



## ARLINGTON COUNTY, VIRGINIA

### County Board Agenda Item Meeting of September 16, 2017

**DATE:** September 5, 2017

**SUBJECT:** License Agreement between the County Board of Arlington County, Virginia and WRPV XIII Shirlington, L.L.C. for Subterranean Earth Anchors located on 2700 S. Taylor St., RPC# 29-014-011, Supporting a Retaining Wall located on 3000 S. Randolph St.

#### C. M. RECOMMENDATIONS:

1. Approve the attached License Agreement between the County Board and WRPV XIII Shirlington, L.L.C. for subterranean earth anchors located on 2700 S. Taylor Street, RPC# 29-014-011 ("License Agreement"), supporting a retaining wall located on 3000 S. Randolph St., RPC# 29-014-007.
2. Authorize the Real Estate Bureau Chief, Department of Environmental Services, to execute, on behalf of the County Board, the License Agreement and all related documents regarding the License Agreement, subject to approval as to form by the County Attorney.

**ISSUES:** There are no unresolved issues associated with this request.

**SUMMARY:** This license continues to permit subterranean earth anchors on County property (at the Trades Center). The earth anchors support a wall located on 3000 S. Randolph Road ("Adjoining Property"). There is an existing license between the County and the former owner of the Adjoining Property. However, because the Adjoining Property has been sold and the previous license did not permit assignment to a new owner, a new License Agreement needs to be approved by the Board and executed on its behalf.

**BACKGROUND:** At its meeting on May 20, 2006, the County Board approved a license permitting the location of these subterranean wall anchors on County property. The wall anchors support a wall located on the Adjoining Property, next to the County Trades Center. The Adjoining Property recently has been sold and as the prior license does not permit assignment of the license to the new owner, the new owners have requested the County Board to approve the

County Manager:

*mga/cgm*

County Attorney:

*[Signature]*

*CR Sanders*

29.

Staff: Linda Eichelbaum Collier, Betsy Herbst, Real Estate Bureau, Department of Environmental Services

attached License Agreement with them as the new Licensee. The terms of the attached License Agreement are the same as the original license, except the License Agreement may be assigned, with the prior written consent of the County, such consent not to be unreasonably withheld.

**DISCUSSION:** The License Agreement permits the continued location of the earth anchors on County property located at 2700 S. Taylor St., as shown on “Plat Showing Wall Maintenance License Area thru Parcel “B,” Property of the County Board of Arlington County,” prepared by Dewberry & Davis LLC, dated September 2005, attached hereto as Exhibit B. The proposed License Agreement includes the following provisions:

- The County grants WRPV XIII Shirlington, L.L.C. (“Licensee”) a non-exclusive license to use 306 square feet of County property located at 2700 S. Taylor St., RPC# 29-014-011 (the County Property Storage Yard) for subterranean earth anchors.
- The License Agreement permits the Licensee to use the County property solely to maintain, repair and remove the anchors.
- The Licensee agrees to pay the County a one-time lump sum license fee of \$12,240.00 for the use of the Property.
- The License Agreement terminates when the anchors are replaced, destroyed, removed, no longer in use, no longer supporting the wall or are not continuously and promptly maintained by the Licensee, unless terminated sooner by the County or the Licensee upon 180 days’ prior written notice. Upon such notice from the County, the Licensee agrees to remove the anchors at its sole cost and expense and restore the County property to its prior condition.
- The Licensee agrees to repair all damage to any utilities located on or installed within the County property at its sole expense caused by any use permitted under the License Agreement or by entry upon the Property by the Licensee.
- The Licensee agrees to give the County at least 48 hours’ notice before entering the County property unless there is an emergency where the advance notice is not possible.
- The Licensee agrees to be fully liable for any and all damages and losses arising from the terms of the License Agreement and to defend, indemnify and hold harmless the County for any such damages or losses.
- The Licensee is required to obtain and maintain commercial general liability insurance with a minimum amount of not less than \$1,000,000.00 per occurrence and to name the County as an additional insured.

**PUBLIC ENGAGEMENT:** The License Agreement was advertised once in accord with County practice. It was advertised in the August 29, 2017 edition of the *Washington Times*.

**FISCAL IMPACT:** The County will receive the sum of \$12,240.00 as payment for the License Agreement, which amount will be deposited in the County’s General Fund.

