



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of December 16, 2017

DATE: December 11, 2017

SUBJECT: Agreement of Sale Between Michael 905 S. 20th Street, LLLP and the County Board of Arlington County, Virginia for the Purchase of 905 20th Street South and the Adjacent Vacant Lot (RPC#s 36-007-010 and 36-007-017)

C. M. RECOMMENDATIONS:

1. Approve the attached Agreement of Sale between Michael 905 S. 20th Street, LLLP (“Seller”) and the County Board of Arlington County, Virginia (“County Board”) for the purchase of 905 20th Street South and the adjacent vacant lot (RPC#s 36-007-010 and 36-007-017) (together, the “Property”).
2. Authorize the Real Estate Bureau Chief, Department of Environmental Services, or his designee, to execute the Agreement of Sale and all related documents necessary for the acquisition of the Property, subject to approval as to form of all documents by the County Attorney.

ISSUES: As of the date of this report, there are no outstanding issues.

SUMMARY: The Agreement of Sale, attached hereto as Exhibit A, is an offer from the Seller to sell fee simple interest in the Property to the County Board for a total purchase price of \$1,235,000.00. The Property is located on 20th Street South at the intersection of 20th Street South and South Ives Street (see Vicinity Maps at Attachments 1, 2 and 3) and is being acquired to create a new park in the Aurora Highlands neighborhood.

BACKGROUND: The Property is located on the north side of 20th Street South and the west side of South Ives Street, between 19th Street South and 20th Street South, and is more particularly described in the legal description of the Agreement of Sale, attached hereto as Exhibit A. The Property is approximately 11,500 square feet in size.

DISCUSSION: The opportunity to acquire the vacant lot at the intersection of 20th Street South and South Ives Street was brought to the County’s attention by members of the Aurora Highlands Civic Association (AHCA) leadership. County staff contacted the owner to determine whether the owner would consider selling the adjacent parcel, which is improved with a small

County Manager:

mga / cgm

County Attorney:

[Signature]

[Signature]

40.

Staff: Maxine Cholmondeley, DES/REB; Tina Chiappetta, DES/REB; Lisa Grandle, DPR

house, along with the vacant lot. The house is currently occupied by a tenant. On December 3, 2017, the tenant and owner executed an Addendum to Residential Deed of Lease amending the termination date to February 1, 2018 and further agreeing that no rent is due for the month of January 2018. A copy of the Addendum to Residential Deed of Lease is attached to this Board Report.

The house is a small one-and-one-half story bungalow built around 1920. To create the new park on 20th Street S., the existing structures and driveway will be removed and the area will be graded and seeded to establish the new park. The property is a contributing resource to the Aurora Highlands Historic District as listed by the National Park Service in 2008. The district is also listed to the Virginia Landmarks Register in 2008. Staff will take photographs of the house and salvage architectural finishes and materials prior to demolition.

In the short term, the residential structure presently located on the Property would be deconstructed or demolished and the site restored for creation of a new park. The acquisition of the Property would create an opportunity to increase park land in the densely-populated Pentagon City area. The approximately ¼-acre new park could be used to provide the kind of casual use space residents in the area have been asking for – a park that is open and available for a range of casual uses such as having a picnic, throwing a Frisbee, laying out on a blanket, reading or having small social gatherings.

The sales price is consistent with an appraisal, dated September 12, 2017, obtained by the County from a licensed Virginia real estate appraiser. The 2017 assessed value of the Property is \$1,068,800.00. The proposed Agreement of Sale, attached as Exhibit A, is the Seller's offer to sell the Property to the County for \$1,235,000.00.

PUBLIC ENGAGEMENT: The availability of the vacant lot was brought to the County's attention by the AHCA leadership. County staff has notified the AHCA president of the proposed acquisition.

FISCAL IMPACT: The acquisition cost of the Property (\$1,235,000.00), plus associated closing costs of approximately \$7,500.00, will be allocated from the Park Bond Fund (\$500,000 from 324.480001.80001.LA.RAJ.0000 and the balance from 324.48001.LA.RA2). Additional future expenses for the house removal and site restoration of approximately \$75,000.00 will be paid from park land acquisition funds.

