



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of February 24, 2018

DATE: February 13, 2018

SUBJECT: First Amendment to Deed of Lease between the County Board of Arlington, Virginia, as landlord, and T-Mobile Northeast LLC, a Delaware limited liability company, as tenant, for a portion of the real property located at 2400 N. Wakefield St., Arlington, Virginia (RPC# 05-005-072) and known as Lee Pumping Station.

C. M. RECOMMENDATIONS:

1. Approve the attached First Amendment to Deed of Lease between the County Board of Arlington County, Virginia, as landlord, and T-Mobile Northeast LLC, a Delaware limited liability company, as tenant, for a portion of the real property located at 2400 N. Wakefield St., Arlington, Virginia (RPC# 05-005-072); and
2. Authorize the Real Estate Bureau Chief, Department of Environmental Services, or his designee, to execute the First Amendment to Deed of Lease and any related documents on behalf of the County Board, subject to approval as to form by the County Attorney.

ISSUES: There are no known outstanding issues associated with this matter as of the date of this report.

SUMMARY: Approval and execution of the attached proposed First Amendment to Deed of Lease (the "Amendment") would permit T-Mobile Northeast LLC ("T-Mobile") to continue to operate a wireless communications facility on a portion of the County's Lee Pumping Station property for an additional five years and amend certain other terms and conditions of the current lease.

BACKGROUND: T-Mobile operates a wireless communications facility on a portion of the County's Lee Pumping Station property (the "Premises") pursuant to a lease with the County Board dated November 22, 2005 (the "Lease"). The term of the Lease expires on February 28, 2018. T-Mobile has no extension option.

County Manager:

mga/cgm

County Attorney:

[Signature] *[Signature]*

Staff: Doug Raiden, DES – Real Estate

DISCUSSION: Approval and execution of the attached Amendment would extend the term of the Lease for an additional five years. The base rent during the extension term would be as follows:

Dates		Annual Base Rent	Monthly Base Rent
March 1, 2018	June 30, 2018	\$82,680	\$6,890
July 1, 2018	June 30, 2019	\$84,120	\$7,010
July 1, 2019	June 30, 2020	\$86,640	\$7,220
July 1, 2020	June 30, 2021	\$89,280	\$7,440
July 1, 2021	June 30, 2022	\$91,920	\$7,660
July 1, 2022	Feb. 28, 2023	\$94,680	\$7,890

The proposed Amendment would also grant T-Mobile the right (under certain conditions) to place a temporary communications facility on the Premises, as necessary, to avoid telecommunication facility down-time, and make various additional administrative and technical revisions to the Lease, including the deletion of certain obligations relating to future third-party agreements and any requirement for the County to maintain casualty insurance.

PUBLIC ENGAGEMENT: None. There is no proposed change in the use of the Premises.

FISCAL IMPACT: All rent collected from T-Mobile would be deposited into the County's general fund.

FIRST AMENDMENT TO DEED OF LEASE

This First Amendment to Deed of Lease (this "**Amendment**"), dated _____, 2017, is by and between THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body politic ("**Lessor**"), and T-MOBILE NORTHEAST LLC, a Delaware limited liability company, d/b/a T-Mobile, successor in interest to Omnipoint Communications Cap Operations, LLC, a Delaware limited liability company ("**Lessee**"). Lessor and Lessee are sometimes jointly referred to in this Amendment as the "**Parties**."

RECITALS

A. Whereas, Lessor owns real property located at 2400 N. Wakefield St., Arlington, Virginia (RPC 05-005-072) known as Lee Pumping Station (the "**Property**").

B. Whereas, Lessor and Omnipoint Communications Cap Operations, LLC as lessee entered into that certain Deed of Lease dated November 22nd, 2005 (the "**Original Lease**") pursuant to which Lessee leased from Lessor, for specified uses, space on a water tank and an equipment area located on the Property. The Original Lease as amended by this Amendment shall be referred to as the "**Lease**."

C. Whereas, Lessee acquired Communications Cap Operations, LLC's interest in the Original Lease by assignment.

D. Whereas, the term of the Original Lease expires on February 28, 2018. Lessee has no remaining options to extend the Term.