**Document prepared by:**

Christine Sanders, Assistant County Attorney  
Arlington County Virginia  
2100 Clarendon Boulevard, Suite 403  
Arlington, Virginia 22201  
VA Bar No. 31855

**RPC Nos.: 29-014-011**

**29-014-007**

**When recorded return to:**

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

This Deed is exempt from recordation tax under Va. Code §58.1-811 (A)(3)

**LICENSE AGREEMENT**

**THIS LICENSE AGREEMENT** (the “**License**”) is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate (the “**Licensor**”), and WRPV XIII SHIRLINGTON, L.L.C., a Delaware limited liability company, authorized to do business in the Commonwealth of Virginia (the “**Licensee**”).

**WHEREAS**, Licensor and Windsor at Shirlington Village Limited Partnership, a North Carolina limited partnership (the “**Seller**”), entered into that certain License Agreement dated as of June 6, 2006 and recorded in the Office of the Clerk of the Circuit Court of Arlington County, Virginia as Instrument 2006171153 (the “**Original License Agreement**”);

**WHEREAS**, Seller conveyed to Licensee the real property commonly known as 3000 South Randolph Street, Arlington, Virginia (the “**Licensee’s Property**”);

**WHEREAS**, Licensor owns, in fee simple, a parcel of real estate, with improvements thereon, located at 2700 South Taylor Street, RPC #29014011 (the “**Licensor’s Property**”); and

**WHEREAS**, Licensee desires permission to maintain, repair, and remove subterranean earth anchors and related facilities (jointly “**Facilities**”) supporting a retaining wall located on Licensee’s Property (“**Wall**”), which anchors exist within a portion of the Licensor’s Property; and

**WHEREAS**, by this License, Licensor permits Licensee to maintain, repair, and remove the Facilities within a portion of the Licensed Premises, as defined in Section 1 of this License.

**WITNESSETH:**

For and in consideration of \$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 agree as follows:

1. Licensed Premises. Licensors hereby grants to Licensee the non-exclusive permission to use, upon the terms hereinafter provided, three hundred six (306) square feet of real estate ("**Licensed Premises**") within Licensors's Property. Licensors's Property and the Licensed Premises are depicted in **Exhibit A**, entitled "Plat Showing Wall Maintenance License Area thru Parcel "B", Property of the County Board of Arlington County", prepared by Dewberry & Davis LLC, dated September 2005, attached hereto and incorporated herein by reference. Licensee accepts permission to use the Licensed Premises in its "AS IS" condition.

2. Term. The term of this License shall begin on the date that this License is executed on behalf of the Licensors (the "**License Commencement Date**") and shall continue until such time as the portion of the Facilities now existing within the Licensed Premises are replaced, destroyed, removed, no longer in use, no longer supporting the Wall, or are not continuously and promptly maintained by the Licensee ("**Term**"), unless sooner terminated as provided hereunder or as provided by law (the "**Expiration Date**").

3. Permitted Uses. Licensee is permitted to use the Licensed Premises solely to maintain, repair, and remove the Facilities ("**Permitted Uses**") on the Licensed Premises, which Facilities presently exist within the Licensed Premises at the locations described in **Exhibit A**. Licensee shall comply with all laws, rules, orders, ordinances and regulations of the Licensors, and of any applicable governmental authority, in entering the Licensed Premises and performing any of the Permitted Uses.

4. License Fee. Licensee is permitted to use the Licensed Premises for a lump sum fee of Twelve Thousand Two Hundred Forty Dollars (\$12,240.00) (the "**License Fee**"). As of the License Commencement Date, Licensors acknowledges and agrees that it has received the License Fee from Licensee.

5. Access to Licensed Premises. Licensee shall not enter or restrict access to the Licensed Premises, and any areas within Licensors's Property, unless prior written permission is given by Licensors to the Licensee. The Licensee shall enter and exit the Licensed Premises only from Licensee's Property. When exercising such access, Licensee shall use the routes and means that are least damaging to buildings, structures, trees and County real and personal property.

6. Maintenance, Repair and Removal of Anchors. The Licensee shall provide notice to the Licensors at least forty-eight (48) hours before entering the Licensed Premises to maintain, repair or remove the Facilities except that, in case of an emergency where the Licensee cannot provide the required advance notification, the Licensee shall notify the Licensors as soon as practicable. The Licensee shall confine all maintenance activities regarding the Facilities within the Licensed Premises. In case of excavation, digging or any other disturbance to the Licensed 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.

