



## ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item  
Meeting of June 17, 2008**

**DATE:** June 4, 2008

**SUBJECT:** Enactment of an Ordinance to Vacate a portion of South Clark Street between 10<sup>th</sup> Street South and 6<sup>th</sup> Street South, Adjacent to: Parcel 12, Remainder from Subdivision of Parcels 14 and 15, Potomac Yard (RPC No. 34024345); Parcel 3-A, Resubdivision of Lot 3, Cullinane Subdivision (RPC No. 34025003); and Parcel 13, RF&P Railroad Property, Zone 123 (RPC No. 34025004), which adjacent parcels are owned by The County Board of Arlington County, Virginia, with Conditions.

**Applicant:** MR Boundary Channel, LLC/Monument Realty, LLC  
**Owner:** County Board of Arlington, Virginia

**By:** Martin D. Walsh  
Walsh Colucci Lubeley Emrich & Walsh PC  
2200 Clarendon Boulevard, 13<sup>th</sup> Floor  
Arlington, Virginia 22201

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

A. Enact the attached Ordinance (Attachment 1) to Vacate a portion of South Clark Street between 10<sup>th</sup> Street South and 6<sup>th</sup> Street South, Abutting: Parcel 12, remainder from subdivision of Parcels 14 and 15, Potomac Yard (RPC No. 34024345); Parcel 3-A, Resubdivision of Lot 3, Cullinane Subdivision (RPC No. 34025003); and Parcel 13, RF&P Railroad Property, Zone 123 (RPC No. 34025004), which adjacent parcels are owned by The County Board of Arlington County, Virginia, with conditions.

B. Authorize the Real Estate Bureau Chief or his designee to execute the deed of vacation on behalf of the County Board, accept on behalf of the County Board, easements required by the Ordinance or the deed of vacation to be dedicated or conveyed to the County Board; and to sign, on behalf of the County Manager and the County Board, all documents evidencing the termination of the reservation of utility easements, subject to approval of such documents as to form by the County Attorney.

County Manager: \_\_\_\_\_

County Attorney: \_\_\_\_\_

Staff: Betsy Herbst, DES, Real Estate Bureau

**ISSUE:** This is a request for the vacation of a portion of South Clark Street between 10<sup>th</sup> Street South and 6<sup>th</sup> Street South to facilitate development of the property under proposed Site Plan #400. There are no issues identified in this request.

**SUMMARY:** MR Boundary Channel, LLC and Monument Realty, LLC (jointly the “Applicant” or “Monument”) have requested the County Board to enact an Ordinance to vacate a portion of South Clark Street between 10<sup>th</sup> Street South and 6<sup>th</sup> Street South, adjacent to property owned by the County known as RPC Nos. 34024345, 34025003 and 34025004 (“Adjacent Parcels”). The Adjacent Parcels will be acquired by Monument as part of an Exchange Agreement, as hereinafter defined, entered into with the County in July 2007. The vacation is a condition precedent to Monument proceeding to settlement under the Exchange Agreement. The vacation request, if approved, would permit the redevelopment by the Applicant of the property, including the vacated street, the Adjacent Parcels and surrounding parcels, as proposed in Site Plan #400. Upon enactment of the Ordinance, conveyance of the property to Applicant, satisfaction by the Applicant of the applicable conditions, and recordation by the Applicant of the Deed of Vacation before the expiration of the Ordinance, the County’s interest in the vacated portion of South Clark Street between 10<sup>th</sup> Street South and 6<sup>th</sup> Street South will be extinguished.

**BACKGROUND:** The subject portion of South Clark Street is located between 10<sup>th</sup> Street South and 6<sup>th</sup> Street South, abutting the Adjacent Parcels owned by the County Board (see Attachment 2, Vicinity Map). The County acquired the subject portion of South Clark Street by Deed of Dedication dated December 20, 1957, and recorded in Deed Book 1317, Page 388, among the Arlington County land records.