E. Whereas, the Parties desire to amend the Original Lease as hereinafter provided.

NOW, THEREFORE, in consideration of the sum of ten dollars (\$10.00), the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Term. The definition of "Term" in Section 4.A of the Original Lease is amended to provide that the "Commencement Date" is December 1, 2005 and the "Expiration Date" is February 28, 2023. The following sentences are added: "The time from March 1, 2018 through February 28, 2023 shall be referred to as the "**Extended Term**." Lessee shall have no unilateral right to extend the Term beyond the Expiration Date." The entirety of Section 4.A of the Original Lease after the first sentence, commencing "If Lessee is not in default" and ending "through the first day of the Renewal Term," is hereby deleted. All references elsewhere in the Original Lease to "Renewal Term" and "Renewal Terms" are deleted. Sections 4.B and 4.C of the Original Lease remain in effect without amendment.
2. Rent. Effective March 1, 2018, the first two sentences of Section 5.A are hereby deleted, and the following is added to Section 5.A of the Original Lease:

Beginning on March 1, 2018, Lessee shall pay to Lessor the following amounts ("Rent"):

Time Period	Annual Rent	Monthly Rent
Mar. 1, 2018 – Jun. 30, 2018	\$82,680	\$6,890
Jul. 1, 2018 – Jun. 30, 2019	\$84,120	\$7,010
Jul. 1, 2019 – Jun. 30, 2020	\$86,640	\$7,220
Jul. 1, 2020 – Jun. 30, 2021	\$89,280	\$7,440
Jul. 1, 2021 – Jun. 30, 2022	\$91,920	\$7,660
Jul. 1, 2022 – Feb. 28, 2023	\$94,680	\$7,890

Rent payments are due in advance monthly installments on the first day of each month throughout the Term without demand, setoff, or deduction of any type. All references to "Monthly Rent" throughout the Original Lease (except the reference to "Monthly Rent" in the table in Section 5.A) are amended to "Rent." Section 5.C of the Original Lease is deleted in its entirety. Section 5 of the Original Lease shall remain in effect except as modified hereby.

3. Compliance. Section 6.E of the Original Lease is hereby deleted and replaced with the following Sections 6.E(1), (2), and (3):

- E. (1) Lessee shall maintain the Leased Premises at all times in compliance with Lessor's rules and regulations and with all governmental laws and regulations including, without limitation, those relating to the lighting and painting of the Base Station, and the requirements of the Federal Communications Commission (the "FCC"), the Federal Aviation Administration (the "FAA"), and other federal, state, and local government authorities having jurisdiction over the Base Station. Lessee shall have the Equipment and all other Licensee equipment on the Property tested at least once per calendar year, within two (2) months of each anniversary of the Commencement Date (March 1st), for compliance with all FCC Regulations, including those relating to electromagnetic radiation. The testing shall be performed at Lessee's sole expense by an independent engineering firm mutually approved by the Parties. Compliance information with the FCC Regulations shall be made available by the Lessee to civic associations neighboring the Property and to the public.
- (2) In addition to (1) above, at all times, the emission of electromagnetic radiation shall be in compliance with the conditions of Special Use Permit U-2823-94-4 for the use of the Base Station, as such conditions may be amended or repealed, in whole or in part, in the future.

- (3) This Section 6.E is neither intended to, nor shall it, abrogate, modify, or repeal the full effect of any special use permit applicable to the Property or to Lessee's use thereof, as such special use permit now exists or may exist in the future.

The remaining unamended subsections of Section 6 continue in full force and effect.

