fire Separation Agreement, dated March 27, 2006, by and between the County Board of Arlington County, Virginia, and Ameriton Properties Incorporated; and

R-6 WHEREAS, a portion of the Licensed Premises, as hereinafter defined, also is the subject of a Crane Swing License Agreement by and between the County Board of Arlington County, Virginia, and North Tract Apartments LLC, said Crane Swing License Agreement may be executed contemporaneously herewith; and

R-7 WHEREAS, a portion of the Licensed Premises, as hereinafter defined, also is the subject of a Temporary Parking Easement by and between the County Board of Arlington County, Virginia, and North Tract Apartments LLC, said easement may be executed contemporaneously herewith; and

R-8 WHEREAS, a portion of the Licensed Premises, as hereinafter defined, also is the subject of a Temporary Construction Easement by and between the County Board of Arlington County, Virginia, and North Tract Apartments LLC, said easement may be executed contemporaneously herewith; and

R-9 WHEREAS, by this Agreement, Licensor permits Licensee, its employees, agents and contractors, to install, maintain and repair the Anchors within portions of the County Parcel, as further defined in Section 1 of this Agreement, subject to the conditions more particularly stated herein.

WITNESSETH:

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00), cash in hand paid, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the mutual benefits to be received by the parties hereto, the parties hereby agree as follows:

1. Licensed Premises. Licensor hereby grants to Licensee a non-exclusive revocable license to use, upon the terms hereinafter provided, Eleven Thousand Four Hundred and Fifty-four (11,454) square feet of the County Parcel ("Licensed Premises"). The Licensed Premises is further described in Exhibit "C," entitled, "Plat Showing Tie-Back License on the Property of Arlington County Board Deed Book 3400 Page 734 Arlington County, Virginia," prepared by VIKA Incorporated, dated April 10, 2007, revised April 19, 2007, attached hereto and incorporated herein. The design of the Anchors is more particularly described in Exhibit "D," entitled, "North Tract Lofts, Arlington, VA, Sheeting Plan," prepared by Superior Foundation Inc., dated February 28, 2007, attached hereto and incorporated herein, and in Exhibit "E," entitled, "North Tract Lofts, Arlington, VA, Sections and Details," dated February 28, 2007, attached hereto and incorporated herein.
2. Term. The term of this Agreement ("Term") shall begin at 12:01 a.m. on January 30, 2008 (the "Commencement Date") and shall expire upon the earlier of the completion of the construction of the mid-rise residential building on the Apartments Parcel pursuant to SP #390 or 11:59 p.m. on June 30, 2008 ("Expiration Date"), unless terminated sooner as provided hereunder or as provided by law.
3. Permitted Uses. Licensee is permitted to use the Licensed Premises solely to install, maintain and repair the Anchors in the Licensed Premises ("Permitted Uses"). Licensee shall comply with all laws, rules, orders, ordinances and regulations of the Licensor, and of any applicable governmental authority, in entering the Licensed Premises and performing the Permitted Uses.
4. License Fee. Licensor permits Licensee to use the Licensed Premises for a one-time, lump-sum payment of Five Thousand Seven Hundred Twenty-seven and 00/100 Dollars (\$5,727.00), to be paid by Licensee to Licensor upon the execution of this Agreement.

5. Access to Licensed Premises. Licensee shall not restrict Licensor's access to the Licensed Premises or any other areas on, over, beneath, or above the County Parcel. The Licensee shall enter and exit the Licensed Premises only from the Apartments Parcel.

6. Installation, Maintenance, Repair. The Licensee shall provide notice to the Licensor at least forty-eight (48) hours before entering the Licensed Premises to install, maintain or repair the Anchors except that, in case of an emergency where the Licensee cannot provide the required advance notification, the Licensee shall notify the Licensor as soon as practicable upon the occurrence of the emergency. The Licensee shall confine all installation, maintenance and repair activities regarding the Anchors to the Licensed Premises. In case of excavation, digging, or any other disturbance to the License Premises, the Licensee, at Licensee's sole cost and expense, shall return the Licensed Premises to its condition immediately preceding the excavation, digging, or other disturbance. Licensee shall be obligated to maintain the Anchors and Wall in a condition to avoid any settling or subsidence of the County Parcel resulting in damage to the County Parcel or any improvements thereon until such time as they may be removed under the terms of this Agreement. Licensee acknowledges and agrees that Licensor shall not be obligated to perform any alterations, improvements, repairs or maintenance to the Licensed Premises or be responsible in any way for any of the Anchors, either during the construction of the Anchors or thereafter when completed, and such obligations are and shall be solely the obligations of Licensee. Licensee shall be liable for all damage to the County Parcel, and any improvements thereon, resulting from the installation, maintenance and repair of the Anchors and the Wall. In addition, Licensee shall be liable for any damage to the County Parcel, and any improvements thereon, as a result of settling or subsidence of the County Parcel resulting from the installation, maintenance, repair, placement and/or existence of the Anchors and the Wall. All of Licensee's obligations and liabilities set forth in this Section 6 shall survive the expiration or termination of this Agreement.

7. Utilities. Licensee shall repair all damage to any and all utilities located on, or installed within, the Licensed Premises and/or County Parcel at Licensee's sole cost, caused: by any Permitted Uses; entry upon the Licensed Premises or the County Parcel by the Licensee; or any installation, maintenance, and repair of the Anchors and the Wall. Licensor shall have the right to excavate and work in the Licensed Premises and the County Parcel to repair and/or replace any utilities.

8. No Warranty of Condition or Suitability. The Licensor has made and makes no representation or warranty whatsoever, either express or implied, with respect to the condition, fitness or design of any part of the Licensed Premises, their fitness for any particular purpose, or the suitability of the Licensed Premises for the purposes or needs of the Licensee. The Licensee is satisfied that the Licensed Premises are suitable and fit for the Licensee's purposes, having been provided the opportunity to inspect the Licensed Premises.

9. Contractors and Subcontractors.

(a) Licensee may contract or subcontract any portion of the work within the Licensed Premises contemplated by this Agreement to any entity competent to perform such work. Licensee shall provide prior written notice to Licensor before utilizing any contractor or

subcontractor to perform any activities under this Agreement, and provide evidence that the contractor or subcontractor maintains the same or additional insurance coverage as Licensee is herein required to maintain. In no event shall such contract or subcontract relieve Licensee of any of its obligations or liabilities under this Agreement.

(b) Licensee hereby agrees to promptly pay all persons supplying labor, services and materials in the performance of any and all current and future work within the Licensed Premises.

(c) Licensee will require Licensee's contractors and subcontractors to fully defend, indemnify and hold harmless Licensor and its elected and appointed officials, officers, employees, agents, contractors, subcontractors, volunteers, representatives, service providers, utility providers, other licensees, invitees of Licensor, and successors and assigns, individually or collectively, from and against any and all claims, affidavits, liens, suits, or actions asserted by any person, firm or corporation on account of labor, material or services furnished to Licensee or to said contractors or subcontractors during the performance of any activity permitted by this Agreement, or any other or Licensee's work and against any claim for injury or death to persons or damage to any property.

10. "As-built" Plans. Within Thirty (30) days after the completion of the installation of the Anchors, Licensee shall provide to the Licensor, in a form and medium acceptable to the Licensor, "as-built" plans for the Anchors, which plans shall indicate the actual locations, both vertically and horizontally, of the Anchors as constructed.

11. Discharge of Liens. If any lien, encumbrance or charge is filed or asserted, or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively referred to as "Liens"), whether or not valid, is made against the Licensed Premises or the County Parcel or any part thereof or the interest therein, or against any payment or other amounts payable under this Agreement, the Licensee forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Licensor and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefore. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Licensor for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Licensee's interest in the Licensed Premises hereby granted. All of Licensee's obligations and liabilities set forth in this Section 11 shall survive the expiration or termination of this Agreement.

12. No Liability, Indemnification.

(a) All property of Licensee, its employees, agents, and contractors in and/or on the Licensed Premises or the County Parcel, shall be and remain, under any and all circumstances, at the sole risk and responsibility of the Licensee. The Licensor shall not be liable to any person or entity for any damage to, or loss of such property, or for any loss, damage or expense of any kind

or nature caused, directly or indirectly, by the Licensed Premises or the use or maintenance thereof or the failure of the operation of the Anchors, or the repair, service or adjustment of the Anchors, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption or service or loss of use thereof or for any loss of business or delays in construction howsoever caused. The Licensee hereby agrees to defend, indemnify and hold harmless Licensor and its elected and appointed officials, officers, employees, agents, contractors, subcontractors, volunteers, representatives, service providers, utility providers, other licensees, invitees of Licensor, and successors and assigns, individually or collectively, from all liability, costs and expenses for lost, stolen, damaged or destroyed property arising out of the entry upon or use of the Licensed Premises or County Parcel by the Licensee, its employees, agents and contractors.

(b) Licensee acknowledges that Licensor and its elected and appointed officials, officers, employees, agents, contractors, subcontractors, volunteers, representatives, service providers, utility providers, other licensees, invitees of Licensor, and successors and assigns, individually or collectively, shall not be liable for any damages, special, consequential, punitive or otherwise, as a result of any claim relating to this Agreement or Licensee's use of, or entry upon, the Licensed Premises or the County Parcel.

(c) Licensee hereby agrees to defend, indemnify and hold harmless Licensor and its elected and appointed officials, officers, employees, agents, contractors, subcontractors, volunteers, representatives, service providers, utility providers, other licensees, invitees of Licensor, and successors and assigns, individually or collectively, from and against all claims, causes of action, liabilities, losses, costs and expenses arising from or in connection with any injury or other damage to any person or property;

(i) which occurs in the Licensed Premises or in any part of the County Parcel, or

(ii) is caused by negligence or willful misconduct of Licensee, its employees, agents, and/or contractors.

(d) The parties hereto agree that Licensor shall be neither liable nor responsible for any deterioration, failure, or collapse of the Wall or of the Anchors, during or after construction, from any cause or for any reason whatsoever.

(e) All of the provisions set forth in this Section 12 shall survive the expiration or termination of this Agreement.

13. Insurance. Licensee, at its sole expense, shall obtain and maintain a policy of commercial general liability insurance, throughout the Term, from an insurance carrier satisfactory to Licensor, providing coverage for claims arising from or in connection with the exercise of the permission granted hereunder by Licensee for personal injury, death, property damage or loss suffered by any person, or entity with a minimum of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance coverage shall protect the persons and entities indemnified under Section 12 of this Agreement from liability. Licensee shall maintain such insurance coverage in full force and effect continuously at all times while this Agreement is

in effect. The insurance policy and policy limits shall neither operate as a limit of Licensee's liability to Licensor under this Agreement, nor as a limit of Licensee's duty of indemnification hereunder. Prior to the beginning of this Agreement, and at the beginning of each year thereafter, Licensee shall furnish Licensor with certificates of insurance indicating that the insurance is prepaid for a one year policy period, that it insures all activity contemplated under this Agreement, and that it contains a thirty (30) day notice provision prior to termination, cancellation, non-renewal, material change, or reduction of coverage. The policy shall provide, among other things, that the actions or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any insured party under the policy. No provision contained in this Agreement shall act as a waiver of any rights of subrogation of the insurance company which is the primary insurer for Licensor. The insurance required to be carried by Licensee herein shall be with an insurance company licensed to do business in the Commonwealth of Virginia and rated not lower than A-X in the A.M. Best Rating Guide. Such insurance shall:

- (i) contain an endorsement that such policy shall remain in full force and effect notwithstanding that the insured has released its right of action against any party before the occurrence of a loss; and
- (ii) name Licensor and others listed hereinafter as additional insureds and loss payee; and
- (iii) provide that the policy shall not be canceled, failed to be renewed or materially amended without at least thirty (30) days' prior written notice to Licensor. On or before the Commencement Date and, thereafter, not less than thirty (30) days before the expiration date of the insurance policy, a certificate of insurance, together with evidence satisfactory to Licensor of the payment of all premiums for such policy, shall be delivered to Licensor. Licensor, its elected and appointed officials, officers, employees, contractors and agents shall be named as additional insureds under all coverage maintained by Licensee hereunder and the certificate of insurance must so state. Coverage afforded under this section shall be primary as respects the Licensor, its elected and appointed officials, officers, employees, contractors and agents. The following definition of the term "Licensor" applies to all policies issued under this Agreement:

"The County Board of Arlington County, Virginia and any affiliated or subsidiary Board, Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board, Authority, Committee, or Independent Agency is either a Body Politic created by the County Board of Arlington County, Virginia, or one in which controlling interest is vested in Arlington County; or Arlington County Constitutional Officers."