On July 7, 2007, the County Board approved an exchange agreement between the County Board and MR Boundary Channel, LLC, with an effective date of July 16, 2007 (“Exchange Agreement”), by which the Applicant would acquire 4.7 acres of County Board owned property bounded by Old Jefferson Davis Highway, 6<sup>th</sup> Street South, South Ball Street and 10<sup>th</sup> Street South (the “Exchanged Property”). Under the terms of the Exchange Agreement, if the Site Plan is approved, the Applicant would acquire the Exchanged Property, including the area upon which the requested vacated portion of South Clark Street is located and the area upon which the request vacated utility easements are located in exchange for conveyance of the 7.09 acre Twin Bridges site that the County would acquire to facilitate the development of the future Long Bridge Park.

The obligations of the County and Monument under the Exchange Agreement are conditioned on approval of Site Plan #400 submitted by Monument for the Exchanged Property, which is the subject of a separate Board Report. In conjunction with its plans to redevelop the Exchanged Property, the Applicant has also submitted an application for a GLUP amendment, a rezoning request, a vacation of certain utility easements, and approval of a 4.1 Site Plan concurrently with this vacation application.

At its May 1, 2008 meeting, the Transportation Commission voted to recommend the approval of the subject vacation if the Site Plan is approved by the County Board. The Applicant has submitted a revised 4.1 Site Plan consisting of a proposal to construct approximately 352 residential units, 3,512 square feet of retail space and 323,229 square feet of office space, along

with modifications of use regulations for exclusion of density for recycling storage, unit mechanical closets, parking and loading docks.

By agreement with the Applicant, the Site Plan and associated vacations were deferred from the May 17, 2008 County Board meeting to the June 2, 2008 Planning Commission meeting and the June 17, 2008 County Board meeting.

**DISCUSSION:** In conjunction with the plans for redevelopment of the Exchanged Property, the Applicant has requested the County Board to vacate a portion of South Clark Street between 10<sup>th</sup> Street South and 6<sup>th</sup> Street South, adjacent to: Parcel 12, remainder from subdivision of Parcels 14 and 15, Potomac Yard; Parcel 3-A, Resubdivision of Lot 3, Cullinane Subdivision; and Parcel 13, RF&P Railroad Property, Zone 123, which Adjacent Parcels are owned by The County Board of Arlington County, Virginia, and known respectively as RPC No. 34024345, 34025003 and 34025004, as designated on a Plat entitled “Plat Showing the Vacation of a 10’ Water Main Easement and a 15’ Sanitary Sewer and Force Main Easement, Deed Book 1936 Page 1, on Part of the Property of the County Board of Arlington, Virginia, Deed Book 3400 Page 734, and the Vacation of a Portion of South Clark Street, Deed Book 1317, Page 388, Arlington County, Virginia”, prepared by VIK A Incorporated, dated May 1, 2006, attached hereto as Exhibit A (“Vacation Plat”). The Applicant must pay all costs and fees associated with removal of any and all existing utility lines located with the portion of South Clark Street to be vacated, and relocation of the new utilities.

Since the Deed of Vacation will be recorded prior to removal, relocation and reconstruction of all utilities existing within the portion of South Clark Street to be vacated, the Deed of Vacation requires that the Applicant shall (a) submit to the Director of DES, or his designee, a bond, letter of credit, or other security to secure the construction, removal and/or replacement of any and all existing utilities pursuant to the approved utility plan; (b) remove, relocate and reconstruct or cause to be removed relocated and reconstructed, at its sole cost and expense, all utilities of the County and of others existing at the time of recordation of the Deed of Vacation.; and (c) dedicate and convey, without compensation from the County, all required new utility easements and/or, if applicable, obtain right-of-way permits, in accordance with the Site Plan and the utility plan.