4. Future Third-Party Agreements. Section 11.C of the Original Lease is hereby deleted.
5. Insurance. The last sentence of Subsection (a) of Section 13.F(1) of the Original Lease (commencing "Lessor shall carry and maintain" and ending "pursuant to this section"), all of Section 13.F(2) of the Original Lease, "Exhibit C" in Section 21 of the Original Lease, and Exhibit C of the Original Lease are hereby deleted.
6. Casualty Damage. Section 19.A of the Original Lease is amended by adding the following sentence to the end: "Lessor shall have no obligation to repair casualty damage to the Property or any part thereof."
7. Notices. Section 16 of the Original Lease is hereby deleted and replaced with the following:

16. NOTICES:

Unless specifically provided within the Original Lease, as amended by this Amendment, all notices, requests, demands, and other communications shall be in writing and shall be effective three (3) business days after deposit in the U.S. mail, certified, return receipt requested or upon receipt if personally delivered or sent via a nationally-recognized courier to the addresses set forth below. Lessor or Lessee may from time to time designate any other address for this purpose by providing written notice to the other Party, pursuant to this section.

If to Lessee:
T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Attn: Lease Compliance/7WAC005A

If to Lessor:
Arlington County Manager
2100 Clarendon Boulevard, Suite 302
Arlington, Virginia 22201

with a copy to:
Real Estate Bureau Chief
c/o ACG Real Estate Bureau
2100 Clarendon Boulevard, Suite 800
Arlington, Virginia 22201

8. Temp Facility. If necessary to maintain wireless communications service from the Leased Premises because of the inoperability of the Equipment or any other Lessee equipment on or about the Property (collectively, "Lessee's Facility"), and if space is available on the Property for such purpose at no cost to Lessor, Lessee may place a cell-on-wheels or other

temporary antenna facility on the Property (a "**Temp Facility**"), subject to the following conditions: (i) the Temp Facility and all connections thereto shall be placed only in locations designated or approved by Lessor in writing in Lessor's sole discretion; (ii) Lessee must cause the Temp Facility and its use to be safe and to comply with applicable law at all times; (iii) the Temp Facility and its use may not cause or threaten damage to any portion of the Property or interfere with the use of the Property by Lessor or by others or with any equipment thereon; (iv) the Temp Facility may not generate noise than can be heard outside of the Property except as approved by Lessor in writing in Lessor's sole discretion or otherwise cause conditions that are unacceptable to Lessor in Lessor's sole discretion; (v) Lessee must diligently and continuously pursue the restoration of Lessee's Facility to ordinary service; (vi) immediately upon the restoration of Lessee's Facility to ordinary service, Lessee must remove the Temp Facility from the Property; (vii) Lessee must promptly repair all damage to the Property occurring in connection with the installation, operation, or removal of the Temp Facility and restore the repaired areas to their condition immediately preceding such damage; and (viii) in no event may Lessee keep the Temp Facility on the Property for more than one (1) month in connection with any service outage without Lessor's written approval, in Lessor's sole discretion, in each instance. Excepting Lessor's willful misconduct and gross negligence, Lessee shall indemnify, defend, and hold harmless Lessor and its elected and appointed officials, officers, employees, and contractors (collectively, the "**Lessor Group**") from all losses, costs, claims, causes of actions, demands, and liabilities arising from or related to any Temp Facility or its installation, use, presence, or removal on or about the Property. Notwithstanding the foregoing, no provision of the Lease shall be construed to require Lessee to indemnify the Lessor Group from bodily injury or property damage caused by or resulting from the negligence of the Lessor Group when such indemnification is prohibited by applicable law.

9. Violations by Lessor. Lessee shall promptly notify Lessor of the need for any repairs or other actions that are Lessor's obligation under the Lease. Lessor shall not be deemed to have breached the Lease based on a purported or actual violation of any provision hereof unless Lessee first notifies Lessor of the violation, including a reasonably-detailed statement of the factual basis thereof, and Lessor fails to cure the violation within thirty (30) days after receipt of such notice. Notwithstanding the foregoing, if the violation is not reasonably susceptible to cure within thirty (30) days, Lessor shall not be deemed to have breached the Lease so long as Lessor commences curing the violation within thirty (30) days after receiving the notice and thereafter diligently pursues the cure to completion.
10. Relief, Remedies. Notwithstanding anything to the contrary in the Lease, if the Lease provides that Lessor's consent or approval as to any matter shall not be unreasonably withheld, conditioned, and/or delayed, and it is finally determined by a court of competent jurisdiction that Lessor has been unreasonable, then Lessee's sole and exclusive remedy shall be to obtain equitable relief deeming that Lessor has given its consent or approval to the particular matter. Lessee hereby expressly waives all other remedies, including without limitation any claim for money damages.