All insurance policies and certificates of insurance required of Licensee hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, material change, or reduction in coverage until thirty (30) days prior written notice has been given to Arlington County, Virginia." Therefore, the words "endeavor to" and "but failure to mail such notice shall impose no obligation of liability of any kind upon

the company, its agents or representatives" are to be eliminated from the cancellation provision of any standard ACORD certificates of insurance.

14. No Permanent Rights. Licensors and Licensee acknowledge that the intention of this Agreement is for Licensor to grant a license (permission) to Licensee for Licensee's sole use and benefit, and that there is no intention whatsoever to grant to Licensee, its successors, or to any other person or entity, any permanent rights or legal interests, of any kind, in Licensor's real or personal property.

15. Default. This Agreement shall, at the option of Licensor, cease and terminate if Licensee shall violate or fail to perform any of the conditions, covenants or agreements of this Agreement, provided that any such violation or failure to perform any of such conditions, covenants or agreements shall continue for a period of thirty (30) days after written notice thereof has been delivered by Licensor to Licensee. In such event Licensee shall however remain liable to Licensor for all monetary and other damages arising from such default. Upon the termination or expiration of this Agreement, Licensor shall have the right to prevent Licensee's entry to or access upon the Licensed Premises and the County Parcel, and to immediately remove any property of Licensee located upon the Licensed Premises and the County Parcel at Licensee's sole risk and expense.

16. Termination. Except as otherwise specifically noted herein as surviving the expiration or termination of this Agreement, and notwithstanding any other conditions to the contrary, Licensor and Licensee each shall have the right to terminate this Agreement at any time, without cause, without penalty and without any liability whatsoever, by providing ninety (90) days, prior written notice of such termination to the other party. If Licensee fails to terminate its use of the Licensed Premises and to vacate all areas of the County Parcel on the Expiration Date or the earlier termination of this Agreement, then Licensee shall be deemed a trespasser. The Licensor has the right to temporarily or permanently close the Licensed Premises and the County Parcel in the interest of public health, safety and welfare, without any liability whatsoever to the Licensor or others.

17. Preparation of Licensed Premises. Prior to the expiration or termination of this Agreement, Licensee shall coordinate with Licensor regarding Licensee's preparation of the Licensed Premises for the Licensor's construction on the County Parcel.

18. Inspection of Licensed Premises. The Licensee shall permit the Licensor, its agents, employees, designees, contractors or subcontractors, at all reasonable times to enter upon the Apartments Parcel and the Licensed Premises to examine and inspect the Licensed Premises and the Anchors. Any such examination or inspection shall not be express or implied acceptance or approval by Licensor of the work performed.

19. Notices. All notices or other communications hereunder shall be in writing and shall be either hand delivered, sent by commercial courier (such as Federal Express) or sent by United States registered or certified mail, return receipt requested, at the following addresses or such other address hereafter provided by notice to the other party:

If to County:

Arlington County, Virginia
Engineering and Capital Projects Division
Real Estate Section, Suite 900
Arlington, VA 22201
Attn: Real Estate Bureau Chief

With copies to:

Arlington County, Virginia
Office of the County Manager
2100 Clarendon Boulevard
Suite 302
Arlington, VA 22201
Attn: County Manager

If to Licensee:

NORTH TRACT APARTMENTS LLC
C/O One Overton Park
3625 Cumberland Boulevard, Suite 680
Atlanta, Georgia 30339
Attn: Gerald R. Massey, III

With copies to:

York Residential, Mid Atlantic Region
2011 Crystal Drive, Suite 400
Arlington, Virginia 22202
Attn: Michael K. George, Development Services Manager

Any party may, by notice given at least five (5) days before such change becomes effective, designate a new address to which such notices shall be sent. Notice shall be deemed effective when delivered.

20. No Partnership, Joint Venture, Lease, or Easement; Use by Licensor. The parties hereby agree that nothing contained in this Agreement shall be deemed or construed as creating a partnership; joint venture; the relationship of landlord and tenant between Licensor and Licensee; a leasehold interest; or an easement in any portion of the County Parcel. Licensor has the right to enter upon and use the Licensed Premises without prejudice to Licensee's use hereunder, including without limitation the installation by the Licensor of public utilities and other facilities within the Licensed Premises.

21. Role of the Licensor/Licensor Decisions; No Waiver. The Licensor's execution of this Agreement shall neither constitute nor be deemed to be governmental approval for any actions or interests contemplated herein, or for any other governmental approval or consent required to be obtained by Licensor. Whenever, in this Agreement, Licensor is required to join in, consent, give its approval, or otherwise act under this Agreement, it is understood that such obligations are meant to apply to the Licensor acting in its capacity as a Licensor and not in its capacity as a governing authority. Nothing in this Agreement shall be construed to waive any of Licensor's powers, rights or obligations as a governing authority of local governing body, whether or not affecting the Licensed Premises, including, but not limited to its police power, right to grant or deny permits, right to collect taxes or fees, or any other power, right or obligation whatsoever.
22. No Waiver of Sovereign Immunity by Licensor. Nothing in this Agreement nor any action taken by Licensor pursuant to this Agreement, nor any document which arises out of this Agreement, shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of the Licensor, or of its elected and appointed officials, officers and employees.
23. No Rights in Third Parties. The parties hereto mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than those signing this Agreement as parties hereto, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for personal injury, property damage, or breach of contract pursuant to the terms of this Agreement or otherwise.
24. No Assignment or Transfer. This Agreement is non-assignable and non-transferable by the Licensee.
25. No Indemnification or Hold Harmless. Notwithstanding any other term or provision of this Agreement to the contrary, Licensor shall have no obligation to explicitly or implicitly indemnify or hold harmless the Licensee or any third party or parties from any liability whatsoever.
26. Severability. If any term or provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement, other than those terms or provisions which are held to be invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
27. Approval of Agreement by Licensor. This Agreement shall not become effective unless and until the Licensor approves this Agreement and it is signed on behalf of the Licensor. If this Agreement is not approved by the Licensor and executed by an authorized person, then no liability whatsoever shall accrue to the Licensor or Licensee and the Licensor and Licensee shall have no obligations whatsoever to each other.
28. Survival. Expiration or termination of this Agreement for any cause shall not release either party from any liability that, at the time of termination, has already accrued to it or that may

thereafter accrue with respect to acts or omission made prior to such termination, and shall not affect in any way the survival of any right or obligation of either party which is expressly or implicitly stated in this Agreement to survive termination hereof.

29. Entire Agreement/Applicable Law. This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof. Licensee expressly acknowledges and represents that it has not relied on any oral or written representations, warranties, promises, statements, covenants or agreements, express or implied, direct or indirect, given or made by or on behalf of Licensor, except those representations, if any, expressly contained herein. This Agreement shall 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 Licensor and Licensee. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia. All legal actions instituted by Licensor or Licensee concerning this Agreement shall be filed solely in the Arlington County General District or Circuit Court.

30. Incorporation of Recitals. The foregoing recitals are fully incorporated into this Agreement by this reference.

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WITNESS the following signatures:

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

BY: _____

NAME: _____

TITLE: _____

DATE: _____

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____

I, THE UNDERSIGNED Notary Public, in and for the commonwealth and city/county aforesaid, hereby certify that _____, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same as his/her act and deed and the act and deed of THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate and politic.

Given under my Hand and Seal this ____ day of _____, 200 ____.

Notary Public

My commission expires: _____

LICENSEE: NORTH TRACT APARTMENTS LLC, a Delaware limited liability company registered to do business in Virginia

BY: North Tract, LLC, a Georgia limited liability company, its Manager

BY: York North Tract, LLC, a Georgia limited liability company, its Manager

BY: York Residential – North Tract, LLC, a Georgia limited liability company, its Manager

BY: [Signature]

NAME: Gerald R. Massey, III

TITLE: MANAGING MEMBER

DATE: 1.4.2008

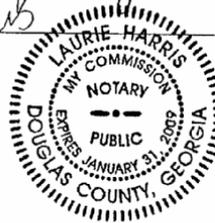
STATE/Commonwealth of Georgia
CITY/COUNTY OF Douglas

I, THE UNDERSIGNED Notary Public, in and for the state/commonwealth and city/county aforesaid, hereby certify that Gerald R. Massey, III, Managing Member of York Residential - North Tract, LLC, itself the Managing Member of York North Tract, LLC, itself the Managing Member of North Tract, LLC, itself the Managing Member of NORTH TRACT APARTMENTS LLC, a Delaware limited liability company authorized to do business in Virginia, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same as his/her act and deed and the act and deed of the foregoing limited liability company.

Given under my Hand and Seal this 4th day of January, 2008.

Laurie Harris
Notary Public

My commission expires: 1/31/09



Approved as to form: _____
County Attorney

Exhibit "A-1"
COUNTY PARCEL

AIA:

AREA 1:

Beginning at the northeasterly corner of the land of Davis Industries, said point also being in the easterly right-of-way line of Old Jefferson Davis Highway, U.S. Route 1;

Thence, with said easterly right-of-way line of Old Jefferson Davis Highway, U.S. Route 1, the following three (3) courses:

- 1) N 51° 18' 22" E, a distance of 820.11 feet to a point of curvature;
- 2) With a curve to the left having a central angle of 33° 55' 36", a radius of 324.37 feet, an arc distance of 192.07 feet, and a chord length of 189.28 feet which bears N 34° 20' 34" E;
- 3) thence N 17° 22' 46" E a distance of 70.77 feet to a point on the southerly line of the land of Equitable Life Assurance Society of the U.S.;

Thence, with the southerly and easterly line of the land of Equitable Life Assurance Society of the U.S. the following two (2) courses:

- 1) With a curve to the left having a central angle of 16° 49' 29", a radius of 1,136.28 feet, an arc distance of 333.67 feet, and a chord length of 332.47 feet which bears N 71° 19' 50" E;
- 2) N 33° 04' 26" E, a distance of 861.25 feet to a point in the southerly line of the land of the United States of America;

Thence with said southerly line of the land of the United States of America the following three (3) courses:

- 1) S 53° 12' 34" E, a distance of 57.10 feet;
- 2) N 33° 04' 26" E, a distance of 156.86 feet;
- 3) N 74° 33' 17" E, a distance of 49.98 feet to a point in the westerly line of the land of Commonwealth Atlantic Land V Inc;

Thence, with said westerly line of the land of Commonwealth Atlantic Land V Inc. the following four (4) courses:

- 1) S 33° 04' 26" W, a distance of 1,986.38 feet to a point of curvature;

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2) With a curve to the left having a central angle of $13^{\circ} 27' 23''$, a radius of 5,789.65 feet, an arc distance of 1,359.76 feet, and a chord length of 1,356.64 feet which bears $S 26^{\circ} 20' 44'' W$ to a point of tangency;

3) $S 19^{\circ} 37' 02'' W$, a distance of 74.06 feet to a point of curvature;

4) With a curve to the left having a central angle of $04^{\circ} 09' 51''$ a radius of 1,599.67 feet, an arc distance of 116.26 feet and a chord length of 116.24 feet which bears $S 17^{\circ} 32' 07'' W$ to a point in the westerly line of Parcel 3A of the land of Third Crystal Park Associates L.P.;

Thence, with said line of Parcel 3A of the land of Third Crystal Park Associates L.P., and the northerly line of Parcel 3B of the land of Third Crystal Park Associates L.P., the following two (2) courses:

1) $S 22^{\circ} 11' 51'' W$, a distance of 196.87 feet;

2) $N 69^{\circ} 33' 09'' W$, a distance of 36.99 feet to the southeasterly corner of the land of CESC Crystal/Roslyn LLC;

Thence, with the easterly lines of CESC Crystal/Roslyn LLC, Richard C. and Jeanne T. Morauer and the northerly right-of-way line of 6th Street South, the following five (5) courses:

1) With a curve to the right having a central angle of $01^{\circ} 47' 00''$, a radius of 5,844.60 feet, an arc distance of 181.92 feet, and a chord length of 181.91 feet which bears $N 16^{\circ} 39' 08'' E$;

2) $N 07^{\circ} 32' 04'' W$, a distance of 82.76 feet;

3) $N 19^{\circ} 07' 54'' E$, a distance of 139.82 feet to a point of curvature;

4) With a curve to the right having a central angle of $03^{\circ} 15' 33''$, a radius of 5,879.65 feet, an arc distance of 334.45 feet, and a chord length of 334.41 feet which bears $N 21^{\circ} 19' 57'' E$, to the point of reverse curvature;

5) With a curve to the left having a central angle of $73^{\circ} 02' 19''$, a radius of 45.00 feet, an arc distance of 23.66 feet, to the southeasterly corner of the land of Davis Industries;

Thence, with the easterly line of Davis Industries, the following fourteen (14) courses:

1) $N 82^{\circ} 48' 57'' E$, a distance of 25.00 feet;

2) $N 22^{\circ} 04' 11'' E$, a distance of 133.67 feet;

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- 3) N 30° 05' 00" W, a distance of 137.27 feet;
 - 4) N 44° 44' 48" E, a distance of 21.46 feet;
 - 5) N 21° 55' 20" W, a distance of 105.29 feet;
 - 6) N 47° 04' 16" W, a distance of 90.33 feet;
 - 7) N 24° 44' 41" W, a distance of 33.42 feet;
 - 8) N 05° 31' 22" W, a distance of 49.44 feet;
 - 9) N 05° 36' 33" E, a distance of 116.40 feet;
 - 10) N 75° 21' 51" W, a distance of 18.22 feet;
 - 11) N 25° 23' 15" E, a distance of 101.00 feet;
 - 12) N 61° 59' 51" W, a distance of 22.69 feet;
 - 13) N 29° 13' 30" E, a distance of 65.72 feet;
 - 14) N 34° 14' 14" W, a distance of 63.34 feet to the point of beginning.
- Containing 774.782 Square Feet or 17.7865 Acres, More or Less.

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Exhibit "A-2"
COUNTY PARCEL
Schematic

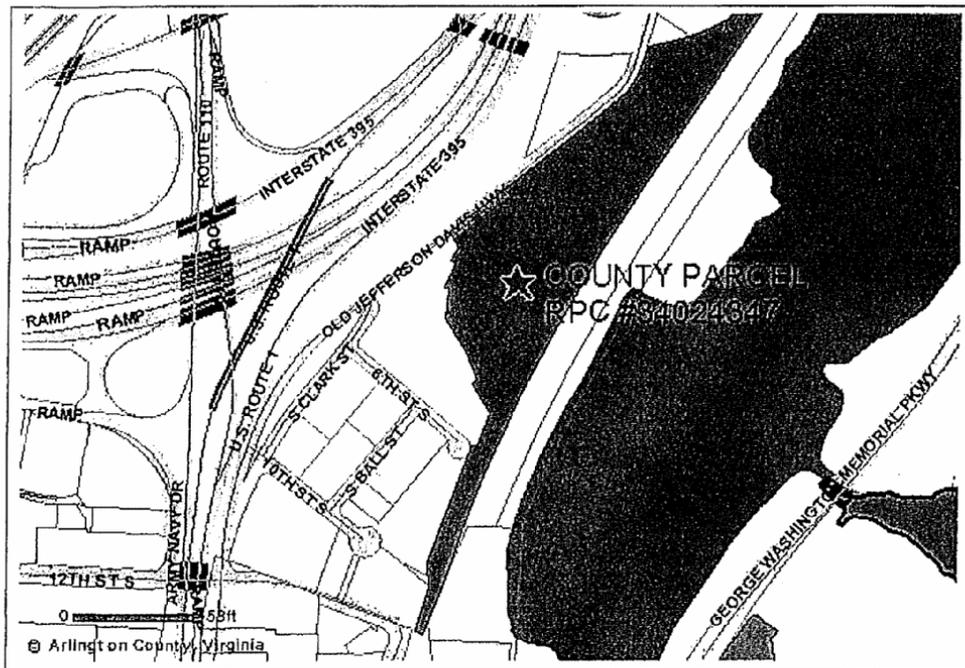


Exhibit "B-1"
APARTMENTS PARCEL
Legal Description

All of that certain lot or parcel of land situated, lying and being in Arlington County, Virginia and being more particularly described as follows:

Being all of the property described in a grant to Morauer Family Limited Partnership by deed dated December 19, 1996 and recorded in Deed Book 2810 at Page 457 all among the Land Records of Arlington County, Virginia.

Beginning for the same at an iron pipe found on the southeasterly curved right of way line of 10th Street South (50 feet wide), said point also marking the northwesterly end of the common line of division between the aforesaid Morauer property (D.B. 2810 PG. 457) and the property of CBSC Crystal/Rosslyn LLC (D.B. 2837 PG. 1211); thence running with the right of way line of said 10th Street South, the following four (4) courses and distances.

- 1) 123.52 feet along the arc of curve to the left having a radius of 60.00 feet and a chord bearing and distance of North 43 degrees 25' 32" West, 102.83 feet to a point of curvature; thence
- 2) 27.40 feet along the arc of a curve to the right having a radius of 30.00 feet and a chord bearing and distance of North 76 degrees 14' 29" West, 26.45 feet to a point, thence
- 3) North 50 degrees 04' 50" West, 75.49 feet to a point of curvature; thence
- 4) 31.76 feet along the arc of a curve to the right having a radius of 20.00 feet and a chord bearing and distance of North 04 degrees 35' 30" West, 28.52 feet to an iron pipe found on the northeasterly right of way line of South Ball Street, width varies thence; running with South Ball Street
- 5) North 40 degrees 53' 50" East, 44.98 feet to a point on the southerly line of the property of Baljit S. and Pavitar P. Aulakh (D.B. 2668, PG. 717); thence running with the aforesaid southerly property line.
- 6) South 49 degrees 06' 10" East, 156.80 feet to a point; thence running with the northeasterly line of said Aulakh Property and continuing with the northeasterly lines of W.M.A.T.A (D.B. 2567 PG. 1344), the following two (2) courses and distances
- 7) North 40 degrees 53' 50" East, 356.79 feet to rebar found; thence
- 8) 92.89 feet along the arc of a curve to the left having a radius of 1,314.95 feet and a chord bearing and distance of North 38 degrees 53' 51" East, 92.87 feet to a point on the southwesterly right of way line of 6th Street South (width varies); thence running with said right of way, the following (2) courses and distances
- 9) 20.75 feet along the arc of a curve to the right having a radius of 45.00 feet and a chord bearing and distance of South 06 degrees 06' 42" East, 20.57 feet to a point; thence

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10) 128.16 feet along the arc of a curve to the left having a radius of 45.00 feet and a chord bearing and distance of South 74 degrees 29' 35" East, 89.03 feet to a point on the westerly line of the Arlington County School Board (D.B. 3400 PG 734); thence running with said property, the following three (3) courses and distances

11) 334.53 feet along the arc of a curve to the left having a radius of 5,879.65 feet and a chord bearing and distance of South 22 degrees 04' 57" West, 334.48 feet to a point; thence

12) South 19 degrees 48' 20" West, 140.00 feet to a point; thence

13) South 06 degrees 36' 25" East, 47.02 feet to an iron pipe found on the aforesaid common line of division between Morauer and CESC Crystal/Rosslyn LLC (DB 2857 Pg 1211); thence running with said common line of division, the following two (2) courses and distances

14) North 62 degrees 26' 40" West, 114.10 feet to an iron pipe found; thence running with the aforesaid common line of division of CESC Crystal/Rosslyn LLC (D.B. 2857 PG. 1211)

15) North 50 degrees 02' 35" West, 109.26 feet to the point of beginning containing 92,727 square feet or 2.12872 acres of land, more or less.

AND BEING the same property conveyed to Ameriton Properties Incorporated by deed from Morauer-Crystal City, LLC and Morauer Family Limited Partnership, dated September 22, 2005 and recorded September 23, 2005 in Deed Book 3904 at page 1244.