7. No Liability, Indemnification.

(a) All property of Licensee, its employees, agents, and contractors in and/or on the Licensed Premises or Licensors's Property, shall be and remain therein under any and all

circumstances at the sole risk of the Licensee. The Licenser shall not be liable to any person or entity for any damage to, or loss of such property. The Licensee hereby agrees to defend, indemnify and hold harmless Licenser and its elected and appointed officials, officers, employees, contractors and agents 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 Premises by the Licensee, its employees, agents and contractors.

(b) Licensee acknowledges that Licenser, its elected and appointed officials, officers, employees, contractors and agents shall not be liable for any damages, special, consequential, punitive or otherwise, as a result of any claim relating to this License or Licensee's use of, or entry upon, the Licensed Premises or Licenser's Property.

(c) Licensee hereby agrees to defend, indemnify and hold harmless Licenser, and its elected and appointed officials, officers, employees, contractors, agents, successors and assigns, 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 Licenser's Property and,

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

(d) The parties hereto agree that Licenser is not liable or responsible, and shall not be, for any deterioration, failure, or collapse of the Wall or the Facilities from any cause or for any reason whatsoever.

(e) The indemnification in this Section 7 shall survive the expiration or termination of the License.

8. 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 Licenser, 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 from liability the persons and entities indemnified under Section 7 of this License. Licensee shall maintain such insurance coverage in full force and effect continuously at all times while this License is in effect. The insurance policy and policy limits shall not operate as a limit of Licensee's liability to Licenser under this License, nor as a limit of Licensee's duty of indemnification hereunder. Prior to the beginning of this License, and at the beginning of each year thereafter, Licensee shall furnish Licenser with certificates of insurance indicating that the insurance is prepaid for a one year policy period insuring all activity contemplated under this License, and containing 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 License 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;

- (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 License 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 the License:

"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.

9. No Permanent Rights. Licensor and Licensee acknowledge that the intention of this License 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.

10. Default. This License 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 License, 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 License, Licensor shall have the right to prevent Licensee's entry to or access upon the Licensed Premises and Licensor's Property and to immediately remove any property of Licensee located upon the Licensed Premises and Premises at Licensee's sole risk and expense. In the event of any default or dispute arising under this License, Licensee shall reimburse Licensor for any and all attorneys' fee and court costs incurred by Licensor, for exercising the Licensor's rights upon Licensee's default or resolving any such dispute.

11. Termination. Notwithstanding anything herein to the contrary, both Licensor and Licensee each shall have the right to terminate this License at any time, without cause, without penalty and without any liability whatsoever, by providing one hundred eighty (180) days, prior written notice of such termination to the other party. Upon termination Licensee promptly shall remove the Facilities at Licensee's sole cost and expense and restore the Licensed Premises to its condition immediately preceding the excavation, digging or other disturbance. If Licensee fails to terminate its use of the Licensed Premises, remove, at its sole cost and expense, the Facilities installed therein, and to vacate all areas of Licensor's Property on the Expiration Date or the earlier termination of this License, then Licensee shall be deemed a trespasser. Thereafter, Licensor may immediately remove Licensee and Licensee's Facilities from the Licensed Premises and Licensor's Property, at Licensee's sole risk and expense. The Licensor has the right to temporarily or permanently close the Licensed Premises and Licensor's Property in the interest of public health, safety and welfare, without any liability whatsoever to the Licensor or others.

12. Utilities. Licensee shall repair all damage to any utilities located on, or installed within, the Licensed Premises and/or Premises at Licensee's sole cost, caused: by any Permitted Uses; entry upon the Licensed Premises or Premises by the Licensee; or any placement, deterioration, or repair to the Wall or the Facilities. Licensor shall have the right to excavate and work in the Licensed Premises and Premises to repair and/or replace any utilities.

13. 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 Licensor:	Department of Environmental Services Division of Engineering & Capital Projects Real Estate Bureau 2100 Clarendon Boulevard, Suite 800
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Arlington, VA 22201  
Attn: Real Estate Bureau Chief

If to Licensee: WRPV XIII Shirlington, L.L.C.  
3000 South Randolph Street  
Arlington, VA 22206  
Attn: John Sancho, Community Manager

And:

WRPV XIII Shirlington, L.L.C.  
c/o Waterton Associates  
30 South Wacker, Suite 3600  
Chicago, IL 60606  
Attn: General Counsel

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.

