



## ARLINGTON COUNTY, VIRGINIA

### County Board Agenda Item Meeting of October 20, 2018

**DATE:** October 10, 2018

**SUBJECT:** Deed of Lease between the County Board of Arlington County, Virginia, as landlord, and the Industrial Development Authority of Arlington County, Virginia, as tenant, for approximately 3,274 square feet of space located at 2020 14th St. N., Suite 150, Arlington, Virginia (RPC#s 17-016-012 and 17-016-013).

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

1. Approve the attached Deed of Lease between County Board of Arlington County, Virginia, as landlord, and Industrial Development Authority of Arlington County, Virginia, as tenant, for approximately 3,274 square feet of space located at 2020 14th St. N., Suite 150, Arlington, Virginia; and
2. Authorize the Real Estate Bureau Chief, Department of Environmental Services, or his designee, to execute the 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 outstanding issues associated with this matter as of the date of this report.

**SUMMARY:** The attached Deed of Lease would lease approximately 3,274 square feet of space located at 2020 14th St. N., Suite 150 (the "Premises") to the Industrial Development Authority of Arlington County, Virginia (the "IDA"). The lease would enable the IDA to sublease the Premises to Courthouse Deli, Inc. (the "Deli").

**BACKGROUND:** The County currently leases the Premises to the Deli pursuant to that certain Deed of Lease dated October 3, 2013 (the "Existing Lease"). The term of the Existing Lease expired December 31, 2017 and is now month-to-month. The Department of Environmental Services Real Estate Bureau recommends a new structure for leasing the Premises to the Deli, with the Board leasing the Premises to the IDA, and the IDA subleasing to the Deli.

The Board approved both a master lease to the IDA and a sublease to the Deli in January, 2018. The IDA subsequently requested revisions to the master lease, primarily concerning IDA

County Manager:

*MJS / Muc*

County Attorney:

*[Signature]* *[Signature]*

Staff: Doug Raiden, DES – Real Estate

liability. Staff and the IDA negotiated mutually-acceptable revisions. The IDA has signed the master lease as revised, and staff is now presenting the revised master lease for the Board's consideration.

**DISCUSSION:** The proposed lease to the IDA, coupled with the Deli sublease, would enable the Deli to continue to lease the Premises. The primary terms of the proposed lease to the IDA are as follows:

Landlord	County Board
Tenant	Industrial Development Authority of Arlington County, Virginia
Premises size	3,274 rentable square feet.
Lease term	February 1, 2018 through December 31, 2037. The term will commence retroactively to correspond to the sublease term, which has already been signed by the Deli.
Extension options	None.
Rent	The IDA is required to pay to the County all amounts received from any subtenants.
Property management	The County will manage the premises for the IDA, including collecting rent and performing any required maintenance.
Assignment and sublease	The IDA may not assign the lease or sublease the Premises without the County's prior written consent.
Early termination	The County may terminate the lease, at any time, upon at least 30 days' written notice.

## **PUBLIC ENGAGEMENT:**

### *Level of Engagement:* **Communicate**

This level of engagement is appropriate because the public is not actively engaged during negotiation of the details of lease agreements and there is no proposed change in the use of the premises to be leased.

### *Outreach Methods:*

The proposed lease was placed as an item to be considered for approval on the published and advertised Agenda for the regular meeting of the County Board to be held on October 20, 2018.

**FISCAL IMPACT:** There will be no financial impact to the County. All rent collected during the term of the lease will continue to be deposited into the County's General Fund.

## DEED OF LEASE

This Deed of Lease (this "**Lease**") is made this first day of February, 2018 by and between the COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body politic ("**Lessor**"), and the INDUSTRIAL DEVELOPMENT AUTHORITY OF ARLINGTON COUNTY, VIRGINIA, a body politic, ("**Lessee**"). Lessor and Lessee are hereinafter jointly referred to as the "**Parties**."

### RECITALS

A. Lessor owns a building located at 2020 14<sup>th</sup> St. N., Arlington, Virginia (the "**Building**") on land designated as RPC Nos. 17-016-012 and 17-0160-13.

B. Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, upon the terms and conditions set forth herein, Suite 150 within the Building, containing approximately three thousand two hundred seventy-four (3,274) rentable square feet as shown on Exhibit A attached hereto ("**Premises**").