Exhibit "B-2"
APARTMENTS PARCEL
Schematic

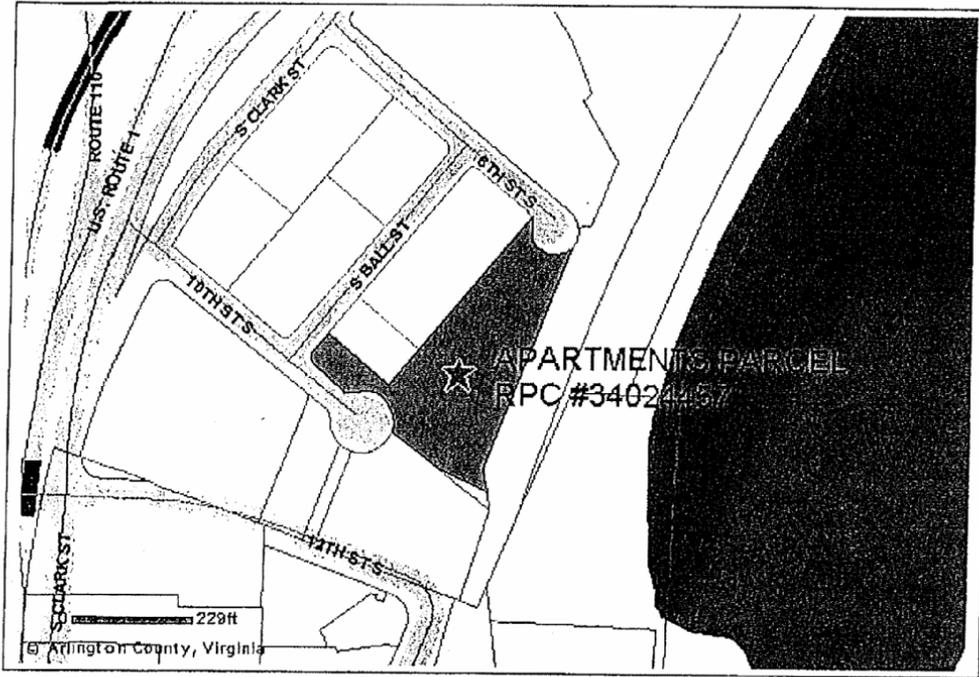
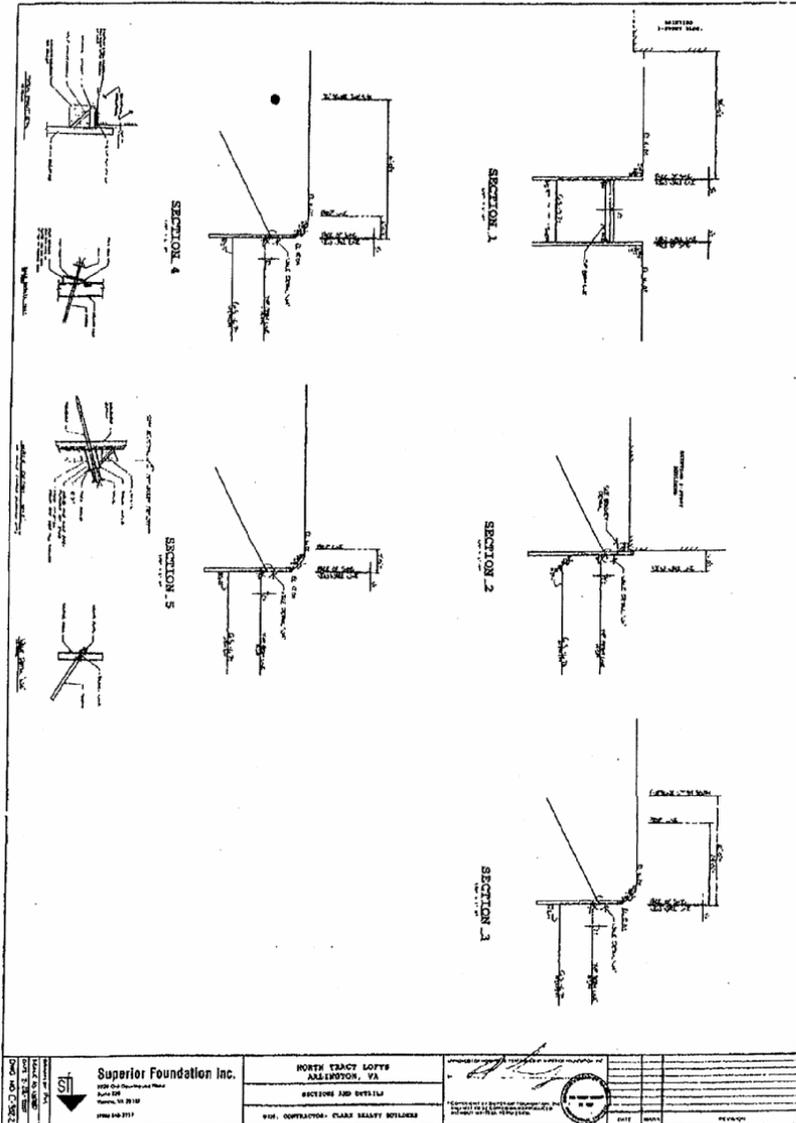


Exhibit "E"
SECTIONS AND DETAILS



January 3, 2008

DEED OF TEMPORARY PARKING EASEMENT

This DEED OF TEMPORARY PARKING EASEMENT ("Temporary Easement") is made this _____ day of _____, 2008, by THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate and politic (the "Grantor"), and NORTH TRACT APARTMENTS LLC, a Delaware limited liability company registered to do business in Virginia (the "Grantee").

RECITALS:

R-1 WHEREAS, the Grantor is the owner of certain real property in Arlington County, Virginia, known as Parcel 15, Potomac Yard Arlington, being further described in Exhibit "A-1" and Exhibit "A-2", attached hereto and incorporated herein, RPC #34024347, and having been acquired by the Grantor in a deed dated October 31, 2002, and recorded in Deed Book 3400 at page 734, among the land records of Arlington County, Virginia (the "County Parcel"); and

R-2 WHEREAS, the Grantee is the owner of certain real property in Arlington County, Virginia, known as Parcel A, Sebastian Springs, Parcel A and B, Lots 3B1 and 3B, Burke & Smiths Cullinane Subdivision, being further described in Exhibit "B-1" and Exhibit "B-2", attached hereto and incorporated herein, RPC #34024457, and having been acquired by the Grantee in a deed dated December 21, 2006, and recorded in Deed Book 4054 at page 402, among the land records of Arlington County, Virginia (the "Apartments Parcel"); and

R-3 WHEREAS, the Grantee plans to develop the Apartments Parcel pursuant to the approved Administrative Rule 4.1 Site Plan, SP #390, as a mid-rise residential building; and

R-4 WHEREAS, the Grantee requires a temporary parking easement over and upon a portion of the County Parcel adjacent to the Apartments Parcel during the time of Grantee's construction of the mid-rise residential building for temporary parking purposes incidental and related to such construction; and

R-5 WHEREAS, a portion of the Licensed Premises, as hereinafter defined, also is the subject of a Fire Separation Agreement, dated March 27, 2006, by and between the County Board of Arlington County, Virginia, and Ameriton Properties Incorporated; and

R-6 WHEREAS, a portion of the Licensed Premises, as hereinafter defined, also is the subject of a Crane Swing License Agreement by and between the County Board of Arlington County, Virginia, and North Tract Apartments LLC, said Crane Swing License Agreement may be executed contemporaneously herewith; and

R-7 WHEREAS, a portion of the Licensed Premises, as hereinafter defined, also is the subject of a Tie-back License Agreement by and between the County Board of Arlington County, Virginia, and North Tract Apartments LLC, for the installation, maintenance, and repair

of sheeting tie-backs, said License Agreement may be executed contemporaneously herewith; and

R-8 WHEREAS, a portion of the Licensed Premises, as hereinafter defined, also is the subject of a Temporary Construction Easement by and between the County Board of Arlington County, Virginia, and North Tract Apartments LLC, said easement may be executed contemporaneously herewith; and

R-9 WHEREAS, by this Temporary Easement, the Grantor desires to grant to Grantee a temporary parking easement over and upon a portion of the County Parcel, as further described herein.

WITNESSETH:

NOW, THEREFORE, in consideration of the sum of Nineteen Thousand Two Hundred Forty-nine and 89/100 Dollars (\$19,249.89) cash paid in hand, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the mutual benefits to be derived by the parties hereto, the Grantor does hereby grant and convey unto the Grantee a temporary parking easement for the use of a portion of the County Parcel containing Nineteen Thousand Three Hundred Forty-seven (19,347) square feet of land as shown on the exhibit entitled, "Plat Showing Temporary Construction Easement for Parking Purposes on the Property of Arlington County Board Deed Book 3400 Page 734 Arlington County, Virginia," dated April 10, 2007, revised April 19, 2007, revised May 9, 2007, prepared by VIKA Incorporated (Exhibit "C"), attached hereto and incorporated herein ("Temporary Parking Easement Area"), for temporary vehicular parking purposes that are incidental and related to Grantee's construction of the mid-rise residential building on the Apartment Parcel pursuant to SP #390. The Temporary Easement shall be subject to the following terms and conditions:

1. The Grantor covenants that the Grantor is seized of, and has the right to, convey the Temporary Easement, and that the County shall make no use of the Temporary Parking Easement Area that is inconsistent with the rights hereby conveyed.
2. Grantee, its employees, contractors, and agents shall have non-exclusive use of the Temporary Parking Easement Area for the purposes named, and shall have all rights and privileges reasonably necessary to the exercise of the Temporary Easement, provided, however, that this right to use the Temporary Parking Easement Area shall not be construed to allow the Grantee to erect any building, structure or facility of a permanent nature in the Temporary Parking Easement Area. Access to the Temporary Parking Easement Area shall be from 6th Street South and over the Temporary Construction Easement referenced in Recital R-8 herein.
3. The Grantee shall have the right to trim, cut and remove trees, shrubbery, fences, structures or other obstructions or facilities in or near the Temporary Parking Easement Area.

4. The Grantee shall not dig or excavate on or within the Temporary Parking Easement Area or otherwise damage the Temporary Parking Easement Area, except that the Grantee is permitted, at its sole cost and expense, to lay down gravel in the Temporary Parking Easement Area.
5. The Grantee agrees that, as soon as practicable prior to the expiration of this Temporary Parking Easement, the Grantee shall, at no cost to the Grantor: (1) restore any damaged portion of the Temporary Parking Easement Area and any area adjacent to the Temporary Parking Easement Area as nearly as practicable to its original condition; (2) remove any and all gravel laid down within the Temporary Parking Easement Area by Grantee; and, (3) reseed (or resod, at the option of the Grantor) all damaged grass areas adjacent to the Temporary Parking Easement Area. Grantee further agrees to prepare the Temporary Easement Area for Grantor's future development per Grantor's direction.
6. The Grantee agrees to allow Grantor access to the Temporary Parking Easement Area to conduct any inspections, surveys, environmental and other tests, install necessary utilities, and perform any grading and landscaping reasonably related to the Grantor's development of the County Parcel, including the Temporary Easement Area. The Grantee, the Grantor, and their respective employees, contractors, and agents shall coordinate to provide reasonable access to the Temporary Easement Area to the Grantee, the Grantor, and their respective employees, contractors, and agents, at all times during the term of this Temporary Easement. Notwithstanding the foregoing, the Grantee agrees to not interfere with Grantor's access to the Temporary Easement Area for purposes reasonably related to the Grantor's development of the County Parcel.
7. The rights granted by this Temporary Easement shall commence at 12:01 a.m. on January 30, 2008, and shall expire upon the earlier of the completion of the construction of the mid-rise residential building on the Apartments Parcel pursuant to SP #390 or 11:59 p.m. on June 30, 2008, unless terminated sooner pursuant to the provisions herein (the "Term").
8. Grantor shall have the absolute right to terminate this Temporary Easement, without any liability whatsoever, at any time during the Term by Grantor sending written notice of such termination to Grantee, via certified mail or overnight courier, at both of the following addresses:

NORTH TRACT APARTMENTS, LLC
c/o One Overton Park
3625 Cumberland Boulevard, Suite 680
Atlanta, Georgia 30339
Attn: Gerald R. Massey, III

And

York Residential, Mid-Atlantic Region
2011 Crystal Drive, Suite 400
Arlington, Virginia 22202
Attn: Michael K. George, Development
Services Manager

Such written notice shall be effective upon Grantor's delivery of the written notice to the United States Post Office or the overnight courier. Grantee shall have fifteen (15) calendar days from the date of effective delivery of the written notice, including weekends and holidays, to restore the Temporary Easement Area pursuant to the provisions herein, and to vacate the Temporary Easement Area. Any such termination shall not relieve the Grantee or others of their independent obligation(s) to comply with all conditions of SP #390.

9. This Temporary Easement covers all agreements between the parties hereto. No representations or statements have been made which would modify, add to, or change the terms of this Temporary Easement.
10. This Temporary Easement is contingent upon acceptance by the County Board of Arlington, Virginia.
11. This Temporary Easement shall be construed, interpreted, and applied according to the laws of the Commonwealth of Virginia.
12. The Recitals set forth above are incorporated into this Temporary Easement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WITNESS the following signatures:

GRANTOR: THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

BY: _____

NAME: _____

TITLE: _____

DATE: _____

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____

I, THE UNDERSIGNED Notary Public, in and for the commonwealth and city/county aforesaid, hereby certify that _____, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same as his/her act and deed and the act and deed of THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate and politic.