AGREEMENT OF SALE

This AGREEMENT OF SALE (the "Agreement") is made on _____, 2017 among MICHAEL 905 S. 20TH STREET, LLLP, a Virginia limited liability limited partnership ("Seller"), and THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body politic ("Purchaser").

In consideration of the mutual promises of the Seller and Purchaser herein contained, and other good and valuable consideration, the receipt of which is hereby acknowledged, and in further consideration of the mutual benefits to be received by the parties, Seller agrees to sell, and Purchaser agrees to buy pursuant to the terms and conditions of this Agreement, in fee simple absolute, all that land, together with the improvements thereon, situate, lying and being in Arlington County, Virginia, and being more particularly described in paragraph 1 below:

1. **THE PROPERTY:** All those certain parcels, lots or tracts of land together with improvements thereon and the appurtenances thereto situate, lying and being in Arlington County, Virginia, known as 905 20th Street S, Arlington, Virginia (RPC No. 36-007-010), and the vacant parcel known as RPC No. 36-007-017, and together more particularly described as follows

All of Lots One (1), Two (2), Three (3), and Four (4), Block Twenty-One (21), of the subdivision known as "ADDISON HEIGHTS", as the same appears of record in Liber U- 4, Folio 56, et seq., of the land records of Arlington County, Virginia (the "Property").

2. **PRICE:** The total purchase price for the Property is ONE MILLION TWO HUNDRED THIRTY-FIVE THOUSAND AND NO/100 Dollars (\$1,235,000.00), subject to adjustments as provided for in this Agreement, to be paid by Purchaser to Seller as set forth hereinafter (the "Purchase Price").

3. **SETTLEMENT:**

a. The settlement of the sale of the Property in accordance with this Agreement (the "Settlement" or "Settlement Date") shall take place on a date mutually agreed upon by the parties, provided that the Settlement shall occur no later than 45 days after execution of this Agreement by Purchaser, unless extended to meet the conditions and requirements of

paragraph 5 (Title), paragraph 10 (Hazardous Materials), paragraph 11 (Survey), or as provided in paragraph 3b.

- b. The Real Estate Bureau Chief, Engineering and Capital Projects Division Arlington County Department of Environmental Services is authorized to extend the Settlement Date on behalf of the Purchaser pursuant to any provision of this Agreement, or upon written agreement of the Seller and Purchaser.
- c. Settlement shall take place in the offices of Walker Title, LLC, 11781 Lee Jackson Memorial Highway, Suite 300, Fairfax, Virginia 22033 or such other place as the Purchaser may designate (the "Settlement Agent").
- d. On or before Settlement, Purchaser shall deliver good and sufficient funds to the Settlement Agent for the Purchase Price and settlement costs. The settlement proceeds due to Seller, after settlement costs prorations and adjustments made pursuant to this Agreement, will be disbursed to Seller by the Settlement Agent's trust check or wired funds upon the satisfactory completion of the bringdown of title and recording of the deed of conveyance. No less than thirty (30) days prior to Settlement, Seller shall provide the Settlement Agent with written authorization and documentation sufficient to permit the Settlement Agent to obtain accurate payoff amounts from the holder of any promissory note secured by the Property and/or other lien or encumbrances affecting the Property.
- e. Seller represents and warrants to Purchaser that Seller is not a "foreign person" as defined by §1445 of the Internal Revenue Code, and is a resident of Virginia. At the time of Settlement, Seller shall execute before a notary public, as may be required, all necessary forms and affidavits stating the foregoing under penalty of perjury. Seller shall provide its true and correct address and United States Taxpayer Identification Number for a proper 1099 Internal Revenue Service Form and such other forms, where such information is required, together with an "Owner's Affidavit" prepared and provided by the Purchaser's title insurance company. Seller and Purchaser shall also execute such other settlement documents as are reasonably required by the Settlement Agent.
- f. Seller warrants and represents that it has the full legal right and authority to execute this Agreement and to convey the Property to Purchaser and to

execute any and all other documents necessary or desirable to effectuate Seller's obligations pursuant to this Agreement of Sale. If additional signatures, authority or documentation is required by the title insurance company or the Settlement Agent, Seller shall promptly and at his own cost supply the same. If the Seller is a legal entity such as a corporation, partnership, limited liability company, or a fiduciary, such as a trustee, executor or administrator, then Seller warrants and represents that it has the authority to execute this Agreement on behalf of Seller, and to bind Seller to the terms of this Agreement.