14. No Partnership, Joint Venture, Lease, or Easement; Use by Licensors. It is agreed that nothing contained in this License shall be deemed or construed as creating a partnership; joint venture; the relationship of landlord and tenant between Licensors and Licensee; a leasehold interest; or an easement in any portion of Licensors' Property. Licensors 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 Licensors of public utilities and other facilities within the Licensed Premises.

15. Role of the Licensors/Licensors Decisions; No Waiver. The Licensors' execution of this License 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 Licensors. Whenever, in this License, Licensors is required to join in, consent, give its approval, or otherwise act under this License, it is understood that such obligations are meant to apply to the Licensors acting in its capacity as a Licensors and not in its capacity as a governing authority. Notwithstanding the foregoing, nothing in this License shall be construed to waive any of Licensors' 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.

16. No Waiver of Sovereign Immunity by Licensors. Notwithstanding any other provisions of this License to the contrary, nothing in this License nor any action taken by Licensors pursuant to this License, nor any document which arises out of this License, shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of the Licensors, or of its elected and appointed officials, officers and employees.



17. No Rights in Third Parties. The parties hereto mutually agree that no provision of this License shall create in the public, or in any person or entity other than those signing this License 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 License or otherwise.

18. No Assignment or Transfer. This License shall not be assignable or transferable without Licensors prior written consent, which consent shall not be unreasonably withheld.

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

20. Severability. If any term or provision of this License shall be invalid or unenforceable, the remainder of this License, 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 License shall be valid and enforced to the fullest extent permitted by law.

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

22. Entire Agreement/Applicable Law. This License contains the entire agreement of the parties hereto with respect to the subject matter hereof All representations, inducements, or agreements, oral or otherwise, between the parties not contained in this License shall be of any force and effect. This License 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 Licensors and Licensee. This License shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia. All legal actions instituted by Licensors or Licensee concerning this License shall be filed solely in the Arlington County General District or Circuit Court.

23. Incorporation of Recitals. The foregoing recitals are fully incorporated into this License by this reference.

*[signature pages follow]*

[signature page to License Agreement]

**IN WITNESS WHEREOF**, Licensors and Licensee have caused this License to be executed and delivered as their respective acts, intending to be legally bound by its terms.

**LICENSEE:**

**WRPV XIII SHIRLINGTON, L.L.C.**,  
a Delaware limited liability company

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

State of Illinois )  
County of Cook ) ss:  
County of Cook )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017,  
by \_\_\_\_\_ as \_\_\_\_\_ of WRPV XIII SHIRLINGTON, L.L.C.,  
a Delaware limited liability company.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

[signature page follows]

[signature page to License Agreement]

**LICENSOR:**

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

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

Commonwealth of Virginia )  
 ) ss:  
County of Arlington )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017,  
by \_\_\_\_\_ for the County Board of Arlington County, Virginia and acting on  
behalf thereon.

Notary Public  
My Commission Expires: \_\_\_\_\_

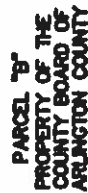
Approved as to form:

County Attorney

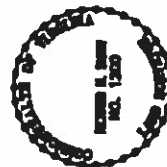
**Exhibit A**

[see attached]

1. THE PROPERTY DESCRIBED ON THIS PLAT IS LOCATED ON ARLINGTON COUNTY ZONAL MAP NUMBER 2004-001.
2. THE EXISTING FENCE SHOWN ON LOT 14A, VILLAGE AT SWANSON ARE FIELD LOCATED LOCATIONS OF UNDERGROUND METAL ANCHORS SHOWN ON PARCEL B ARE NOT FIELD LOCATED.