Given under my Hand and Seal this ____ day of _____, 200 ____.

Notary Public

My commission expires: _____

GRANTEE: NORTH TRACT APARTMENTS LLC, a Delaware limited liability company registered to do business in Virginia

BY: North Tract, LLC, a Georgia limited liability company, its Manager

BY: York North Tract, LLC, a Georgia limited liability company, its Manager

BY: York Residential – North Tract, LLC, a Georgia limited liability company, its Manager

BY: [Signature]

NAME: GERALD R. MASSEY, III

TITLE: MANAGING MEMBER

DATE: 1.4.2008

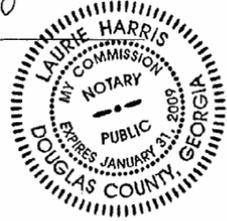
STATE/Commonwealth of Georgia
CITY/COUNTY OF Douglas

I, THE UNDERSIGNED Notary Public, in and for the state/commonwealth and city/county aforesaid, hereby certify that Gerald R. Massey, III, Managing Member of York Residential - North Tract, LLC, itself the Managing Member of York North Tract, LLC, itself the Managing Member of North Tract, LLC, itself the Managing Member of NORTH TRACT APARTMENTS LLC, a Delaware limited liability company authorized to do business in Virginia, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same as his/her act and deed and the act and deed of the foregoing limited liability company.

Given under my Hand and Seal this 4th day of January, 2008.

Laure Harris
Notary Public

My commission expires: 1/31/09



Approved as to form: _____
County Attorney

Exhibit "A-1"
COUNTY PARCEL
Legal Description

AIA:

AREA 1:

Beginning at the northeasterly corner of the land of Davis Industries, said point also being in the easterly right-of-way line of Old Jefferson Davis Highway, U.S. Route 1;

Thence, with said easterly right-of-way line of Old Jefferson Davis Highway, U.S. Route 1, the following three (3) courses:

- 1) N 51° 18' 22" E, a distance of 820.11 feet to a point of curvature;
- 2) With a curve to the left having a central angle of 33° 55' 36", a radius of 324.37 feet, an arc distance of 192.07 feet, and a chord length of 189.28 feet which bears N 34° 20' 34" E;
- 3) thence N 17° 22' 46" E a distance of 70.77 feet to a point on the southerly line of the land of Equitable Life Assurance Society of the U.S.;

Thence, with the southerly and easterly line of the land of Equitable Life Assurance Society of the U.S. the following two (2) courses:

- 1) With a curve to the left having a central angle of 16° 49' 29", a radius of 1,136.28 feet, an arc distance of 333.67 feet, and a chord length of 332.47 feet which bears N 71° 19' 50" E;
- 2) N 33° 04' 26" E, a distance of 861.25 feet to a point in the southerly line of the land of the United States of America;

Thence with said southerly line of the land of the United States of America the following three (3) courses:

- 1) S 53° 12' 34" E, a distance of 57.10 feet;
- 2) N 33° 04' 26" E, a distance of 156.86 feet;
- 3) N 74° 33' 17" E, a distance of 49.98 feet to a point in the westerly line of the land of Commonwealth Atlantic Land V Inc;

Thence, with said westerly line of the land of Commonwealth Atlantic Land V Inc. the following four (4) courses:

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2) With a curve to the left having a central angle of $13^{\circ} 27' 23''$, a radius of 5,789.65 feet, an arc distance of 1,359.76 feet, and a chord length of 1,336.64 feet which bears $S 26^{\circ} 20' 44'' W$ to a point of tangency;

3) $S 19^{\circ} 37' 02'' W$, a distance of 74.06 feet to a point of curvature;

4) With a curve to the left having a central angle of $04^{\circ} 09' 51''$ a radius of 1,599.67 feet, an arc distance of 116.26 feet and a chord length of 116.24 feet which bears $S 17^{\circ} 32' 07'' W$ to a point in the westerly line of Parcel 3A of the land of Third Crystal Park Associates L.P.;

Thence, with said line of Parcel 3A of the land of Third Crystal Park Associates L.P., and the northerly line of Parcel 3B of the land of Third Crystal Park Associates L.P., the following two (2) courses:

1) $S 22^{\circ} 11' 51'' W$, a distance of 196.87 feet;

2) $N 69^{\circ} 33' 09'' W$, a distance of 36.99 feet to the southeasterly corner of the land of CESC Crystal/Roslyn LLC;

Thence, with the easterly lines of CESC Crystal/Roslyn LLC, Richard C. and Jeanne T. Morauer and the northerly right-of-way line of 6th Street South, the following five (5) courses:

1) With a curve to the right having a central angle of $01^{\circ} 47' 00''$, a radius of 5,844.60 feet, an arc distance of 181.92 feet, and a chord length of 181.91 feet which bears $N 16^{\circ} 39' 08'' E$;

2) $N 07^{\circ} 32' 04'' W$, a distance of 82.76 feet;

3) $N 19^{\circ} 07' 54'' E$, a distance of 139.82 feet to a point of curvature;

4) With a curve to the right having a central angle of $03^{\circ} 15' 33''$, a radius of 5,879.65 feet, an arc distance of 334.45 feet, and a chord length of 334.41 feet which bears $N 21^{\circ} 19' 57'' E$, to the point of reverse curvature;

5) With a curve to the left having a central angle of $73^{\circ} 02' 19''$, a radius of 45.00 feet, an arc distance of 23.66 feet, to the southeasterly corner of the land of Davis Industries;

Thence, with the easterly line of Davis Industries, the following fourteen (14) courses:

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2) $N 22^{\circ} 04' 11'' E$, a distance of 133.67 feet;

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- 3) N 30° 05' 00" W, a distance of 137.27 feet;
 - 4) N 44° 44' 48" E, a distance of 21.46 feet;
 - 5) N 21° 55' 20" W, a distance of 105.29 feet;
 - 6) N 47° 04' 16" W, a distance of 90.33 feet;
 - 7) N 24° 44' 41" W, a distance of 33.42 feet;
 - 8) N 05° 31' 22" W, a distance of 49.44 feet;
 - 9) N 05° 36' 33" E, a distance of 116.40 feet;
 - 10) N 75° 21' 51" W, a distance of 18.22 feet;
 - 11) N 25° 23' 15" E, a distance of 101.00 feet;
 - 12) N 61° 59' 51" W, a distance of 22.69 feet;
 - 13) N 29° 13' 30" E, a distance of 65.72 feet;
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- Containing 774.782 Square Feet or 17.7865 Acres, More or Less.

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Exhibit "B-1"
APARTMENTS PARCEL
Legal Description

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Being all of the property described in a grant to Morauer Family Limited Partnership by deed dated December 19, 1996 and recorded in Deed Book 2810 at Page 457 all among the Land Records of Arlington County, Virginia.

Beginning for the same at an iron pipe found on the southeasterly curved right of way line of 10th Street South (50 feet wide), said point also marking the northwesterly end of the common line of division between the aforesaid Morauer property (D.B. 2810 PG. 457) and the property of CESC Crystal/Rosslyn LLC (D.B. 2857 PG. 1211); thence running with the right of way line of said 10th Street South, the following four (4) courses and distances.

- 1) 123.52 feet along the arc of curve to the left having a radius of 60.00 feet and a chord bearing and distance of North 43 degrees 25' 32" West, 102.83 feet to a point of curvature; thence
- 2) 27.40 feet along the arc of a curve to the right having a radius of 30.00 feet and a chord bearing and distance of North 76 degrees 14' 29" West, 26.45 feet to a point, thence
- 3) North 50 degrees 04' 50" West, 75.49 feet to a point of curvature; thence
- 4) 31.76 feet along the arc of a curve to the right having a radius of 20.00 feet and a chord bearing and distance of North 04 degrees 35' 30" West, 28.52 feet to an iron pipe found on the northeasterly right of way line of South Ball Street, width varies thence; running with South Ball Street
- 5) North 40 degrees 53' 50" East, 44.98 feet to a point on the southerly line of the property of Baljit S. and Pavitar P. Aulakh (D.B. 2668, PG. 717); thence running with the aforesaid southerly property line.
- 6) South 49 degrees 06' 10" East, 156.80 feet to a point; thence running with the northeasterly line of said Aulakh Property and continuing with the northeasterly lines of W.M.A.T.A (D.B. 2567 PG. 1344), the following two (2) courses and distances
- 7) North 40 degrees 53' 50" East, 356.79 feet to rebar found; thence
- 8) 92.89 feet along the arc of a curve to the left having a radius of 1,314.95 feet and a chord bearing and distance of North 38 degrees 53' 51" East, 92.87 feet to a point on the southwesterly right of way line of 6th Street South (width varies); thence running with said right of way, the following (2) courses and distances
- 9) 20.75 feet along the arc of a curve to the right having a radius of 45.00 feet and a chord bearing and distance of South 06 degrees 06' 42" East, 20.57 feet to a point; thence

10) 128.16 feet along the arc of a curve to the left having a radius of 45.00 feet and a chord bearing and distance of South 74 degrees 29' 35" East, 89.03 feet to a point on the westerly line of the Arlington County School Board (D.B. 3400 PG 734); thence running with said property, the following three (3) courses and distances

11) 334.53 feet along the arc of a curve to the left having a radius of 5,879.65 feet and a chord bearing and distance of South 22 degrees 04' 57" West, 334.48 feet to a point; thence

12) South 19 degrees 48' 20" West, 140.00 feet to a point; thence

13) South 06 degrees 36' 25" East, 47.02 feet to an iron pipe found on the aforesaid common line of division between Morauer and CESC Crystal/ Roslyn LLC (DB 2857 Pg 1211); thence running with said common line of division, the following two (2) courses and distances

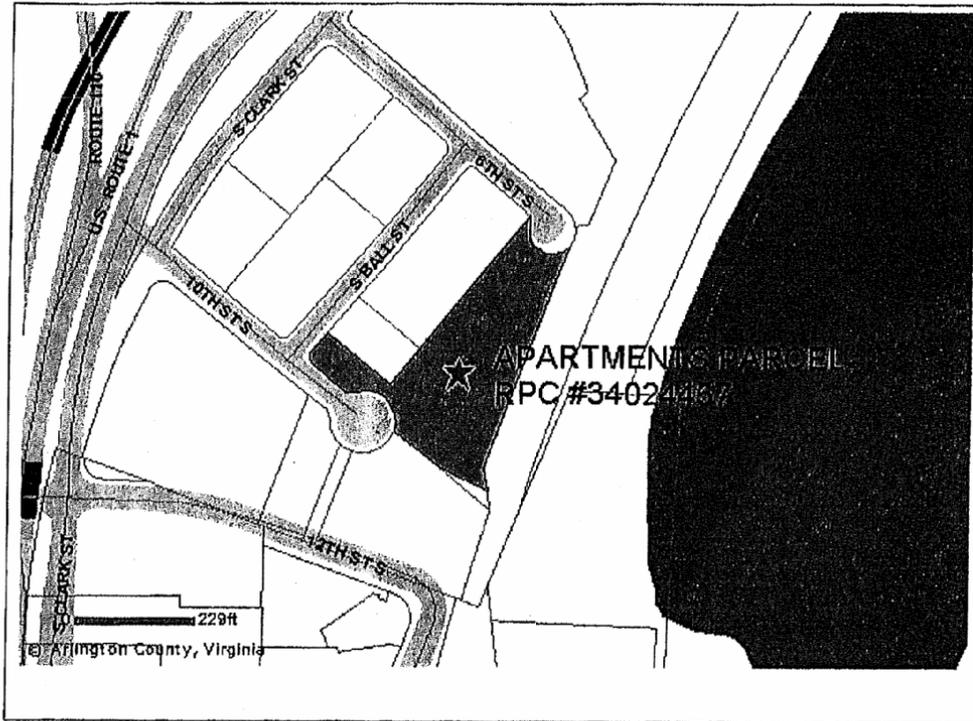
14) North 62 degrees 26' 40" West, 114.10 feet to an iron pipe found; thence running with the aforesaid common line of division of CESC Crystal/Roslyn LLC (D.B. 2857 PG. 1211)

15) North 50 degrees 02' 35" West, 109.26 feet to the point of beginning containing 92,727 square feet or 2.12872 acres of land, more or less.