11. Lessor's Liability. Lessor shall not be liable to Lessee for any lost profits, lost economic opportunities, or any other type of consequential damage as the result of any breach of Lessor's obligations under the Lease.
12. Nonrenewal. Notwithstanding any provision in the Lease to the contrary, upon the termination of the Lease, as set forth in Virginia Code section 15.2-734, the Lease shall not be renewed if the Leased Premises are required for any of the purposes mentioned in Virginia Code section 15.2-1639. Upon the termination of the Lease, except as otherwise provided in Section 4.B of the Original Lease, all improvements on the Leased Premises shall revert to Lessor, and the Property, including all improvements erected thereon, shall revert to Lessor and shall be free from any encumbrance at the time of such reversion.
13. County Manager Delegation. Except to the extent prohibited by law, Lessor's County Manager or his or her designee is hereby authorized to grant or withhold, on behalf of Lessor, consents and approvals that Lessor may provide under the Lease. This specific authority shall not be construed to limit the general authority invested by law in the County Manager to manage public property and to perform acts related thereto.
14. Brokerage Fees. Lessee represents to Lessor that Lessee has not engaged a broker or finder or otherwise incurred liability for commissions or similar compensation to third parties in connection with this Amendment. Lessee shall indemnify, defend, and hold harmless Lessor and Lessor's elected and appointed officials, agents, and employees from and against any liability arising from any claims for such compensation, including without limitation reasonable attorneys' fees and costs.
15. Conflicts. To the extent any provision contained in this Amendment conflicts with the terms of the Original Lease, the terms and provisions of this Amendment shall control.
16. Counterparts. This Amendment may be executed in duplicate counterparts, each of which will be deemed an original.
17. Authority. Each of the Parties represent and warrant that they have the right, power, legal capacity and authority to enter into and perform their respective obligations under this Amendment.
18. Defined Terms. Except as otherwise defined in this Amendment, all terms that are defined in the Original Lease shall have the same meanings when such terms are used in this Amendment.
19. Confirmation of Terms; Effective Date. All of the terms, covenants, and conditions of the Original Lease, except as are specifically modified and amended by this Amendment, shall remain in full force and effect, and are hereby adopted and reaffirmed by the Parties. This Amendment shall be effective on the date it is executed by Lessor. Lessor shall sign this Amendment after it is executed by Lessee and approved by the County Board of Arlington County, Virginia.

20. Memorandum of Lease Amendment. Concurrently with their execution of this Amendment, the Parties shall execute a Memorandum of Lease Amendment in the form attached hereto as Exhibit E. Lessee may record the Memorandum of Lease Amendment in the Land Records of Arlington County, Virginia at Lessee's sole cost and expense.

IN WITNESS WHEREOF, the Parties have executed this Amendment on the dates set forth below.

Lessor:
THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA, a body politic

Lessee:
T-MOBILE NORTHEAST LLC, a Delaware
limited liability company

By: _____ (seal)
Print Name: _____
Title: _____
Date: _____, 2017

By: James B. Walther (seal)
Print Name: James B. Walther
Title: Director, Engineering Network Operations
Date: 1/23/2018, 2017

Approved as to form

County Attorney

Kelly Dunbar 12/18/17
T-Mobile Legal Approval as to form

EXHIBIT E

Memorandum of Lease Amendment

**RECORDING REQUEST BY
AND WHEN RECORDED MAIL TO:**

County Board of Arlington County, Virginia
2100 Clarendon Boulevard, Suite 800
Arlington Virginia 22201
Attn: Real Estate Bureau Chief

RPC No. 05005072

MEMORANDUM OF LEASE AMENDMENT

THIS MEMORANDUM OF LEASE AMENDMENT (this "**Memorandum**"), dated _____, 2017, is by and between THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body politic ("**Landlord**"), as Grantor and Lessor and T-MOBILE NORTHEAST LLC, a Delaware limited liability company ("**Tenant**"), successor-in-interest to Omnipoint Communications CAP Operations, LLC, as Grantee and Lessee.