**Legal and Physical Description:** This portion of South Clark Street was established by Deed of Dedication dated December 20, 1957, and recorded in Deed Book 1317, Page 388, among the land records of Arlington County, Virginia, and is located between 6<sup>th</sup> Street South and 10<sup>th</sup> Street South. The existing public utilities in this portion of South Clark Street include a 10” sanitary sewer, a 27” sanitary sewer, a 8” force main, a 27” force main, a 24” force main, a 6” water line, electric, gas and communication lines.

**Public Notice:** Public notice was given in accordance with the Code of Virginia. Notices were placed in the May 20, 2008 and May 27, 2008 issues of the Washington Times for the June 2, 2008 Planning Commission and the June 17, 2008 County Board Meeting.

**Compensation:** The portion of South Clark Street being vacated is a part of the property being exchanged by the County with Monument for property of greater size being conveyed by Monument to the County under the terms of the Exchange Agreement.

**FISCAL IMPACT:** None.

**CONCLUSION:** It is recommended that the County Board enact the attached Ordinance of Vacation as set forth in Attachment 1 hereto.

## ATTACHMENT 1

**ORDINANCE TO VACATE A PORTION OF SOUTH CLARK STREET BETWEEN 10<sup>th</sup> STREET SOUTH AND 6<sup>th</sup> STREET SOUTH, ABUTTING: PARCEL 12, REMAINDER FROM SUBDIVISION OF PARCELS 14 AND 15, POTOMAC YARD (RPC NO. 34024345); PARCEL 3-A, RESUBDIVISION OF LOT 3, CULLINANE SUBDIVISION (RPC NO. 34025003); AND PARCEL 13, RF&P RAILROAD PROPERTY, ZONE 123 (RPC NO. 34025004), WHICH ADJACENT PARCELS ARE OWNED BY THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, WITH CONDITIONS:**

**BE IT ORDAINED** that, pursuant to a request on file by MR Boundary Channel, LLC and Monument Realty, LLC (jointly the “Applicant”) in the Office of the Department of Environmental Services, a portion of South Clark Street between the northeastern right-of-way line of 10<sup>th</sup> Street South and the southwestern right-of-way line of 6<sup>th</sup> Street South, abutting: Parcel 12, Remainder from Subdivision of Parcels 14 and 15, Potomac Yard (RPC No. 34024345); Parcel 3-A, Resubdivision of Lot 3, Cullinane Subdivision (RPC No. 34025003); and Parcel 13, RF&P Railroad Property, Zone 123 (RPC No. 34025004), which abutting parcels are owned by The County Board of Arlington County, Virginia, and which portion of South Clark Street was established by Deed of Dedication dated December 20, 1957, and recorded in Deed Book 1317, Page 388, among the land records of Arlington County, Virginia, which portion of South Clark Street is also shown on a plat dated May 1, 2006, prepared by VIKI Incorporated, entitled “Plat Showing the Vacation of a 10’ Water Main Easement and a 15’ Sanitary Sewer and Force Main Easement, Deed Book 1936 Page 1, on Part of the Property of the County Board of Arlington, Virginia, Deed Book 3400 Page 734, and the Vacation of a Portion of South Clark Street, Deed Book 1317 Page 388, Arlington County, Virginia”, attached to the County Manager’s Report dated June 4, 2008, as Exhibit A, is hereby vacated subject to the following conditions:

1. The Applicant/Property Owner shall submit, for review and approval, to the Department of Environmental Services (“DES”), a utility relocation and engineering design plan for the construction, relocation, removal, and/or replacement of any and all utilities located, in whole or in part, within the portion of South Clark Street vacated by this Ordinance of Vacation (“Plan”) in compliance with the Arlington County Construction Standards and Specifications. The Plan shall be subject to approval by the Director of DES, or his designee.
2. The Applicant/Property Owner shall prepare and submit to the County for review and approval, a Deed of Vacation and Reservation of Utility Easements (“Deed of Vacation”) substantially in the form attached hereto as Exhibit B and incorporated herein by reference, which Deed shall reserve unto the County utility easements for any then existing utilities within the area to be vacated, which utilities are proposed or required to be relocated and reconstructed under Site Plan #400. The reservation of the utility easements shall continue until completion, as determined by the Arlington County Manager or his designee, of each of the following:
  - (a) Applicant/Property Owner shall submit to the Director of DES, or his designee, a bond, letter of credit, or other security, in an amount and in a form, as determined by and acceptable to the County Manager or his

designee, to secure the construction, relocation, removal, and/or replacement of any and all existing utilities pursuant to the approved Plan;

(b) Applicant/Property Owner shall remove, relocate and reconstruct, or cause to be removed, relocated and reconstructed, at its sole cost and expense, all utilities of the County and of others existing at the time of recordation of the Deed of Vacation within the portion of South Clark Street being vacated, including but not limited to a 10” sanitary sewer, 27” sanitary sewer, 8” force main, 24” force main, 6” water line, and any electric, gas and communication lines. Any utilities removed shall be relocated or reconstructed with new utilities and related appurtenant facilities of size, dimension and location acceptable to the County, in accordance with the approved Plan as defined in Condition No. 1 of this Ordinance and in strict accordance with Arlington County Construction Standards and Specifications, all applicable laws, ordinances, regulations and policies, as provided in Site Plan #400, approved by the County Board concurrently with this Ordinance; and

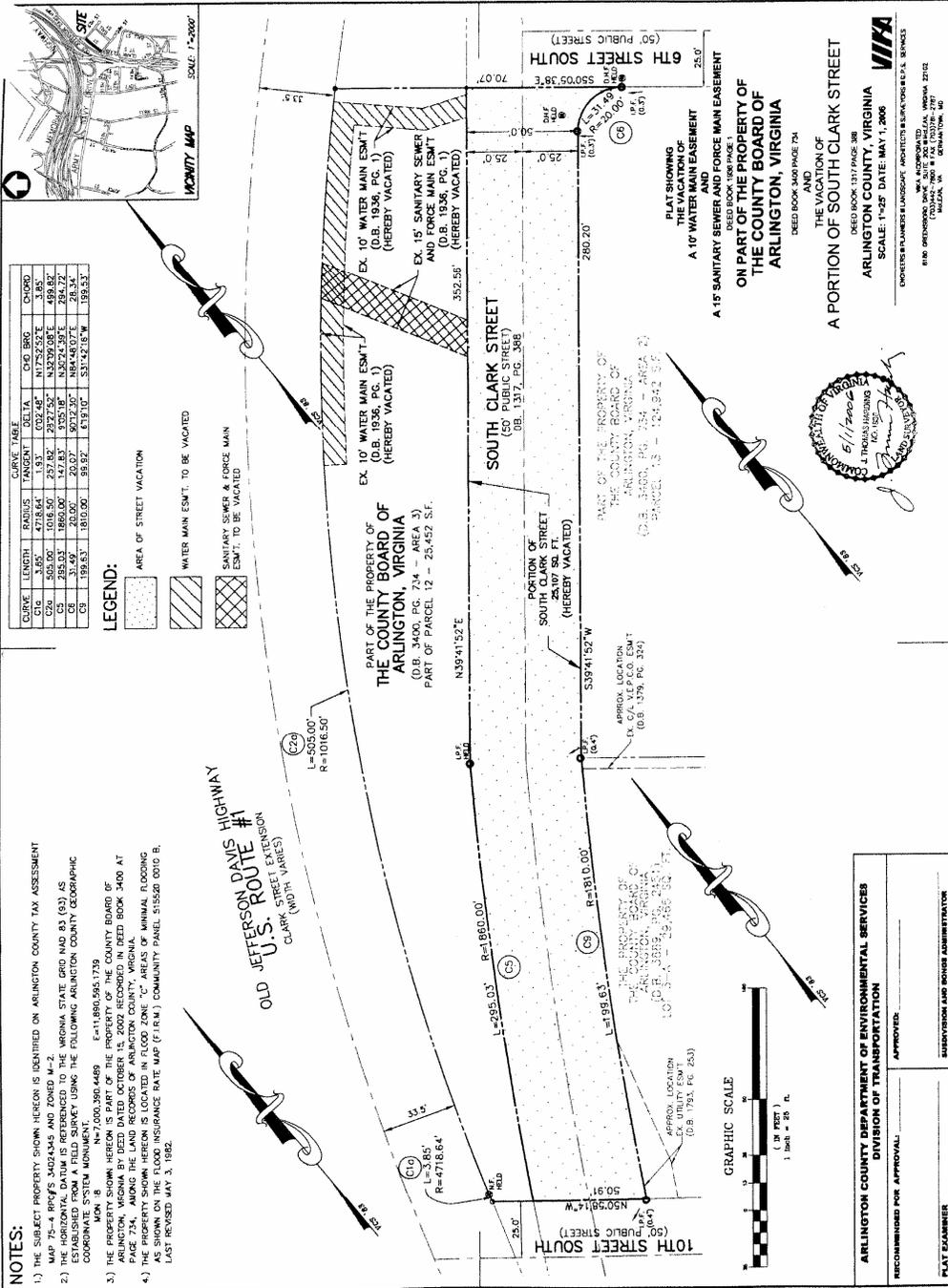
(c) Applicant/Property Owner shall dedicate and convey, without compensation from the County, any and all required new utility easements in a form acceptable to the County Manager and approved by the County Attorney, and/or, if applicable, obtain right-of-way permits, in accordance with Site Plan #400 and the Plan described in Condition No. 1 of this Ordinance.