- g. **Choice of Settlement Agent:** Virginia's Real Estate Settlement Agents Act provides that the purchaser or borrower has the right to select the settlement agent's role in closing this transaction. The settlement agent's role in closing this transaction involves the coordination of numerous administrative and clerical functions relating to the collection of documents and the collection and disbursement of funds required to carry out the terms of the contract between the parties. If part of the purchase price is financed, the lender for the purchaser will instruct the settlement agent as to the signing and recording of loan documents and the disbursement of loan proceeds. No settlement agent can provide legal advice to any party to the transaction except a settlement agent who is engaged in the private practice of law in Virginia and who has been retained or engaged by a party to the transaction for the purpose of providing legal services to that party.

Variation by Agreement: The provisions of the Real Estate Settlement Agents Act may not be varied by agreement, and rights conferred by this chapter may not be waived. The seller may not require the use of a particular settlement agent as a condition of the sale of the property.

Escrow, Closing and Settlement Service Guidelines: The Virginia State Bar issues guidelines to help settlement

agents avoid and prevent the unauthorized practice of law in connection with furnishing escrow, settlement or closing services. As a party to a real estate transaction, the purchaser or borrower is entitled to receive a copy of these guidelines from the purchaser's or borrower's settlement agent, upon request, in accordance with the provisions of the Real Estate Settlement Agents Act.

4. **ENCUMBRANCES:** Seller shall not, either by commission or omission, cause or permit the Property to be encumbered in any way after Seller's execution of this Agreement.

5. **TITLE:** Seller agrees to execute and deliver a good and sufficient General Warranty deed with English Covenants of Title to the Property to Purchaser at Settlement. The Property shall be conveyed free and clear of all deeds of trust, judgments, liens, indebtedness or encumbrances, and without restrictions, easements, rights of way, covenants of record, title and Survey Exceptions (as hereinafter defined), leases, tenants and tenancies or occupancies which, in the sole opinion of Purchaser, restrict or adversely affect the use of the Property by Purchaser for public purposes (together "Title Exceptions"). In addition, title shall be marketable and fully insurable ("Marketability") at usual and normal rates by a highly reliable national title insurance company licensed to do business in the Commonwealth of Virginia and approved by Purchaser, and free of Title Exceptions. Seller shall, at its sole expense, remove any such Title Exceptions or objectionable Marketability matters prior to Settlement. So long as Seller is actively pursuing the removal of such Title Exceptions or objectionable Marketability matters in good faith, the Settlement Date shall be extended until such Title Exceptions or objectionable Marketability matters are corrected, at the sole option of Purchaser. If at any time Purchaser concludes that such Title Exceptions or objectionable Marketability matters cannot be removed in a timely and satisfactory fashion, then the Purchaser may declare this Agreement void, and neither party will have further rights or responsibilities hereunder. Seller will comply with all orders or notices of violation of any local authority or any court actions against or affecting the Property on Settlement Date and will pay any fines or penalties on account thereof.

6. **CHARGES:** Examination of title, notary fees, State and local recording taxes (except the Virginia grantor tax) if any such taxes are applicable to this transaction, and Purchaser's attorney's fees are to be the cost of Purchaser. Seller shall pay for its own attorney's fees and costs, the preparation of the deed, the Virginia grantor tax, the regional congestion relief fee, a reasonable settlement fee, the release of any liens or encumbrances against the Property, and the costs and attorney's fees to cure or remove any Title Exceptions or objectionable Marketability matters. Real estate taxes, water, sewer, utility and all other charges are to be prorated to the Settlement Date.

7. **INTENTIONALLY OMITTED.**

8. **DAMAGE PRIOR TO POSSESSION:** Risk of loss shall be on Seller until the recordation of the deed. Seller shall maintain fire and casualty insurance on the Property in a face amount of not less than the replacement value of improvements on the Property as determined by Seller's insurance company until delivery of possession to Purchaser. If, prior to delivery of possession, the Property, or any portion thereof, is damaged by fire or other casualty, Purchaser may, at Purchaser's sole option, terminate this Agreement. If Purchaser does not terminate this Agreement, Seller shall, at Settlement, assign to Purchaser all claims against insurers or other third parties, and Seller shall also cooperate with Purchaser in every respect in making and supporting a proof of loss and affecting the collection of insurance. This provision shall survive conveyance of the Property to Purchaser.