1. Landlord leased to Tenant, pursuant to that certain Deed of Lease dated November 22, 2005 (the "**Lease**"), certain premises as described in Section 1 of the Lease and in the exhibits thereto consisting of space on a water tank for the operation and maintenance of antennas and approximately one hundred thirty (130) square feet of space on the ground near the water tank (collectively, the "**Premises**") on land commonly known as the Lee Pumping Station located at 2400 Wakefield Street, Arlington, VA 22207. The land on which the Premises exist is more particularly described in Exhibit A attached to this Memorandum.

2. The Lease was amended by that certain First Amendment to Deed of Lease between Landlord and Tenant dated _____, 2017.

3. Term. The term of the Lease commenced on December 1, 2005 and expires on February 28, 2023. Tenant has no right to extend the term.

4. Landlord's Notice Address.
The County Board of Arlington County, Virginia
2100 Clarendon Boulevard, Suite 302
Arlington, Virginia 22201
Attn: County Manager

with a copy to:

Arlington County Department of Environmental Services
2100 Clarendon Boulevard, Suite 800
Arlington, Virginia 22201
Attn: Real Estate Bureau Chief

5. Tenant's Notice Address.
T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Attn: Lease Compliance/7WAC005A

6. Incorporation of Lease. This Memorandum is for informational purposes only and nothing contained herein shall be deemed in any way to modify or otherwise affect any provision of the Lease. This Memorandum is subject to all of the provisions of the Lease, and in the event of any inconsistency between the provisions of the Lease and this Memorandum, the provisions of the Lease shall prevail.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Deed of Lease as of the date first set forth above.

Approved as to form:

LANDLORD:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA, a body politic

County Attorney

By: _____ (seal)
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA,
COUNTY OF ARLINGTON, to wit:

I, _____, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that _____ as _____ of the County Board of Arlington County, Virginia, a body politic, as Landlord, whose name as such is signed to the foregoing Memorandum of Lease Amendment, appeared before me and personally acknowledged the same in my jurisdiction aforesaid as his act and deed and the act and deed of said body politic.

GIVEN under my hand and seal this ____ day of _____, 2017.

[Notary Seal]

My commission expires: _____

My Registration # _____

Notary Public

TENANT:

T-MOBILE NORTHEAST LLC, a Delaware limited liability company

By: *James B. Walther* (seal)
Name: _____
Title: James B. Walther
Director, Engineering Network Operations

STATE OF WASHINGTON

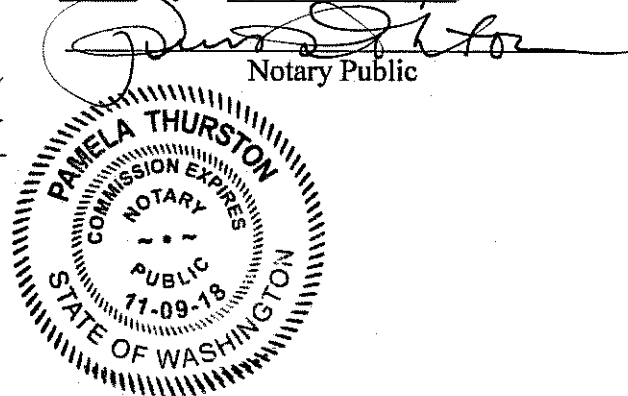
COUNTY/CITY OF KING, to wit:

I, PAMELA THURSTON the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that JAMES B. WALTHER DIRECTOR of T-Mobile Northeast LLC, a Delaware limited liability company, as Tenant, whose name as such is signed to the foregoing Memorandum of Lease Amendment, appeared before me and personally acknowledged the same in my jurisdiction aforesaid as her act and deed and the act and deed of said limited liability company.

GIVEN under my hand and seal this 23 day of JANUARY, 2017.