### AGREEMENT

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. Lease of Premises. Lessor hereby leases the Premises to Lessee, and Lessee leases the Premises from Lessor, for the term (the "**Term**") commencing on February 1, 2018 (the "**Commencement Date**") and expiring December 31, 2037.

2. Rent. Lessee shall pay to Lessor the sum of \$10.00 in advance for the Term of this Lease, and such sum, and all amounts collected and received by Lessor pursuant to Section 5 infra, and all amounts received by Lessee (collectively, "**Rent**"), under any subleases, licenses, or other occupancy agreements for the Premises or any part thereof now or hereafter in effect, including without limitation any guaranty agreements, letters of credit, or other suretyship arrangements related thereto (collectively, "**Subleases**"). Sublessees, licenses, and other occupants under any Subleases, and any guarantors thereof, shall be referred to collectively as "**Sublessees**." Lessee shall pay any Rent to Lessor upon receipt from the Sublessees without notice or demand of any kind. However, Lessee shall direct all Sublessees to pay directly to Lessor all amounts due to Lessee under their Subleases. Lessee's obligation to pay Rent hereunder shall be limited to the amounts received from Sublessees.

3. Security Deposit. None.

4. Permitted Uses. Lessee may use the Premises for any purposes not prohibited by applicable law (the "**Permitted Use**").

5. Maintenance.

(a) Lessor. Lessor shall keep in good repair the Building's roof, the plumbing lines in the Building that neither Lessee nor a third-party Building occupant is contractually required (by lease or otherwise) to maintain, and the foundation and exterior walls of the Premises (excluding doors, windows, plate glass, window and door frames, and the Premises' awning) if and to the extent that Lessor's failure to keep such items in good repair would materially and adversely affect the use of the Premises by Lessee or by a Sublessee. Any repairs to the Building or any part thereof that are necessitated by an act or omission of Lessee, of a Sublessee, of the Sublessee's sublessees, licensees, or concessionaires, or of the agents, employees, or contractors of any of them shall be paid for by Lessee upon demand to the extent not covered by net insurance proceeds received by Lessor. Lessor's obligation hereunder is limited to performing the repairs specified in this Section 5(a) only, and Lessor shall have no liability for any damages, loss, injury, or other expense incurred or suffered by Lessee arising out of, or as a consequence of, any condition or occurrence causing a need for such repairs.

(b) Lessee. Lessee shall keep and maintain the Premises (including without limitation plate glass windows, doors, door closure devices, window and door frames, awnings, molding, locks and hardware, and painting or other treatment of interior walls) and all utility lines and facilities that exclusively serve the Premises, whether inside or outside thereof, in good, clean, and safe condition and shall perform all needed repairs thereto and replacements thereof (including without limitation the replacement of cracked or broken glass) unless such repairs and replacements are expressly required to be made by Lessor under the provisions of Section 5(a) hereof. Lessee shall be solely responsible for the cleaning, maintenance, repair, and replacement of any heating, ventilation, and air conditioning ("HVAC") system exclusively serving the Premises. Lessee shall furnish, maintain, and replace all electric light bulbs, tubes, and tube casings in the Premises at no cost to Lessor.

6. Property Management. Lessee appoints Lessor as its property agent for compliance herewith and Lessor accepts such appointment. Lessor shall perform all of Lessee's obligations under any Subleases. Lessee shall allow Lessor to manage the Premises on Lessee's behalf. Lessor's property management role shall include, but shall not be limited to: (i) collection and receipt of Rent from Sublessees; (ii) maintenance of the Premises; and (iii) serving as the point of contact for any Sublessee and for receiving or sending notices required under any Sublease.

7. 14<sup>th</sup> St. N. Outdoor Seating Area. Lessee may use the portion of the Building shown on Exhibit A attached hereto as the "14<sup>th</sup> St. N. Outdoor Seating Area" for ingress, egress, and Sublessee customer seating, subject to any reasonable rules and regulations that Lessor adopts from time to time.

8. Roof. Lessee may use the Building's roof for the installation, maintenance, repair, and replacement of the HVAC unit exclusively serving the Premises. Lessor may relocate the HVAC unit from time to time.