9. **CONDITION OF PROPERTY/POSSESSION AT SETTLEMENT:** Seller agrees to remove all personal property and trash located on or within the Property prior to Settlement. Seller agrees to give possession of the Property to Purchaser at Settlement. Purchaser is buying the Property "As Is" condition as of the Date of this Agreement, and solely in reliance on Purchaser's own investigation of the condition of the Property.

10. **HAZARDOUS MATERIALS:** Seller represents and warrants that, to the best of Seller's knowledge: (i) neither Seller, nor its predecessors in title, have disposed of, released, or deposited hazardous or toxic wastes or substances, including asbestos, regulated by the most stringent applicable Federal, State or Local environmental, health, and safety laws, regulations, ordinances, or standards ("Hazardous Materials") on or within any part of the Property; and (ii) Seller has no actual knowledge of any such

disposal, release, or deposit of Hazardous Materials on or within any part of the Property. Seller further warrants that Seller has not disposed of, released, or deposited any Hazardous Materials originating on the Property, except as provided by law at a site or facility approved by Federal, State or local regulatory agencies for the disposal of such materials. These representations and warranties in this paragraph shall survive conveyance of the Property to Purchaser.

- a. Prior to Settlement, Purchaser may have the Property inspected by a contractor of Purchaser's choice for the presence of Hazardous Materials, including asbestos and lead based paint in amounts or forms in excess of the most stringent applicable Federal, State or local environmental, health and safety laws, regulations, ordinances, or standards. The aforesaid inspection, together with any report, opinion or investigation of the Property for Hazardous Materials shall be referred to as the "Inspection Report."
- b. If Purchaser chooses to have such an inspection of the Property made, Purchaser will order such inspection with reasonable dispatch after this Agreement is fully executed. If, despite Purchaser's efforts, the Inspection Report is not completed by the agreed upon Settlement Date, the Settlement Date shall be extended until the Inspection Report is completed and reviewed by the Purchaser.
- c. If the Inspection Report shows the presence of Hazardous Materials, Purchaser shall have the option, at any time within 30 days after receipt of the Inspection Report, to withdraw from this Agreement in writing and declare it null and void.
- d. If Purchaser is satisfied, in its sole discretion, that the Property is free of Hazardous Materials, or that the amount of such materials is not sufficient to prevent purchase of the Property, then Purchaser shall proceed with the purchase of the Property and Settlement shall take place in accordance with the terms and conditions of this Agreement.
- e. Seller agrees to indemnify and hold Purchaser harmless from and against any and all costs, expenses, and liabilities which may be incurred by Purchaser (including, without limitation, court costs, reasonable attorney's

fees, and claims by any governmental agencies) as a result of any breach of the representations and warranties in this paragraph.

11. SURVEY: The boundaries and acreage of the Property to be conveyed shall be determined and depicted by a survey prepared by a registered land surveyor or engineer, conducted at the direction and expense of Purchaser. The survey may locate and depict all improvements, easements, rights of way, setbacks, encroachments, flood plain and flood fringe areas and any other particulars which may be required by Purchaser. Purchaser shall provide Seller with a copy of the survey and, with a list of any matters which, in Purchaser's sole discretion, restrict or adversely affect Purchaser's intended use of the Property, encumber the Property, or otherwise adversely affect the marketability, use or enjoyment of the Property (all of the aforesaid being referred to as "Survey Exceptions"). Thereafter, Seller, at its own expense, shall remove any such Survey Exceptions prior to Settlement. Notwithstanding the foregoing, so long as Seller is actively pursuing the removal of Survey Exceptions in good faith, the Settlement Date shall be extended until such Survey Exceptions are corrected, at the option of Purchaser. If at any time Purchaser concludes that the Survey Exceptions cannot be removed in a timely and satisfactory fashion, then the Purchaser may declare this Agreement void, and neither party will have further rights or responsibilities hereunder.

12. INSPECTION OF PREMISES: Seller will permit the agents, designees and employees of Purchaser access to the Property at all reasonable times for the purpose of making the inspections necessary in connection with paragraph 10 (Hazardous or Toxic Materials) and the survey pursuant to paragraph 11 (Survey), and for any other purpose contemplated by this Agreement.