**LOT 10A  
VILLAGE AT SHIRLINGTON**



**FLAT SHOWING**  
**WALL MAINTENANCE LICENSE AREA**

PARCEL "B"  
THRU  
PROPERTY OF THE COUNTY BOARD  
OF ARLINGTON COUNTY

D.B. 3743 PG. 2772  
ARLINGTON COUNTY, VIRGINIA  
SCALE: 1"=10'  
SEPTEMBER, 2003



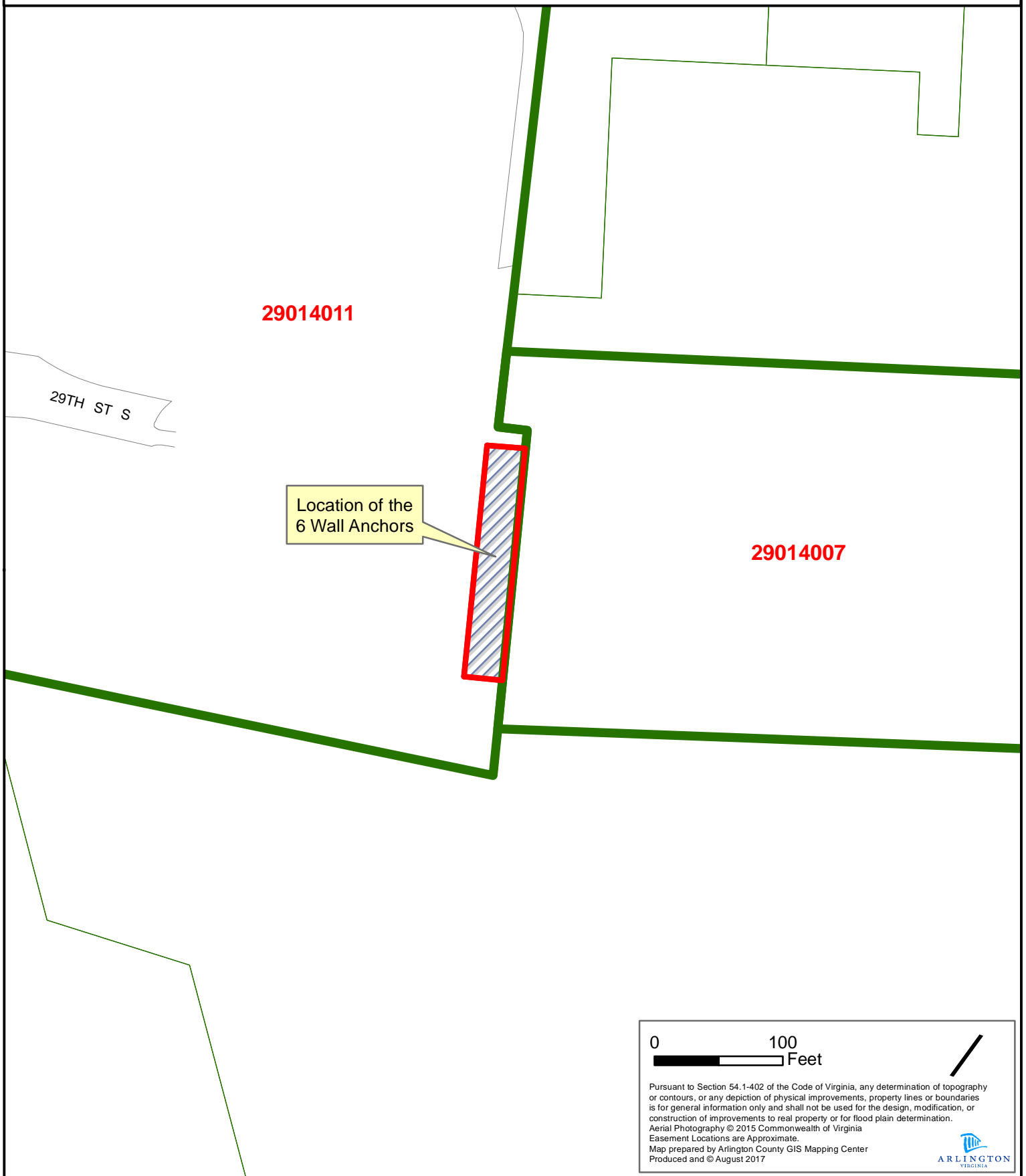
**Dewberry**  
Dewberry & Davis LLC

8401 ARLINGTON BLVD  
FAIRFAX, VA 22031  
PHONE: 703.849.0100  
FAX: 703.849.0119

# Vicinity Map

## License for Subterranean Wall Anchors on County Property

### RPC #'s 29014007 & 29014011



Vicinity Map  
License for Subterranean Wall Anchors on County Property  
RPC #'s 29014007 & 29014011





Vicinity Map  
License for Subterranean Wall Anchors on County Property  
RPC #'s 29014007 & 29014011