The Deed shall provide that the utility easements reserved unto the County shall automatically terminate upon completion of the requirements contained therein and acceptance by the County of all relocated utilities and all deed(s) of easement, if any, for the relocated utilities. If the County Manager or his designee determines that the requirements of the Deed have been completed, then upon the request of the Applicant/Property Owner, the Real Estate Bureau Chief shall execute a Confirmation of Termination of Utility Easements, in substance acceptable to the County Manager, and approved as to form by the County Attorney, to be recorded among the land records of Arlington County, Virginia acknowledging the termination of the reserved utility easements without the requirement of compensation to the County.

3. The Applicant/Property Owner shall prepare and submit the Deed of Vacation and accompanying plat, such deed and plat shall be subject to the approval thereof by the County Manager, or his designee, and approval of the deed as to form by the County Attorney.
4. The Applicant/Property Owner shall record the Deed of Vacation and accompanying plat among the land records of the Clerk of the Circuit Court of Arlington County.
5. The Applicant/Property Owner shall pay all fees, including the fees for review, approval and recordation of the required documents associated with the Ordinance of Vacation.

6. All conditions of this Ordinance of Vacation shall be met by noon on June 17, 2011, or this Ordinance of Vacation shall become null and void, without the necessity of any further action by the County Board.

# EXHIBIT A VACATION PLAT



**NOTES:**

- 1) THE SUBJECT PROPERTY SHOWN HEREON IS IDENTIFIED ON ARLINGTON COUNTY TAX ASSESSMENT MAP 75-A BY P.F.'S 34024345 AND ZONED M-2.
- 2) THE HORIZONTAL DATUM IS REFERENCED TO THE VIRGINIA STATE GRID NAD 83 (93), AS SHOWN ON THE PLAT. THE PLAT IS PREPARED USING THE FOLLOWING ARLINGTON COUNTY GEOGRAPHIC COORDINATE SYSTEM MONUMENT:
  - MON 8 N=7,000,380.4489 E=11,880,595.1739
- 3) THE PROPERTY SHOWN HEREON IS PART OF THE PROPERTY OF THE COUNTY BOARD OF ARLINGTON, VIRGINIA, AS SHOWN ON THE PLAT AND DEED BOOK 3400 AT PAGE 734.
- 4) THE PROPERTY SHOWN HEREON IS LOCATED IN FLOOD ZONE "C" AREAS OF MINIMAL FLOODING AS SHOWN ON THE FLOOD INSURANCE RATE MAP (F.I.R.M.) COMMUNITY PANEL 51552B 0010 B, LAST REVISED MAY 3, 1982.