13. NOTICES: All notices, demands, and requests which may be given, or are required to be given by either party to the other shall be in writing, and shall be either hand delivered by Federal Express or sent by United States certified mail, return receipt requested, with proper first class postage prepaid, properly and fully addressed:

If to Seller:

Michael 905 S. 20th Street, LLLP
5730 Waterloo Bridge Circle
Haymarket, VA 20169

If to Purchaser:

Real Estate Bureau Chief
Arlington County Dept. of Environmental Services
2100 Clarendon Blvd., Suite 800
Arlington, Virginia 22201

Notice shall be deemed effective upon delivery. Any party may, by like notice given at least seven (7) days before such change becomes effective, designate a new address to which such notices shall be sent.

14. COMMISSIONS: Purchaser represents and warrants that it has not retained the services of any real estate broker, agent or finder with respect to the transaction contemplated by this Agreement. Seller represents that Seller has retained the services of Century 21 New Millennium as its real estate broker with respect to the transaction contemplated by this Agreement. Seller hereby agrees that Seller is solely responsible for, and will indemnify, defend and hold Purchaser, its elected and appointed officials, officers and employees, harmless of, from and against, any demand, suit, claim or liability, for any broker's, agent's or finder's fee asserted by any person or entity claiming to be engaged by or on behalf of Seller.

15. DAMAGES: In the event Seller fails or refuses to perform its obligations under this Agreement, including but not limited to its obligation to convey the Property, Purchaser shall be entitled to recover all of its costs and expenses incurred in connection with this Agreement, any breach of this Agreement, or the enforcement of this Agreement, including but not limited to its costs for the preparation of this Agreement, for all inspections, studies and surveys performed or contracted for in connection with this Agreement, and all of its attorney's fees and court costs incurred pursuant to this paragraph. In addition to the foregoing, Purchaser shall be entitled to all other damages it has suffered, in accordance with law. Without limiting or waiving the foregoing, Purchaser may also seek all remedies to which it is entitled in equity, including the right to an injunction or restraining order and the right to seek specific performance.

16. PURCHASER APPROVAL REQUIRED: The execution of this Agreement by the Seller constitutes an irrevocable offer to sell the Property to the Purchaser. This offer shall become null and void if the County Board of Arlington County, Virginia does not approve the Agreement and provide Seller with a fully executed copy of the Agreement on or before December 29, 2017.

17. BINDING AGREEMENT: The parties to this Agreement mutually agree that it shall be binding upon them, and each of the respective heirs, executors, administrators, successors and assigns; that the provisions hereof shall survive the execution and delivery of the deed aforesaid and shall not be merged therein except as specifically provided herein; that this Agreement contains the final and entire agreement

between the parties hereto; and that they shall not be bound by any terms conditions, statements, warranties or representations, oral or written, not contained herein.

18. APPLICABLE LAW: This Agreement shall be construed, interpreted and applied according to the laws of the Commonwealth of Virginia. All legal actions brought by either Purchaser or Seller concerning this Agreement shall be brought in the Arlington County Circuit Court and in no other court.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

WITNESS the following signatures:

SELLER:

MICHAEL 905 S. 20TH STREET, LLLP,
a Virginia limited liability limited partnership

By: Dorene M. Castell
Dorene M. Castell
General Partner, Michael 905 S. 20th Street, LLLP

By: David M. Castell
David M. Castell
General Partner, Michael 905 S. 20th Street, LLLP

PURCHASER:

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

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

County Attorney

Addendum to Residential Deed of Lease

This addendum is made on **November 10, 2017**, to a residential deed of lease offered on **June 15, 2017**, between **Michelle Seaga** (Tenant) and **Michael 905 S 20th Street** (Landlord) for the lease of the property located at **905 S 20th Street, Arlington, VA 22202**.

The parties agree that this deed of lease is modified as follows:

The lease termination date of June 15, 2018 has been changed to take effect on February 1, 2018.

No rent will be due for the month of January 2018.

This addendum shall not alter, modify, or change in any other respect this residential deed of lease, and except as modified herein, all of the terms and conditions of this lease are expressly ratified and confirmed and shall remain in full force and effect.