9. Alterations. Lessee shall not make any alterations, additions, or improvements to the Premises without the prior written consent of Lessor (which may be withheld in Lessor's sole discretion), except for the installation of unattached, movable trade fixtures which may be installed without drilling, cutting, or otherwise defacing the Premises. Notwithstanding the foregoing, Lessee may allow a Sublessee, without Lessor's consent, to make nonstructural alterations to the Premises that cost no more than fifty thousand dollars (\$50,000) and that are not visible outside the Premises. Notwithstanding the foregoing, Lessee shall not be liable hereunder for alterations made by Sublessees. In each instance where Lessor's approval is required hereunder, Lessee shall reimburse Lessor for all reasonable out of pocket costs and expenses incurred in such review regardless of whether the request is approved but only to the extent such reimbursement is received from any Sublessees. Any linoleum, carpeting, or other floor covering which may be cemented or otherwise affixed to the floor of the Premises is hereby deemed a permanent fixture and shall become the property of Lessor without credit or compensation to Lessee.

10. Assignment and Sublease. Lessee may not assign its interest in this Lease or enter into or amend any Sublease without Lessor's written consent, which Lessor may withhold in Lessor's sole discretion.

11. Cooperation. Lessee shall cooperate with Lessor with respect to the maintenance, repair, and operation of the Premises and the Building in order to reduce Lessor's costs and risk exposure and any disruption to Building operations.

12. Default.

(a) Default by Lessee. Lessee shall not be deemed to have defaulted under this Lease based on a violation of any provision hereof unless Lessor notifies Lessee of the violation, including a reasonably-detailed statement of the factual basis thereof, and Lessee fails to cure the violation within the following time, as applicable:

(A) Failure to Pay Amounts Due to Lessor Under this Lease: Fifteen (15) days after Lessee receives notice from Lessor of the failure.

(B) Other Violations: Thirty (30) days after Lessee receives notice from Lessor of the violation, provided that if the violation is not reasonably susceptible to cure within thirty (30) days, then Lessee shall not be deemed to have defaulted under this Lease based on the violation if Lessee commences curing the violation within thirty (30) days after receiving Lessor's notice and thereafter diligently pursues the cure to completion.

(b) Default by Lessor. Lessor shall not be deemed to have defaulted under this Lease based on a violation of any provision hereof unless Lessee 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 receiving the notice. Notwithstanding the foregoing, if the violation is not reasonably susceptible to cure within thirty (30) days, Lessor shall not be deemed to have defaulted under this Lease based on the violation if Lessor commences curing the violation within thirty (30) days after receiving Lessee's notice and thereafter diligently pursues the cure to completion.

13. Termination and Surrender. Upon the termination of this Lease, Lessee shall surrender possession of the Premises to Lessor in their then-existing condition and Lessee's entire right, title, and interest in and to all Subleases shall be deemed automatically to have been assigned to Lessor.

14. Early Termination. Lessor may terminate this Lease as to any part of the Premises from time to time, or as to the entire Premises, at any time upon at least thirty (30) days' notice.

15. Lessor's Appropriation of Funds. Notwithstanding any other term or condition of this Lease to the contrary, all of Lessor's obligations under this Lease are subject to Lessor's appropriation of funds (or subject to appropriation of funds by any successor or assign of Lessor's as lessor of the Premises, if such successor or assign is a governmental or quasi-governmental entity, authority, or political subdivision that appropriates funds) for the specific purpose of satisfying the payment and performance of such obligations. If funds are not appropriated for the specific purpose of satisfying the obligations of Lessor under this Lease, then this Lease shall become null and void and shall terminate on the last day of the Term for which appropriations were made for such purpose, without any liability whatsoever to Lessor. Notwithstanding any provision in this Lease to the contrary, this clause shall supersede any and all obligations imposed by any other provision of this Lease. No subsequent amendment of or addendum to this Lease shall compromise the full legal implication of this section.