**ARLINGTON COUNTY DEPARTMENT OF ENVIRONMENTAL SERVICES  
DIVISION OF TRANSPORTATION**

RECOMMENDED FOR APPROVAL: \_\_\_\_\_

APPROVED: \_\_\_\_\_

PLAT EXAMINER: \_\_\_\_\_

SUBDIVISION AND BOARD ADMINISTRATOR: \_\_\_\_\_

RPH 452A  
6-28

**EXHIBIT B**

Prepared by and return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RPC NO.: \_\_\_\_\_

**DEED OF VACATION AND  
RESERVATION OF UTILITY EASEMENTS**

This **DEED OF VACATION AND RESERVATION OF UTILITY EASEMENTS** (“Deed of Vacation”) is made this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body corporate and politic, Grantor, (the “County”), and **MONUMENT REALTY, LLC**, a \_\_\_\_\_ limited liability company, its successors or assigns, Grantee (“Monument”).

**RECITALS**

R-1: By Deed of Dedication dated December 20, 1957, recorded in Deed Book 1317 at Page 388 among the land records of Arlington County Virginia (“Land Records”), the County was dedicated a portion of South Clark Street as shown on the plat attached thereto (“South Clark Street”); and

R-2: At a regular meeting on June 17, 2008, the County enacted an “ORDINANCE TO VACATE A PORTION OF SOUTH CLARK STREET BETWEEN 10<sup>th</sup> STREET SOUTH AND 6<sup>th</sup> STREET SOUTH, ABUTTING: PARCEL 12, REMAINDER FROM SUBDIVISION OF PARCELS 14 AND 15, POTOMAC YARD (RPC NO. 34024345); PARCEL 3-A, RESUBDIVISION OF LOT 3, CULLINANE SUBDIVISION (RPC NO. 34025003); AND PARCEL 13, RF&P RAILROAD PROPERTY, ZONE 123 (RPC NO. 34025004), WHICH ADJACENT PARCELS ARE OWNED BY THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, WITH CONDITIONS” (the “Ordinance of Vacation”), to vacate a certain portion of South Clark Street; and

R-3: The portion of South Clark Street to be vacated by this Deed of Vacation is more particularly shown on the plat entitled “Plat Showing the Vacation of a 10’ Water Main Easement and a 15’ Sanitary Sewer and Force Main Easement, Deed Book 1936 Page 1, on Part of the Property of the County Board of Arlington, Virginia, Deed Book 3400 Page 734, and the Vacation of a Portion of South Clark Street, Deed Book 1317, Page 388, Arlington County, Virginia”, prepared by VIKA Incorporated, dated May 1, 2006, certified on \_\_\_\_\_, 200\_\_\_\_, approved by the Arlington County Department of Environmental Services Division of Transportation on \_\_\_\_\_, 200\_\_\_\_, attached hereto and made a part hereof (the “Vacation Plat”); and

- R-4 Monument is the owner of certain real property located in Arlington County, Virginia, by virtue of a deed recorded in Deed Book \_\_\_\_ at Page \_\_\_\_ (or recorded immediately prior hereto) among the Land Records (the “Property”); and
- R-5: The County and Monument desire to record this Deed of Vacation and the Vacation Plat in accordance with the conditions of the Ordinance of Vacation and Site Plan #400; and
- R-6 The County desires to reserve certain utility easements located within the vacated portion of South Clark Street, as shown on the Easement Plat attached hereto, until such time as Monument completes certain conditions contained herein; and
- R-7: A certified, true copy of the Ordinance of Vacation and a copy of the Vacation Plat are attached hereto and made a part hereof.