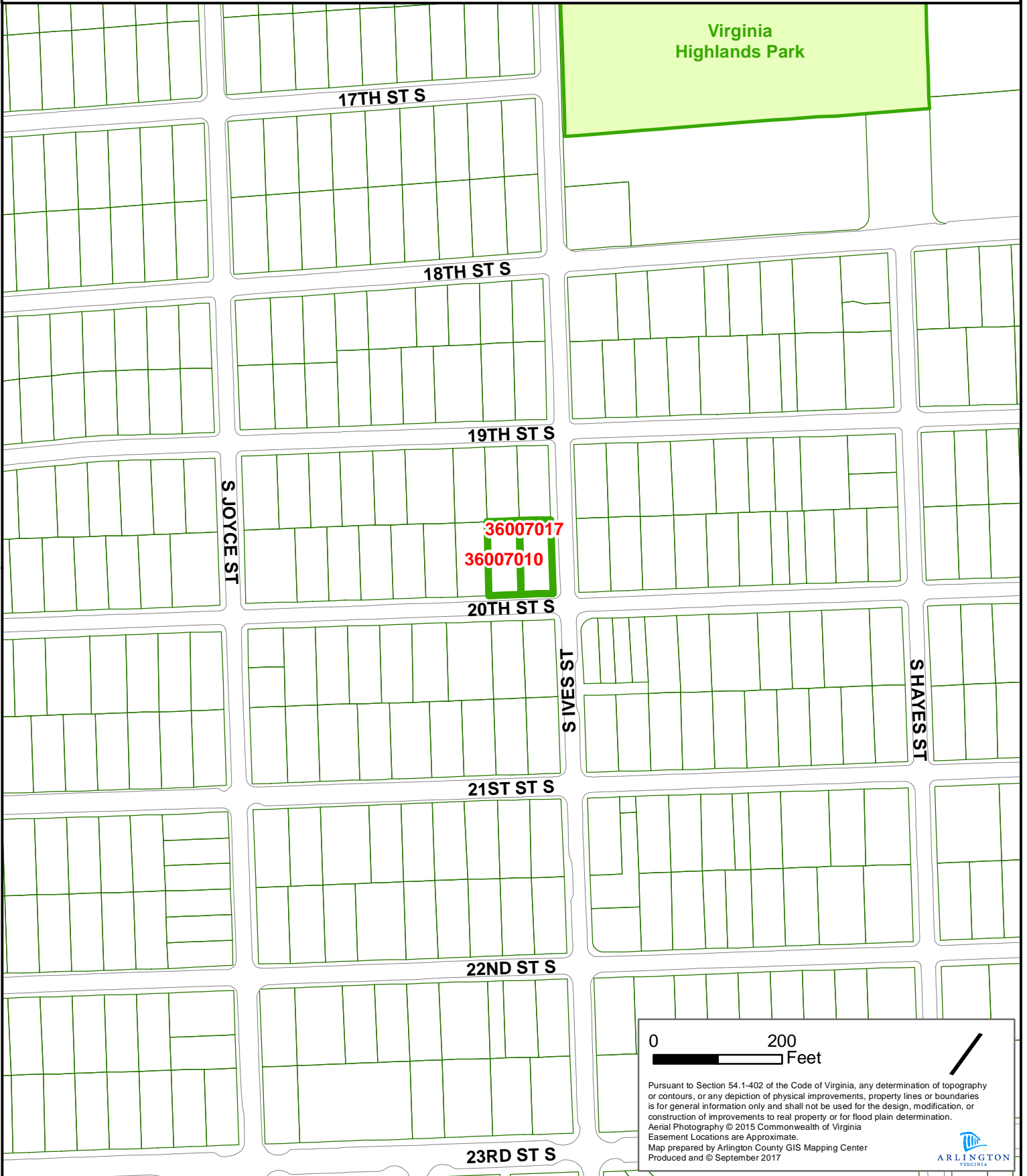
Tenant:

Signature: DocuSigned by:
Michelle Seaga
38DEA7E41C8A479
Date: 11/28/2017 | 2:54:22 PM EST

Landlord:

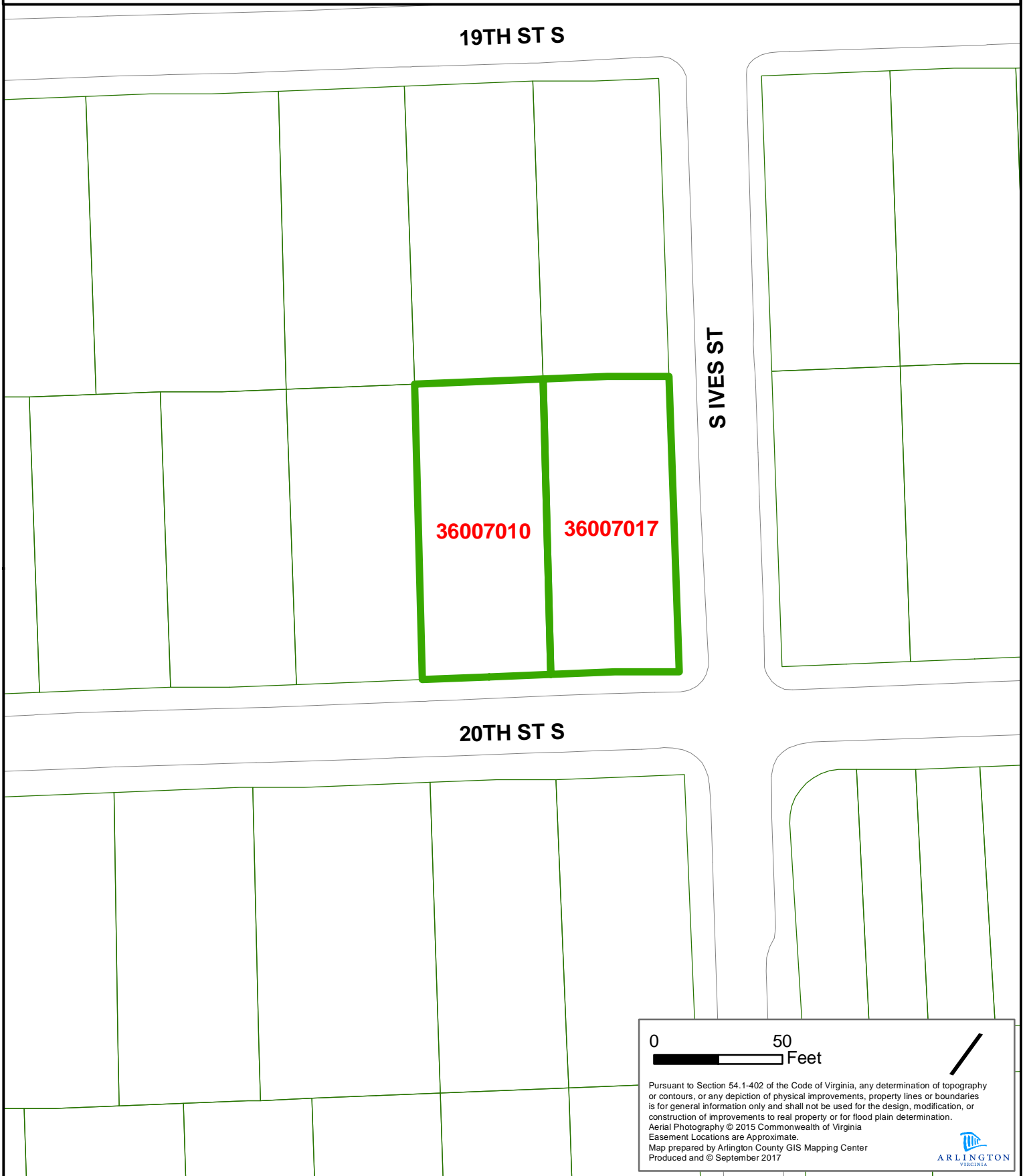
Signature: *Donna Asher*
Date: 12/13/17

Vicinity Map
905 20th St S & Adjacent Vacant Lot
RPC # 36-007-010 & 36-007-017




Vicinity Map
905 20th St S & Adjacent Vacant Lot
RPC # 36-007-010 & 36-007-017

Attachment 2



0 50 Feet

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 © September 2017



Vicinity Map
905 20th St S & Adjacent Vacant Lot
RPC # 36-007-010 & 36-007-017

Attachment 3