16. Lessor's Role. Lessee hereby acknowledges that Lessor has entered into this Lease as a lessor and not as a governing authority. Accordingly, Lessor's execution of this Lease 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 from Lessor in its capacity as a governing authority. Whenever in this Lease Lessor is required to join in, consent, give its approval, or otherwise act under this Lease, it is understood that such obligations are meant to apply to Lessor acting in its capacity as lessor and not in its capacity as a governing authority. Further, Lessee hereby acknowledges that any and all decisions, determinations, consents, notifications, or any other actions taken or to be taken by Lessor pursuant to this Lease, whether or not specifically contemplated hereunder, may be taken by the County Manager or by another Arlington County official or body pursuant to any means, mechanism, or process as determined by Lessor in its sole discretion. Lessee shall have no right to question or challenge the propriety, authority, or legality of any such County official or body, or means, mechanism, or process by which any such decision, determination, consent, notification, or other action is taken or to be taken hereunder by Lessor as lessor; provided such decision, determination, consent, notification, or other action by Lessor, as lessor, is taken in accordance with applicable law and with the terms of this Lease. Notwithstanding the foregoing, nothing in this Lease shall be construed to waive any of Lessor's powers, rights, or obligations as a governing authority or local governing body, whether or not affecting the Premises, including but not limited to its police power, right to grant or deny permits, right to collect taxes or other fees, or any other power, right, or obligation whatsoever.

17. No Waiver of Lessor's Sovereign Immunity. Notwithstanding any other provision of this Lease to the contrary, neither anything in this Lease, nor any action taken by Lessor

pursuant to this Lease, nor any document which arises out of this Lease shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of Lessor or of its elected and appointed officials, officers, and employees.

18. Indemnification and Hold Harmless. Notwithstanding any other term or provision of this Lease to the contrary, no provision of this Lease shall be construed to require Lessor to indemnify, defend, or hold harmless Lessee or any third party from liability of any nature.

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

20. Delegation of Authority to County Manager. Except to the extent prohibited by law, the County Manager or his or her designee is hereby authorized to grant or withhold, on behalf of Lessor, any consents and approvals that Lessee is required to obtain from Lessor, or that Lessor may provide, under this 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.

21. Integration. This Lease sets forth the entire agreement between the Parties relating to the subject matter hereof, and no other oral or written understandings, representations, promises, or agreements have been made or relied upon by either Party hereto. All prior oral or written agreements are merged herein and superseded by this Lease.

22. Unenforceability. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be held invalid or unenforceable, the remaining provisions and the application of such invalid or unenforceable provisions to persons, entities, and circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby. Each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

23. Waiver of Jury Trial. Lessee hereby waives trial by jury in any action, proceeding, claim, or counterclaim brought by either Party in connection with any matter arising out of or in any way connected with this Lease, the relationship of Lessor and Lessee hereunder, Lessee's use or occupancy of the Premises, and/or any claim of injury or damage related hereto.

24. Amendments. This Lease may not be modified in any manner other than by an agreement in writing signed by duly authorized representatives of both Lessor and Lessee.

25. Non-Waiver. No waiver of any right hereunder shall be effective unless made in a writing signed by the waiving Party. Neither Party's failure to enforce or require strict performance of any provision of this Lease shall constitute a waiver of such breach or any future breach.

26. Successors and Assigns. This Lease is binding upon and shall inure to the benefit of the respective Parties herein and their heirs, executors, administrators, successors, and permitted assigns.

27. No Partnership. Nothing contained in this Lease shall be construed as creating a partnership or joint venture of or between Lessor and Lessee, or to create any other relationship between the Parties other than that of Lessor and Lessee.

28. Governing Law. This Lease shall be governed, construed, and enforced in accordance with the laws of the Commonwealth of Virginia.

29. Venue. The General District Court and the Circuit Court of Arlington County, Virginia shall be the exclusive venues for any dispute or claim by or between Lessor and Lessee under this Lease. All actions, suits, and other causes concerning or arising out of this Lease shall be brought in the above-described courts and in no other court.

30. Counterparts. This Lease may be executed in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same Lease.

31. No Binding Effect until Execution and Delivery. This Lease shall not be effective unless and until executed and delivered by both Lessor and Lessee.

32. Time is of the Essence. Time is of the essence as to all the terms and conditions of this Lease.

33. Virginia Code Section 15.2-734. Notwithstanding any provision in this Lease to the contrary, upon the termination of this Lease, as set forth in Virginia Code section 15.2-734, this Lease shall not be renewed if the Premises are required for any of the purposes mentioned in Virginia Code section 15.2-1639.

34. Non-Liability of Lessee and Lessee's Officials, Employees, and Agents. No director, member, official, employee, or agent of Lessee's shall be personally liable to Lessor for any default or breach by Lessee under this Lease or for any amount that might become due to Lessor under the terms of this Lease. Lessee's obligations hereunder are limited to amounts received from Sublessees.