[Notary Seal]

My commission expires: 11/09/18
My Registration # 175086



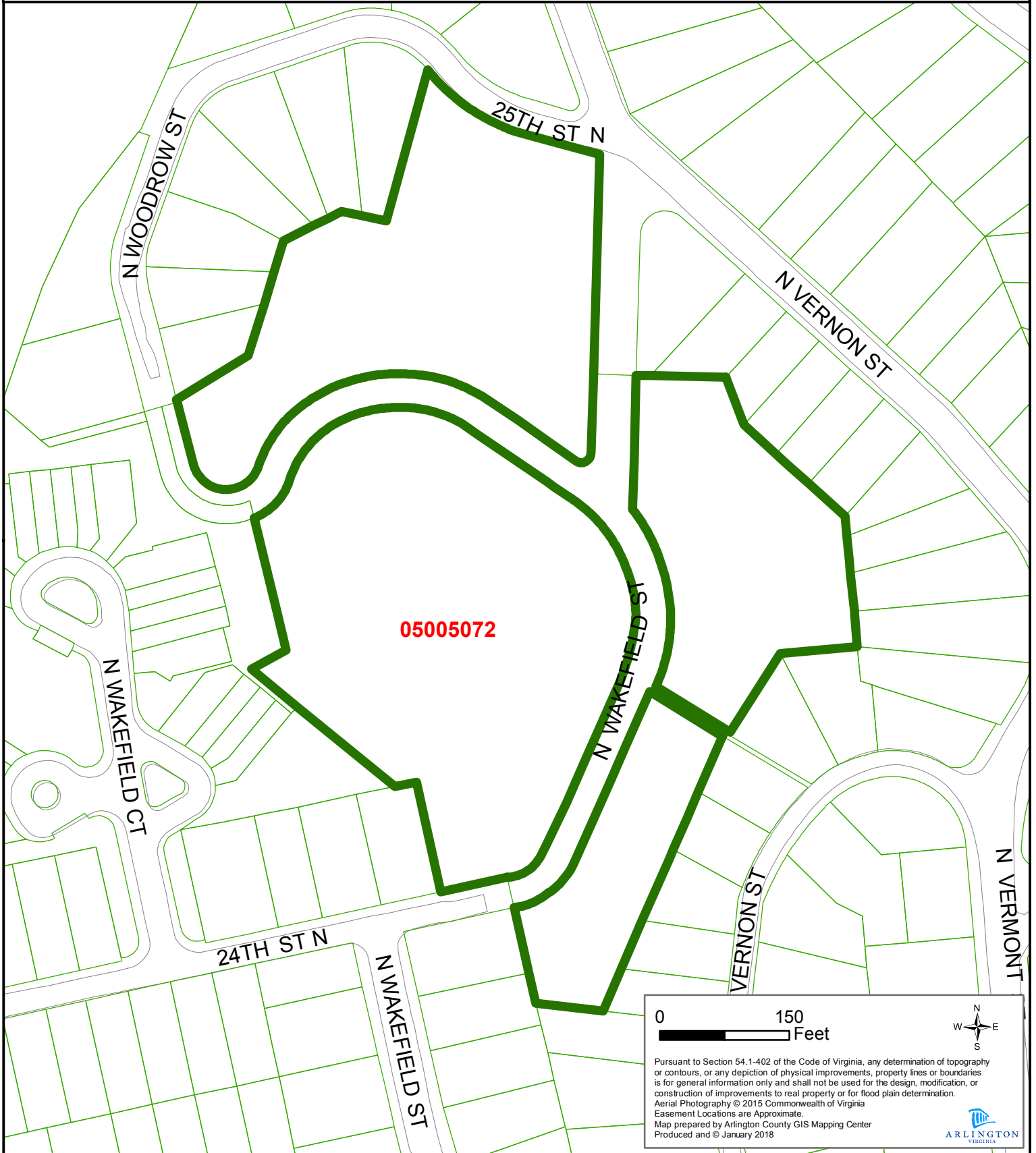
Memorandum of Lease Amendment - Exhibit A
Legal Description

Lee Heights Subdivision, Section 3, Lots 378A - 386A and Section 7, Lots 700 - 703; Moses Pelham Subdivision, Lots 4, 5, and 6.