AND BEING the same property conveyed to Ameriton Properties Incorporated by deed from Morauer-Crystal City, LLC and Morauer Family Limited Partnership, dated September 22, 2005 and recorded September 23, 2005 in Deed Book 3904 at page 1244.

0004

Exhibit "B-2"
APARTMENTS PARCEL
Schematic



January 3, 2008

**DEED OF TEMPORARY EASEMENT
AND CONSTRUCTION AGREEMENT**

This DEED OF TEMPORARY EASEMENT AND CONSTRUCTION AGREEMENT ("Temporary Easement") is made this ____ day of _____, 2008, by THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate and politic (the "Grantor"), and NORTH TRACT APARTMENTS LLC, a Delaware limited liability company registered to do business in Virginia (the "Grantee").

RECITALS:

R-1 WHEREAS, the Grantor is the owner of certain real property in Arlington County, Virginia, known as Parcel 15, Potomac Yard Arlington, being further described in Exhibit "A-1" and Exhibit "A-2", attached hereto and incorporated herein, RPC #34024347, and having been acquired by the Grantor in a deed dated October 31, 2002, and recorded in Deed Book 3400 at page 734, among the land records of Arlington County, Virginia (the "County Parcel"); and

R-2 WHEREAS, the Grantee is the owner of certain real property in Arlington County, Virginia, known as Parcel A, Sebastian Springs, Parcel A and B, Lots 3B1 and 3B, Burke & Smiths Cullinane Subdivision, being further described in Exhibit "B-1" and Exhibit "B-2", attached hereto and incorporated herein, RPC #34024457, and having been acquired by the Grantee in a deed dated December 21, 2006, and recorded in Deed Book 4054 at page 402, among the land records of Arlington County, Virginia (the "Apartments Parcel"); and

R-3 WHEREAS, the Grantee plans to develop the Apartments Parcel pursuant to the approved Administrative Rule 4.1 Site Plan, SP #390, as a mid-rise residential building; and

R-4 WHEREAS, the Grantee requires a temporary construction easement over and upon a portion of the County Parcel adjacent to the Apartments Parcel during the time of Grantee's construction of the mid-rise residential building for purposes incidental and related to such construction; and

R-5 WHEREAS, a portion of the Temporary Easement Area, as hereinafter defined, is subject to a Fire Separation Agreement, dated March 27, 2006, by and between the County Board of Arlington County, Virginia, and Ameriton Properties Incorporated; and

R-6 WHEREAS, a portion of the Licensed Premises, as hereinafter defined, also is the subject of a Crane Swing License Agreement by and between the County Board of Arlington County, Virginia, and North Tract Apartments LLC, said Crane Swing License Agreement may be executed contemporaneously herewith; and

R-7 WHEREAS, a portion of the Temporary Easement Area, as hereinafter defined, also is the subject of a Tie-back License Agreement by and between the County Board of Arlington County, Virginia, and North Tract Apartments LLC, for the installation, maintenance,

and repair of sheeting tie-backs, said License Agreement may be executed contemporaneously herewith; and

R-8 WHEREAS, a portion of the Temporary Easement Area, as hereinafter defined, also is the subject of a Temporary Parking Easement by and between the County Board of Arlington County, Virginia, and North Tract Apartments LLC, said easement may be executed contemporaneously herewith; and

R-9 WHEREAS, by this Temporary Easement, the Grantor desires to grant to Grantee a temporary construction easement over and upon a portion of the County Parcel, as further described herein.

WITNESSETH:

NOW, THEREFORE, in consideration of the sum of Nine Thousand Four Hundred Eighty-one and 60/100 Dollars (\$9,481.60) cash paid in hand, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the mutual benefits to be derived by the parties hereto, the Grantor does hereby grant and convey unto the Grantee a temporary construction easement for the use of a portion of the County Parcel containing Fifteen Thousand and Twenty-eight (15,028) square feet of land as shown on the exhibit entitled, "Plat Showing Temporary Construction Easement on the Property of Arlington County Board Deed Book 3400 Page 734 Arlington County, Virginia," dated April 10, 2007, revised April 19, 2007, prepared by VIKA Incorporated (Exhibit "C"), attached hereto and incorporated herein ("Temporary Easement Area"), for purposes that are incidental and related to Grantee's construction of the mid-rise residential building on the Apartment Parcel pursuant to SP #390. The Temporary Easement shall be subject to the following terms and conditions:

1. The Grantor covenants that the Grantor is seized of, and has the right to, convey the Temporary Easement, and that the County shall make no use of the Temporary Easement Area that is inconsistent with the rights hereby conveyed.
2. Grantee, its employees, contractors, and agents shall have non-exclusive use of the Temporary Easement Area for the purposes named, and shall have all rights and privileges reasonably necessary to the exercise of the Temporary Easement; provided, however, that this right to use the Temporary Easement Area shall not be construed to allow the Grantee to erect any building, structure or facility of a permanent nature in the Temporary Easement Area.
3. The Grantee shall have the right to trim, cut and remove trees, shrubbery, fences, structures or other obstructions or facilities in or near the Temporary Easement Area.
4. The Grantee shall not dig or excavate on or within the Temporary Easement Area or otherwise damage the Temporary Easement Area.
5. The Grantee agrees that, as soon as practicable prior to the expiration of this Temporary Easement, the Grantee shall, at no cost to the Grantor: (1) restore any

damaged portion of the Temporary Easement Area and any area adjacent to the Temporary Easement Area as nearly as practicable to its original condition; and, (2) reseed (or resod, at the option of the Grantor) all damaged grass areas adjacent to the Temporary Easement Area. Grantee further agrees to prepare the Temporary Easement Area for Grantor's future development per Grantor's direction.

6. Any temporary construction equipment temporarily installed or constructed by the Grantee within the Temporary Easement Area, including, but not limited to, scaffolding and other construction equipment, shall be and remain the property of the Grantee.
7. The Grantor reserves the right to access the Temporary Easement Area to conduct any inspections, surveys, environmental and other tests, install necessary utilities, and perform any grading and landscaping reasonably related to the Grantor's development of the County Parcel, including the Temporary Easement Area. The Grantee, the Grantor, and their respective employees, contractors, and agents shall coordinate access to the Temporary Easement Area. Notwithstanding the foregoing, the Grantee agrees to not interfere with Grantor's access to the Temporary Easement Area for purposes reasonably related to the Grantor's development of the County Parcel.
8. The Grantee hereby agrees, upon receipt of a written demand therefor, to pay to the Grantor all of Grantor's remobilization costs or other increased costs, not to exceed Fifty Thousand Dollars (\$50,000), for Grantor's development of the County Parcel, incurred by the Grantor, as determined in Grantor's sole but reasonable discretion, as a result of the use of the Temporary Easement Area by Grantee.
9. The Grantee agrees that, prior to the commencement of this Temporary Easement as provided in Section 10, hereinafter, the Grantee shall deliver to the Grantor, as beneficiary, an irrevocable standby letter of credit, issued by, and drawable upon, an issuing bank in Northern Virginia, acceptable in form and in substance to the County Manager or his designee, and approved as to form by the County Attorney, in the face amount of Fifty Thousand Dollars (\$50,000), securing the faithful performance by the Grantee of all of its obligations, duties, responsibilities, and rights pursuant to this Temporary Easement, including, but not limited to, timely payment of any remobilization costs incurred by Grantor. The County Manager or his or her designee, on behalf of the Grantor, is authorized and may make draws, at any times, upon such letter of credit, if the Grantee fails to faithfully perform any of its obligations pursuant to this Temporary Easement, whether or not such failure constitutes a default. Promptly upon any draw upon the letter of credit, the Grantee shall cause the letter of credit to be amended to replenish the letter to the face amount. Such letter of credit shall provide that it shall be automatically renewed and shall be kept in full force and effect continuously for a period beginning on the Commencement Date, as hereinafter defined, and ending one year after the expiration of this Temporary

Easement. Any failure of the Grantee to maintain the face amount of the letter of credit shall constitute a default of this Temporary Easement.

10. The rights granted by this Temporary Easement shall commence at 12:01 a.m. on April 1, 2008, and shall expire upon the earlier of the completion of the construction of the mid-rise residential building on the Apartments Parcel pursuant to SP #390 or 11:59 p.m. June 30, 2008, unless terminated sooner pursuant to the provisions herein (the "Term").
11. Grantor shall have the absolute right to terminate this Temporary Easement, without any liability whatsoever, at any time during the Term by Grantor sending written notice of such termination to Grantee, via certified mail or overnight courier, at both of the following addresses:

NORTH TRACT APARTMENTS, LLC
c/o One Overton Park
3625 Cumberland Boulevard, Suite 680
Atlanta, Georgia 30339
Attn: Gerald R. Massey, III

And

York Residential, Mid-Atlantic Region
2011 Crystal Drive, Suite 400
Arlington, Virginia 22202
Attn: Michael K. George, Development
Services Manager

Such written notice shall be effective upon Grantor's delivery of the written notice to the United States Post Office or the overnight courier. Grantee shall have fifteen (15) calendar days from the date of effective delivery of the written notice, including weekends and holidays, to restore the Temporary Easement Area pursuant to the provisions herein, and to vacate the Temporary Easement Area. Any such termination shall not relieve the Grantee or others of their independent obligation(s) to comply with all conditions of SP #390.

12. This Temporary Easement covers all agreements between the parties hereto. No representations or statements have been made which would modify, add to, or change the terms of this Temporary Easement.
13. This Temporary Easement is contingent upon acceptance by the County Board of Arlington, Virginia.
14. This Temporary Easement shall be construed, interpreted, and applied according to the laws of the Commonwealth of Virginia.
15. The Recitals set forth above are incorporated into this Temporary Easement.

WITNESS the following signatures:

GRANTOR: THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

BY: _____

NAME: _____

TITLE: _____

DATE: _____

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____

I, THE UNDERSIGNED Notary Public, in and for the commonwealth and city/county aforesaid, hereby certify that _____, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same as his/her act and deed and the act and deed of THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate and politic.

Given under my Hand and Seal this ____ day of _____, 200 ____.