**[SIGNATURES ON SUCCEEDING PAGE]**



IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease to be executed by persons duly authorized to bind the respective Parties.

Approved as to form:

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

**LESSOR:**

COUNTY BOARD OF ARLINGTON  
COUNTY, VIRGINIA, a body politic

By: \_\_\_\_\_ (seal)

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2018

**LESSEE:**

INDUSTRIAL DEVELOPMENT  
AUTHORITY OF ARLINGTON COUNTY,  
VIRGINIA, a body politic

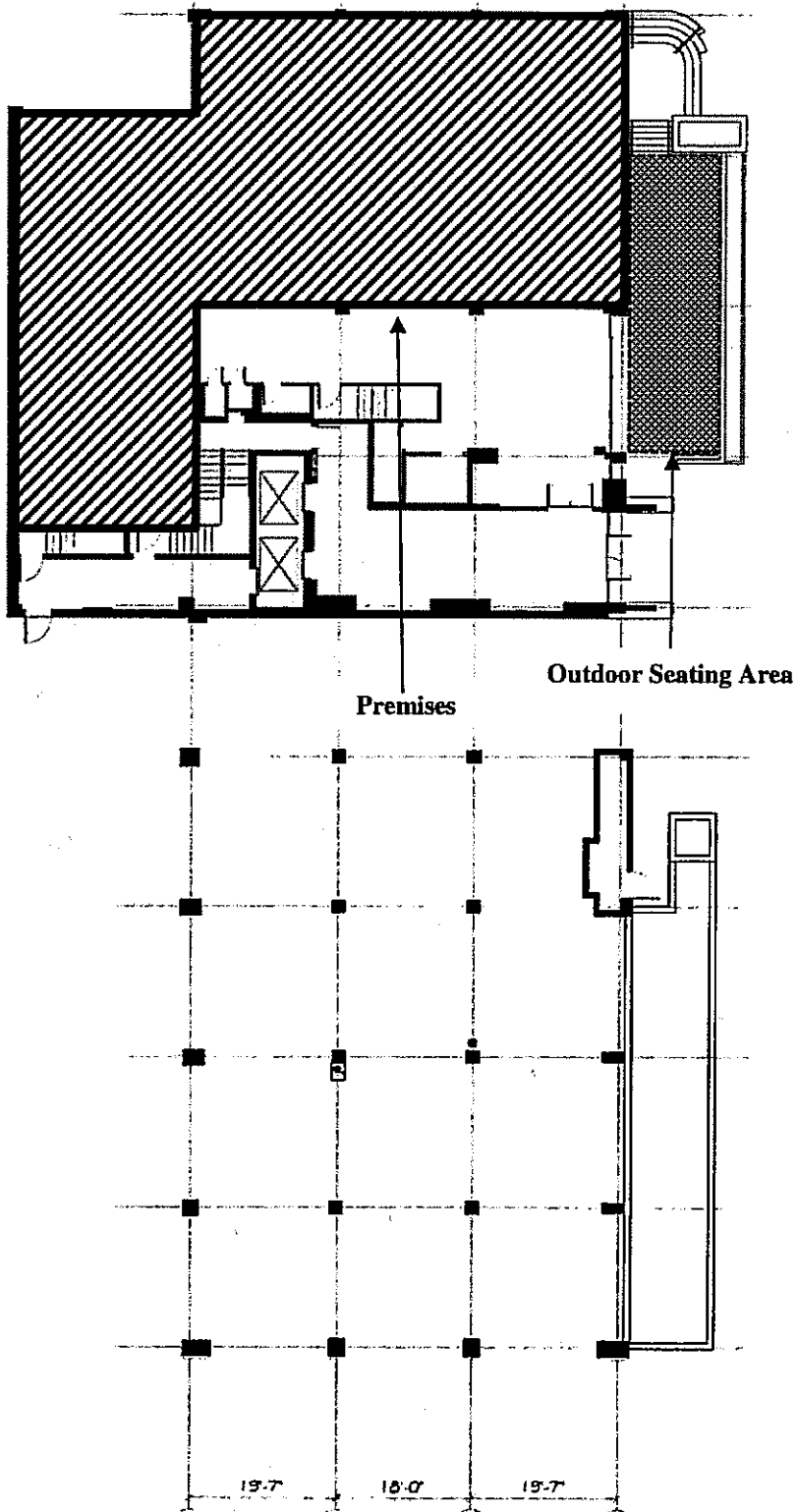
By: E. Wildhack (seal)