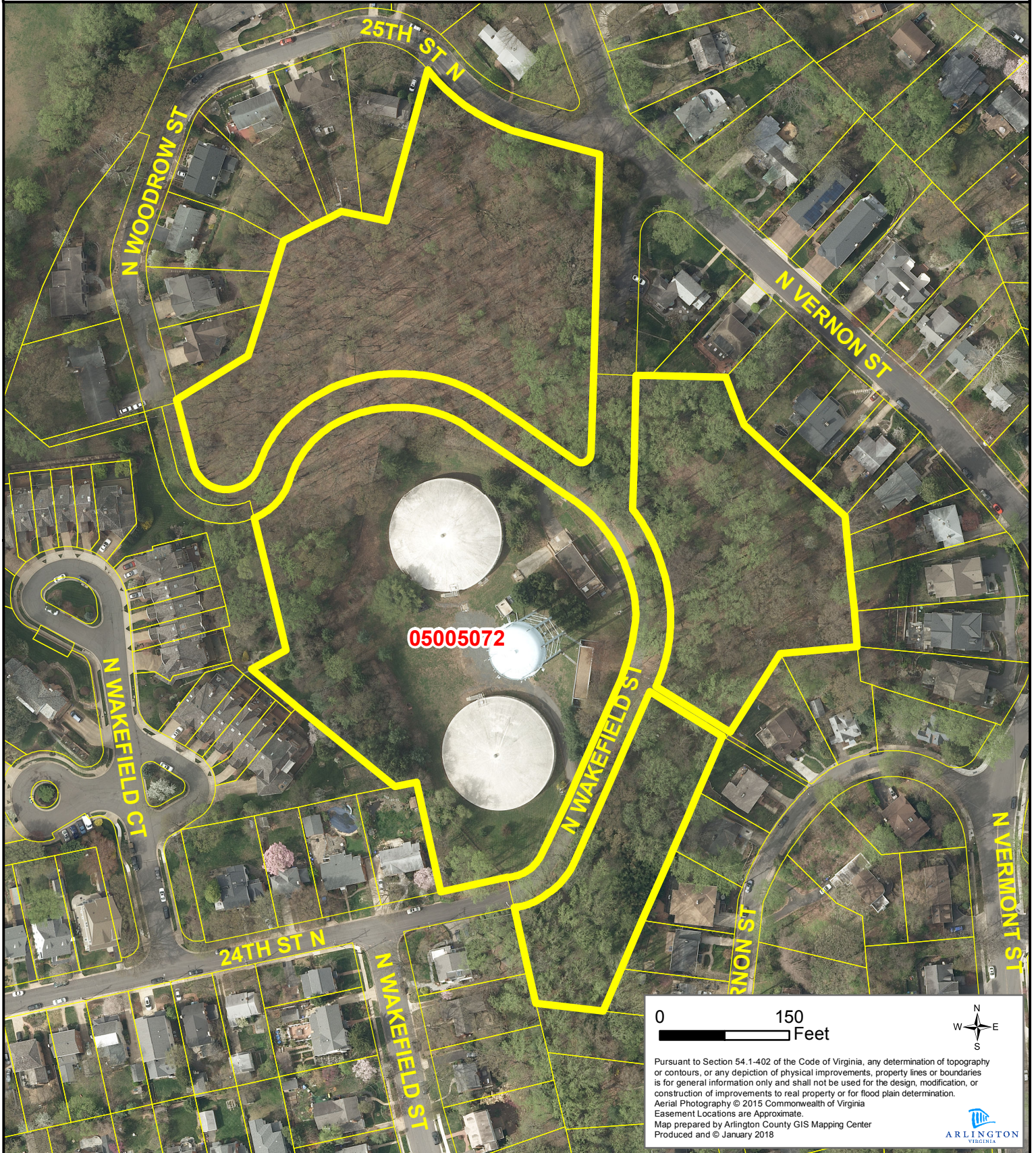
Site Number: 7WAC005A

Site Name: Lee Pump Station

Vicinity Map
Lee Pumping Station
2400 N. Wakefield St.
RPC # 05005072



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Lee Pumping Station
2400 N. Wakefield St.
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Vicinity Map
Lee Pumping Station
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