Notary Public

My commission expires: _____

GRANTEE: NORTH TRACT APARTMENTS LLC, a Delaware limited liability company registered to do business in Virginia

BY: North Tract, LLC, a Georgia limited liability company, its Manager

BY: York North Tract, LLC, a Georgia limited liability company, its Manager

BY: York Residential – North Tract, LLC, a Georgia limited liability company, its Manager

BY: [Signature]
NAME: GERALD R. MASSEY, III
TITLE: MANAGING MEMBER
DATE: 14. 2008

STATE/Commonwealth of Georgia
CITY/COUNTY OF Douglas

I, THE UNDERSIGNED Notary Public, in and for the state/commonwealth and city/county aforesaid, hereby certify that Gerald R. Massey, III, Managing Member of York Residential - North Tract, LLC, itself the Managing Member of York North Tract, LLC, itself the Managing Member of North Tract, LLC, itself the Managing Member of NORTH TRACT APARTMENTS LLC, a Delaware limited liability company authorized to do business in Virginia, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same as his/her act and deed and the act and deed of the foregoing limited liability company.

Given under my Hand and Seal this 4th day of January, 2008.

Laurie Harris
Notary Public

My commission expires: 1/31/09



Approved as to form: _____
County Attorney

Exhibit "A-1"
COUNTY PARCEL
Legal Description

AIA:

AREA 1:

Beginning at the northeasterly corner of the land of Davis Industries, said point also being in the easterly right-of-way line of Old Jefferson Davis Highway, U.S. Route 1;

Thence, with said easterly right-of-way line of Old Jefferson Davis Highway, U.S. Route 1, the following three (3) courses:

- 1) N 51° 18' 22" E, a distance of 820.11 feet to a point of curvature;
- 2) With a curve to the left having a central angle of 33° 55' 36", a radius of 324.37 feet, an arc distance of 192.07 feet, and a chord length of 189.28 feet which bears N 34° 20' 34" E;
- 3) thence N 17° 22' 46" E a distance of 70.77 feet to a point on the southerly line of the land of Equitable Life Assurance Society of the U.S.;

Thence, with the southerly and easterly line of the land of Equitable Life Assurance Society of the U.S. the following two (2) courses:

- 1) With a curve to the left having a central angle of 16° 49' 29", a radius of 1,136.28 feet, an arc distance of 333.67 feet, and a chord length of 332.47 feet which bears N 71° 19' 50" E;
- 2) N 33° 04' 26" E, a distance of 861.25 feet to a point in the southerly line of the land of the United States of America;

Thence with said southerly line of the land of the United States of America the following three (3) courses:

- 1) S 53° 12' 34" E, a distance of 57.10 feet;
- 2) N 33° 04' 26" E, a distance of 156.86 feet;
- 3) N 74° 33' 17" E, a distance of 49.98 feet to a point in the westerly line of the land of Commonwealth Atlantic Land V Inc;

Thence, with said westerly line of the land of Commonwealth Atlantic Land V Inc. the following four (4) courses:

- 1) S 33° 04' 26" W, a distance of 1,986.38 feet to a point of curvature;

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- 2) With a curve to the left having a central angle of $13^{\circ} 27' 23''$, a radius of 5,789.65 feet, an arc distance of 1,359.76 feet, and a chord length of 1,356.64 feet which bears $S 26^{\circ} 20' 44'' W$ to a point of tangency;
- 3) $S 19^{\circ} 37' 02'' W$, a distance of 74.06 feet to a point of curvature;
- 4) With a curve to the left having a central angle of $04^{\circ} 09' 51''$ a radius of 1,599.67 feet, an arc distance of 116.26 feet and a chord length of 116.24 feet which bears $S 17^{\circ} 32' 07'' W$ to a point in the westerly line of Parcel 3A of the land of Third Crystal Park Associates L.P.;

Thence, with said line of Parcel 3A of the land of Third Crystal Park Associates L.P., and the northerly line of Parcel 3B of the land of Third Crystal Park Associates L.P., the following two (2) courses:

- 1) $S 22^{\circ} 11' 51'' W$, a distance of 196.87 feet;
- 2) $N 69^{\circ} 33' 09'' W$, a distance of 36.99 feet to the southeasterly corner of the land of CESC Crystal/Roslyn LLC;

Thence, with the easterly lines of CESC Crystal/Roslyn LLC, Richard C. and Jeanne T. Morauer and the northerly right-of-way line of 6th Street South, the following five (5) courses:

- 1) With a curve to the right having a central angle of $01^{\circ} 47' 00''$, a radius of 5,844.60 feet, an arc distance of 181.92 feet, and a chord length of 181.91 feet which bears $N 16^{\circ} 39' 08'' E$;
- 2) $N 07^{\circ} 32' 04'' W$, a distance of 82.76 feet;
- 3) $N 19^{\circ} 07' 54'' E$, a distance of 139.82 feet to a point of curvature;
- 4) With a curve to the right having a central angle of $03^{\circ} 15' 33''$, a radius of 5,879.65 feet, an arc distance of 334.45 feet, and a chord length of 334.41 feet which bears $N 21^{\circ} 19' 57'' E$, to the point of reverse curvature;
- 5) With a curve to the left having a central angle of $73^{\circ} 02' 19''$, a radius of 45.00 feet, an arc distance of 23.66 feet, to the southeasterly corner of the land of Davis Industries;

Thence, with the easterly line of Davis Industries, the following fourteen (14) courses:

- 1) $N 82^{\circ} 48' 57'' E$, a distance of 25.00 feet;
- 2) $N 22^{\circ} 04' 11'' E$, a distance of 133.67 feet;

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- 3) N 30° 05' 00" W, a distance of 137.27 feet;
 - 4) N 44° 44' 48" E, a distance of 21.46 feet;
 - 5) N 21° 55' 20" W, a distance of 105.29 feet;
 - 6) N 47° 04' 16" W, a distance of 90.33 feet;
 - 7) N 24° 44' 41" W, a distance of 33.42 feet;
 - 8) N 05° 31' 22" W, a distance of 49.44 feet;
 - 9) N 05° 36' 33" E, a distance of 116.40 feet;
 - 10) N 75° 21' 51" W, a distance of 18.22 feet;
 - 11) N 25° 23' 15" E, a distance of 101.00 feet;
 - 12) N 61° 59' 51" W, a distance of 22.69 feet;
 - 13) N 29° 13' 30" E, a distance of 65.72 feet;
 - 14) N 34° 14' 14" W, a distance of 63.34 feet to the point of beginning.
- Containing 774.782 Square Feet or 17.7865 Acres, More or Less.

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Exhibit "A-2"
COUNTY PARCEL
Schematic

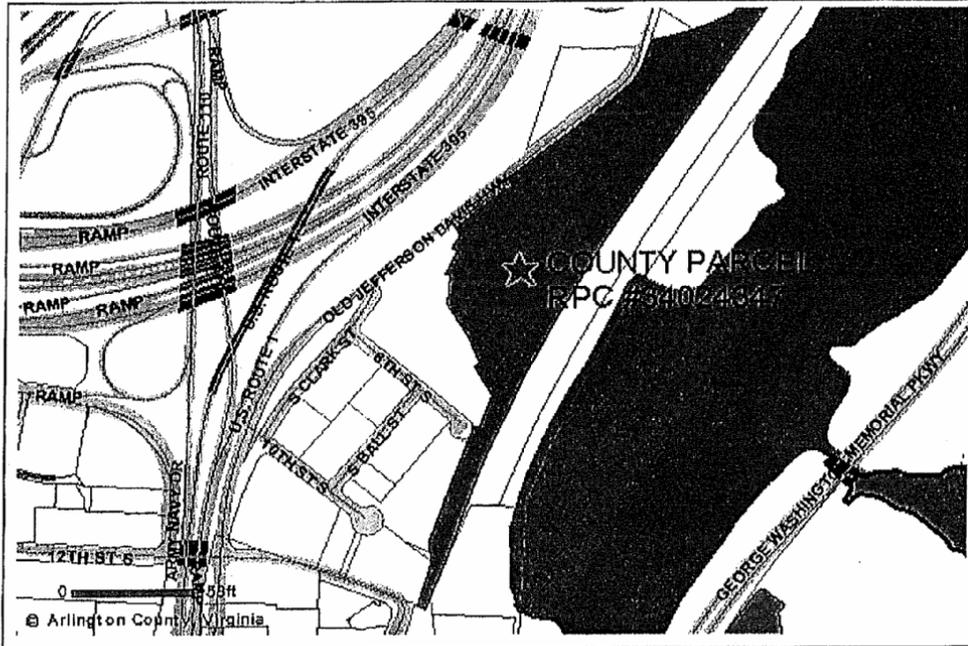


Exhibit "B-1"
APARTMENTS PARCEL
Legal Description

All of that certain lot or parcel of land situated, lying and being in Arlington County, Virginia and being more particularly described as follows:

Being all of the property described in a grant to Morauer Family Limited Partnership by deed dated December 19, 1996 and recorded in Deed Book 2810 at Page 457 all among the Land Records of Arlington County, Virginia.

Beginning for the same at an iron pipe found on the southeasterly curved right of way line of 10th Street South (50 feet wide), said point also marking the northwesterly end of the common line of division between the aforesaid Morauer property (D.B. 2810 PG. 457) and the property of CESC Crystal/Roslyn LLC (D.B. 2857 PG. 1211); thence running with the right of way line of said 10th Street South, the following four (4) courses and distances.

- 1) 123.52 feet along the arc of curve to the left having a radius of 60.00 feet and a chord bearing and distance of North 43 degrees 25' 32" West, 102.83 feet to a point of curvature; thence
- 2) 27.40 feet along the arc of a curve to the right having a radius of 30.00 feet and a chord bearing and distance of North 76 degrees 14' 29" West, 26.45 feet to a point, thence
- 3) North 50 degrees 04' 50" West, 75.49 feet to a point of curvature; thence
- 4) 31.76 feet along the arc of a curve to the right having a radius of 20.00 feet and a chord bearing and distance of North 04 degrees 35' 30" West, 28.52 feet to an iron pipe found on the northeasterly right of way line of South Ball Street, width varies thence; running with South Ball Street
- 5) North 40 degrees 53' 50" East, 44.98 feet to a point on the southerly line of the property of Baljit S. and Pavitar P. Aulakh (D.B. 2668, PG. 717); thence running with the aforesaid southerly property line.
- 6) South 49 degrees 06' 10" East, 156.80 feet to a point; thence running with the northeasterly line of said Aulakh Property and continuing with the northeasterly lines of W.M.A.T.A (D.B. 2567 PG. 1344), the following two (2) courses and distances
- 7) North 40 degrees 53' 50" East, 356.79 feet to rebar found; thence
- 8) 92.89 feet along the arc of a curve to the left having a radius of 1,314.95 feet and a chord bearing and distance of North 38 degrees 53' 51" East, 92.87 feet to a point on the southwesterly right of way line of 6th Street South (width varies); thence running with said right of way, the following (2) courses and distances
- 9) 20.75 feet along the arc of a curve to the right having a radius of 45.00 feet and a chord bearing and distance of South 06 degrees 06' 42" East, 20.57 feet to a point; thence

10) 128.16 feet along the arc of a curve to the left having a radius of 45.00 feet and a chord bearing and distance of South 74 degrees 29' 35" East, 89.03 feet to a point on the westerly line of the Arlington County School Board (D.B. 3400 PG 734); thence running with said property, the following three (3) courses and distances

11) 334.53 feet along the arc of a curve to the left having a radius of 5,879.65 feet and a chord bearing and distance of South 22 degrees 04' 57" West, 334.48 feet to a point; thence