Title: Elizabeth L. Wildhack, Chair

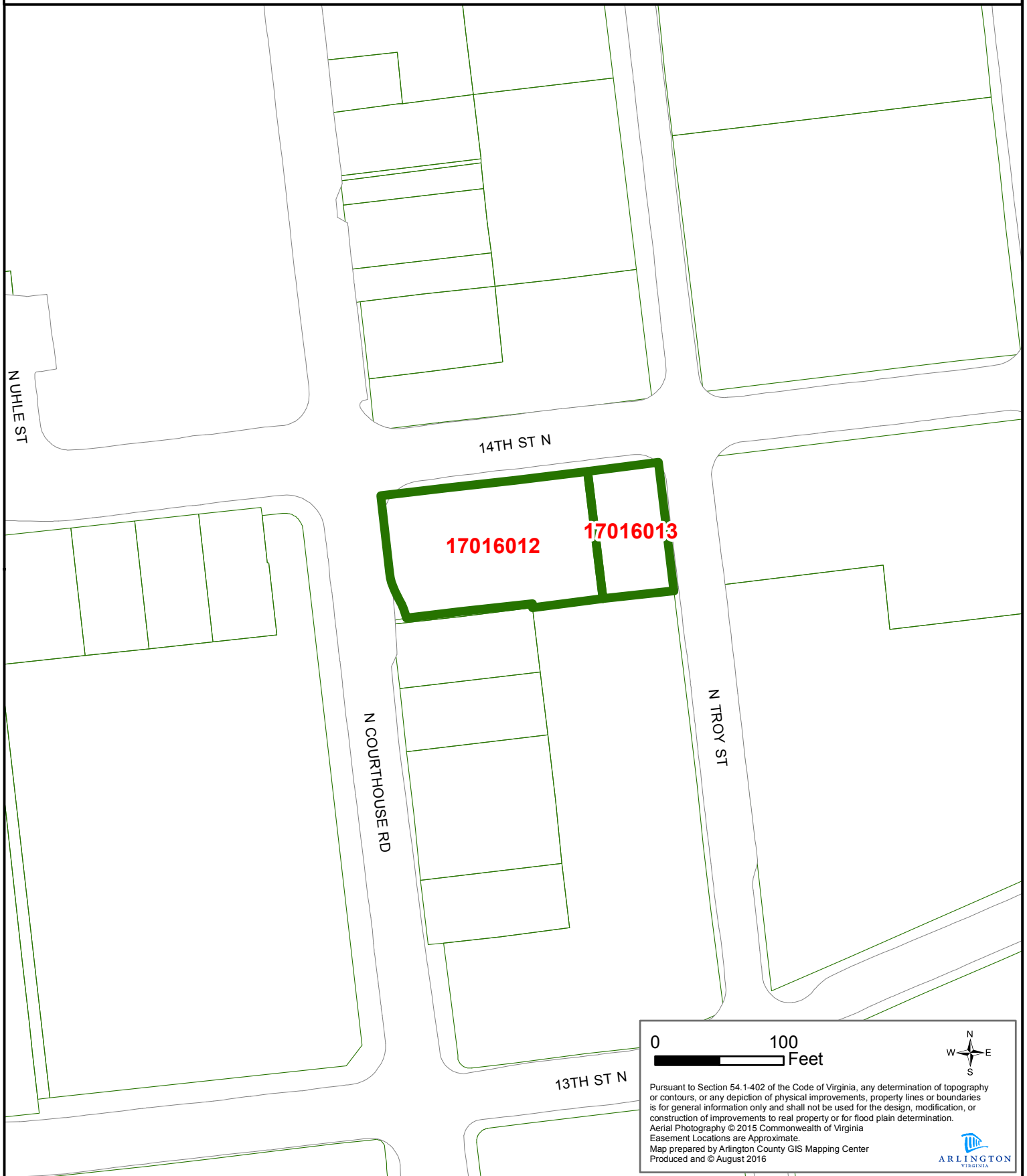
Date: August 31, 2018, 2018

**EXHIBIT A**

**PREMISES**



Vicinity Map  
2020 14th St. N  
RPC # 17016012 & 17016013



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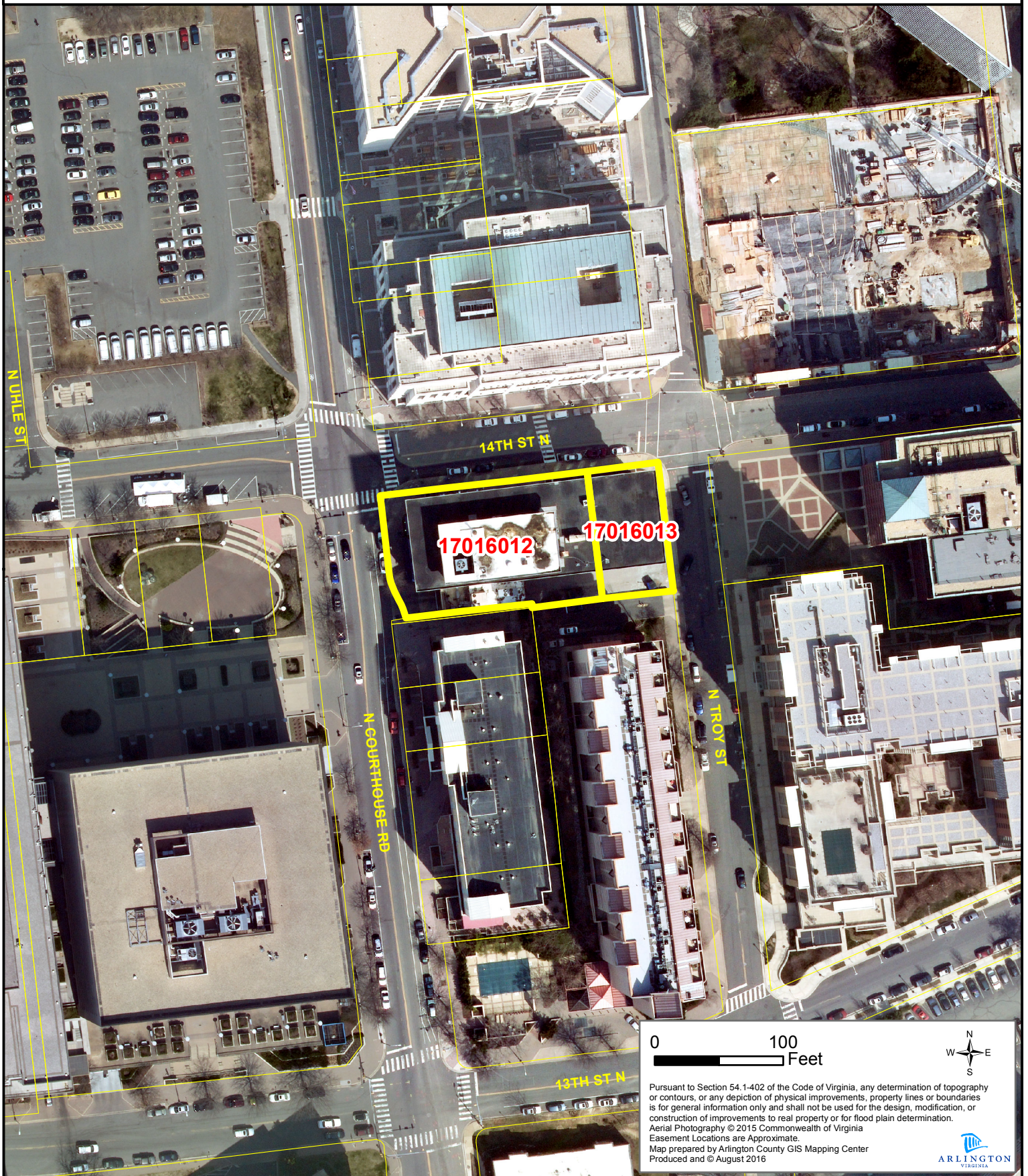


Pursuant to Section 54.1-402 of the Code of Virginia, any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination. Aerial Photography © 2015 Commonwealth of Virginia. Easement Locations are Approximate. Map prepared by Arlington County GIS Mapping Center. Produced and © August 2016.





Vicinity Map  
2020 14th St. N  
RPC # 17016012 & 17016013



0 100  
Feet



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