#### VACATION AND RESERVATION OF EASEMENTS

NOW, THEREFORE, in consideration of the premises and the sum of Ten Dollars (\$10.00) cash in hand paid, the receipt and sufficiency of which are hereby acknowledged, the County does hereby forever, and for all time, vacate, surrender and quitclaim unto Monument, its successors and assigns, all rights, title and interest that the County has in the portion of South Clark Street described in the Vacation Plat, subject to a reservation of certain utility easements by the County, as shown on a Plat entitled '\_\_\_\_\_', prepared by \_\_\_\_\_ and dated \_\_\_\_\_ (the “Easement Plat”), designated on the Plat as \_\_\_\_\_. The utility easements reserved herein shall automatically terminate upon completion of the following requirements, and acceptance by the County of all relocated utilities and all deed(s) of easement, if any, for the relocated utilities:

- (1) Monument shall have submitted to the Director of Arlington County Department of Environmental Services, or his designee, a bond, letter of credit, or other security, in an amount and in a form, as determined by and acceptable to the County Manager or his designee, to secure the construction, relocation, removal, and/or replacement of any and all existing utilities pursuant to the approved utility relocation and engineering design plan for the construction, relocation, removal, and/or replacement of any and all utilities located in whole or in part, within the portion of South Clark Street vacated by the Ordinance of Vacation and this Deed of Vacation (the “Plan”); and
- (2) Monument shall have removed, relocated and reconstructed, or caused to be removed, relocated and reconstructed, at its sole cost and expense, all existing utilities of the County and of others existing within the portion of South Clark Street as of the date of this Deed of Vacation, which utilities include but are not limited to a 10” sanitary sewer, 27” sanitary sewer, 8” force main, 24” force main, 6” water line, and any electric, gas and communication lines located within the portion of South Clark Street herein being vacated, with new utilities and related appurtenant facilities of size, dimension and location acceptable to the County, in accordance with the Plan and in strict accordance with Arlington County Construction Standards and Specifications, and all applicable laws, ordinances, regulations and policies; and

(3) Monument shall have dedicated and conveyed, without compensation from the County, and the County shall have accepted, any and all required new utility easements and/or, if applicable, obtain right-of-way permits, in accordance with the approved Site Plan #400 and the Plan.

If the County Manager or his designee determines that the requirements of this Deed have been completed, then upon the request of Monument, the Real Estate Bureau Chief shall execute a Confirmation of Termination of Utility Easements, in substance acceptable to the County Manager, and approved as to form by the County Attorney, to be recorded among the land records of Arlington County, Virginia, acknowledging the termination of the reserved utility easements without the requirement of compensation to the County.

The Recitals set out above are incorporated into this Deed of Vacation.

No representations or statements have been made which would modify, add to or change the terms of this Deed of Vacation.

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

[SIGNATURES APPEAR ON FOLLOWING PAGE]

WITNESS the following signature(s).

**GRANTOR:**

THE COUNTY BOARD OF ARLINGTON COUNTY,  
VIRGINIA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF VIRGINIA  
CITY/COUNTY OF ARLINGTON, to-wit:

I, the undersigned, a Notary Public in and for the City/County and State aforesaid, do hereby certify that \_\_\_\_\_ of \_\_\_\_\_, whose name is signed to the foregoing, appeared before me this \_\_\_\_ day of \_\_\_\_\_, 2008, and acknowledged that the foregoing is his true act and deed.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_  
Notary Registration No: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
County Attorney

# ATTACHMENT 2

## Vicinity Map

Monument View Site - Old Jefferson Davis Hwy  
County Board Property