12) South 19 degrees 48' 20" West, 140.00 feet to a point; thence

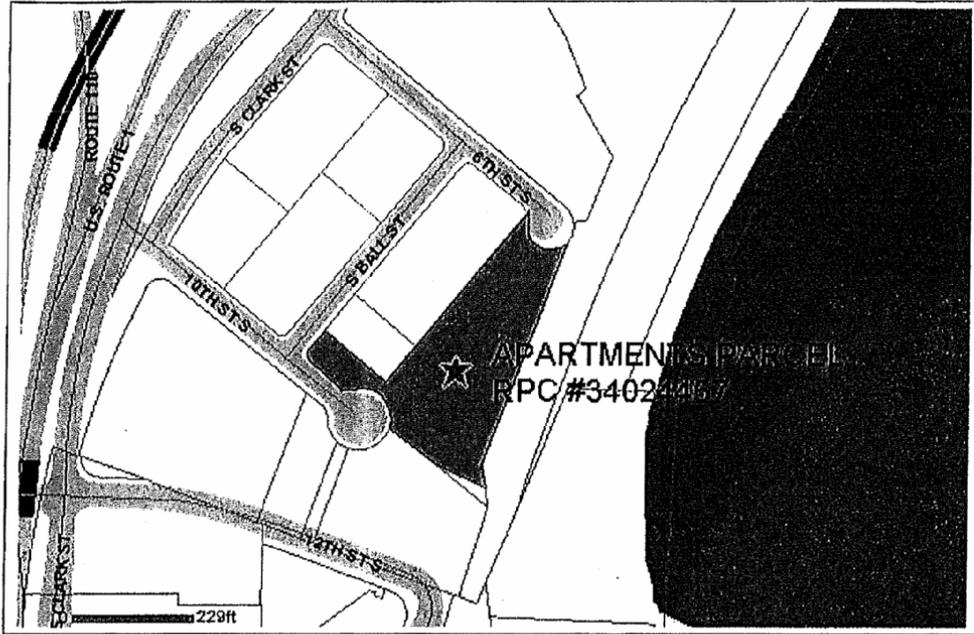
13) South 06 degrees 36' 25" East, 47.02 feet to an iron pipe found on the aforesaid common line of division between Morauer and CESC Crystal/ Rosslyn LLC (DB 2857 Pg 1211); thence running with said common line of division, the following two (2) courses and distances

14) North 62 degrees 26' 40" West, 114.10 feet to an iron pipe found; thence running with the aforesaid common line of division of CESC Crystal/Rosslyn LLC (D.B. 2857 PG. 1211)

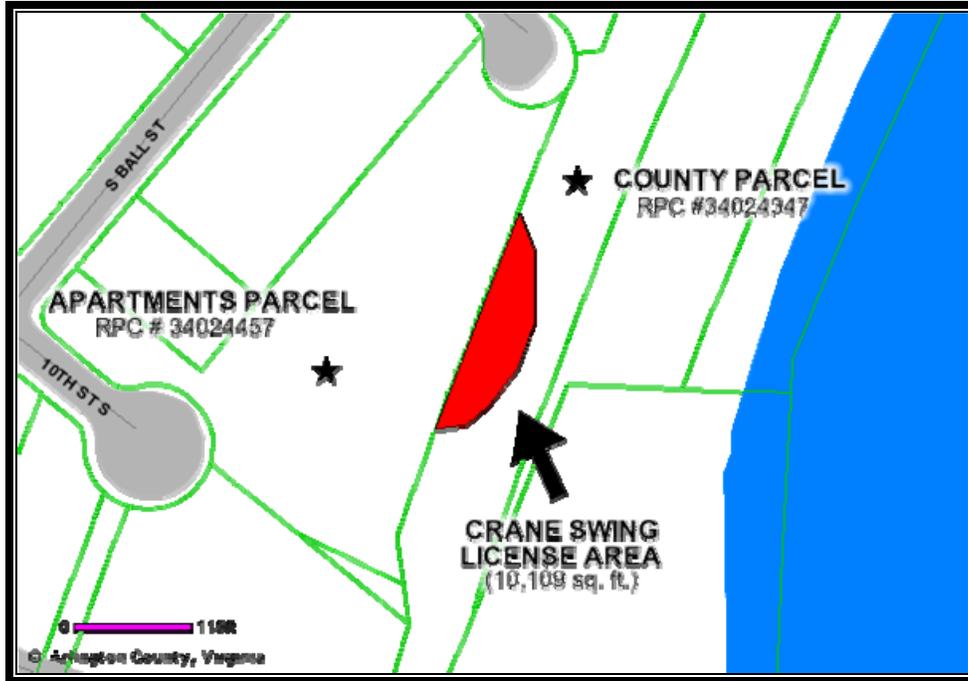
15) North 50 degrees 02' 35" West, 109.26 feet to the point of beginning containing 92,727 square feet or 2.12872 acres of land, more or less.

AND BEING the same property conveyed to Ameriton Properties Incorporated by deed from Morauer-Crystal City, LLC and Morauer Family Limited Partnership, dated September 22, 2005 and recorded September 23, 2005 in Deed Book 3904 at page 1244.

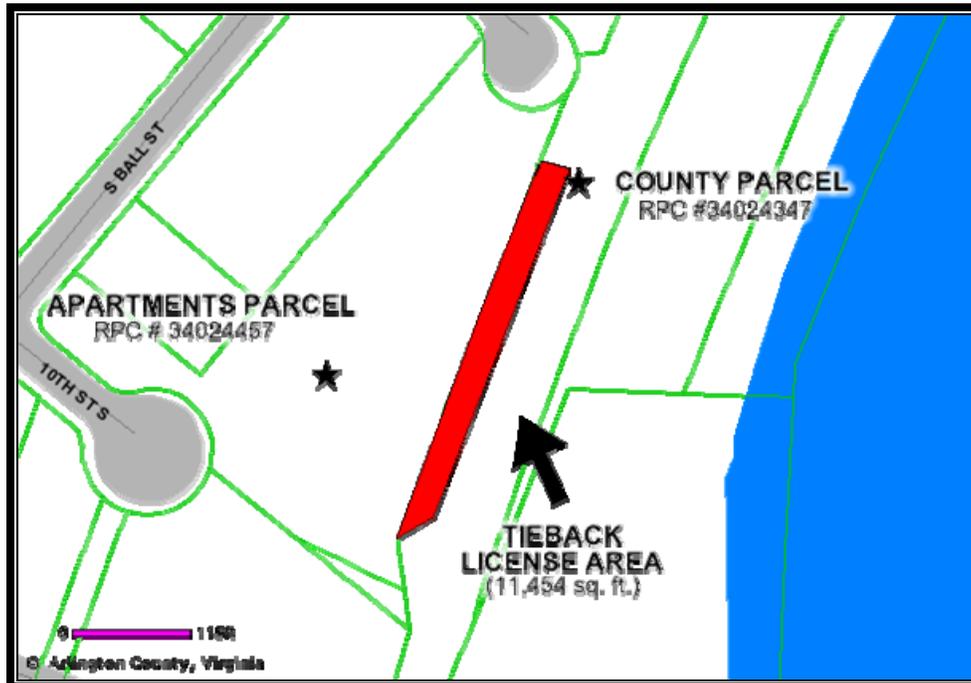
Exhibit "B-2"
APARTMENTS PARCEL
Schematic



VICINITY MAPS
JUNE 9, 2007

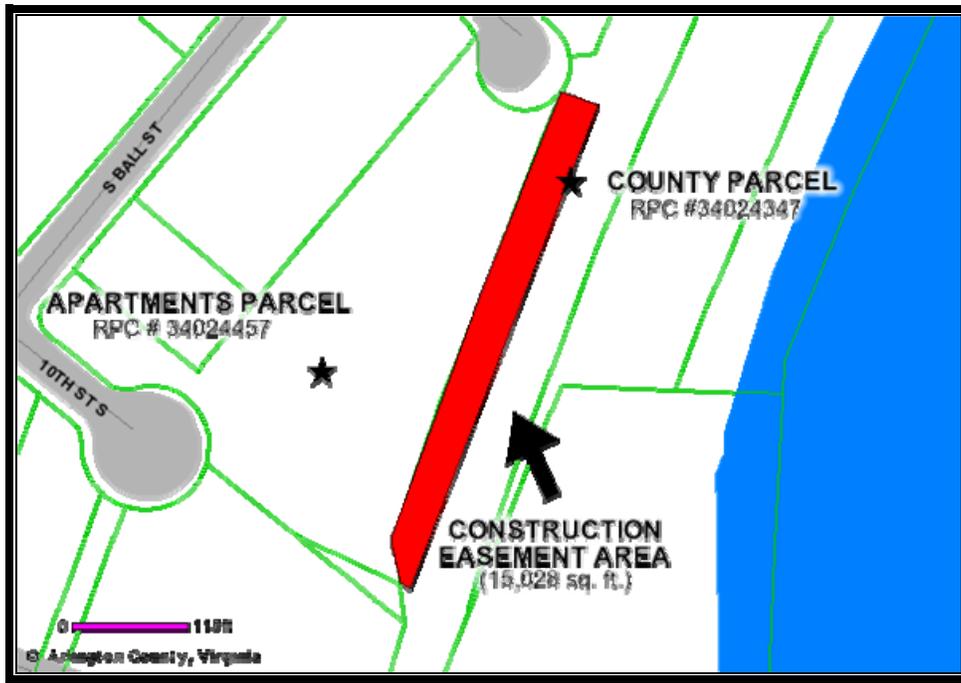


CRANE SWING LICENSE AREA

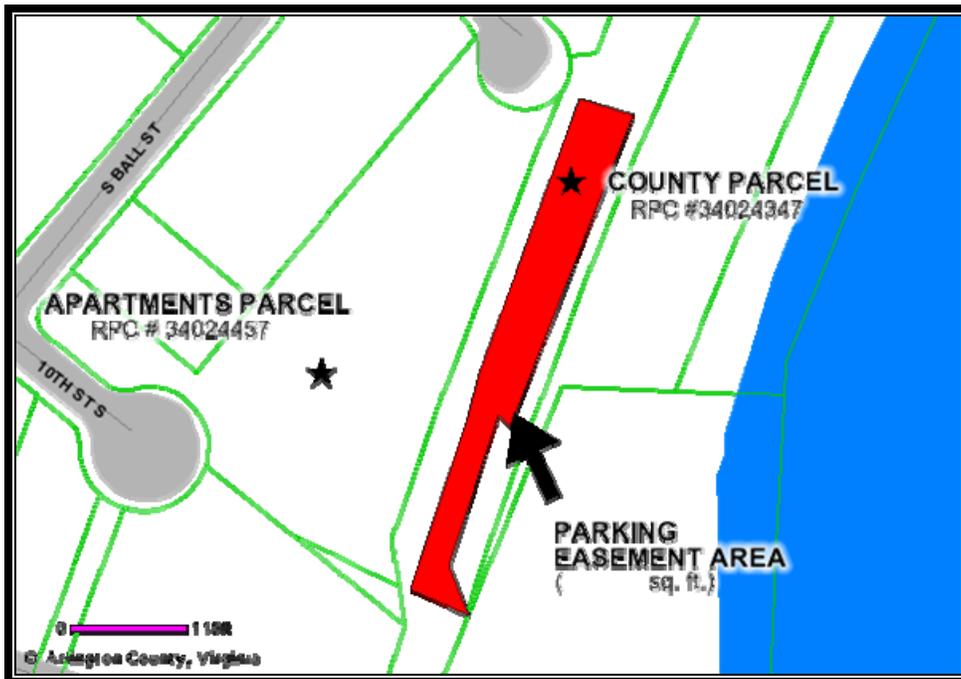


TIEBACK LICENSE AREA

VICINITY MAPS
JUNE 9, 2007



CONSTRUCTION EASEMENT AREA



PARKING EASEMENT AREA