DATE: July 8, 2016

SUBJECT: Adoption of Ordinances Related to Creation of the Ballston Quarter Community Development Authority:

A. Adoption of An Ordinance to Assume Power to Consider Petitions for Creation of Community Development Authorities in Arlington County; and
B. Adoption of Ordinance Creating the Ballston Quarter Community Development Authority

C. M. RECOMMENDATION:

A. Adopt the attached ordinance (Attachment I) to assume the power to consider petitions for the creation of community development authorities in Arlington County; and
B. Adopt the attached ordinance (Attachment II) creating the Ballston Quarter Community Development Authority.

ISSUES: This is a request to adopt ordinances related to next steps in the public-private partnership for the Ballston Quarter redevelopment project, specifically the creation of a community development authority. No issues have been identified.

SUMMARY: In November 2015, the County Board approved site plan amendments for the Ballston Quarter redevelopment project which will change the current Ballston Common Mall into a mixed use project with new retail and a 406 unit residential development. The transformative nature of this project will implement the County’s land use plans and policies for the Ballston area, which plans and policies identify the mall as central to development in the surrounding area, and will have significant place-making and economic revitalization impacts on the Ballston area, including both stabilizing the economic base and spurring additional developments and tax revenue.

Given the magnitude of public improvements needed to achieve this vision, as well as the complex, costly development and construction techniques associated with the redevelopment, the project has a financial gap (currently estimated at approximately $53 million) that cannot be fully
supported by private investment. The County Board’s action in November included approval of a non-binding letter of intent (LOI) with Forest City that provided the framework for the County’s financial participation in the project, including direct funding of garage and transportation improvements as well as the issuance of bonds by a community development authority (CDA) to be repaid with incremental tax revenues generated by the project.

The County has been working closely with Forest City as it has advanced the project through design and development, and construction is scheduled to begin this summer. At the same time, the County and Forest City have been working to finalize the primary terms of the plan of finance for the CDA bond issue, consistent with the LOI. The proposed actions related to authorization and establishment of the CDA are the first of a series of approvals over the next few months needed to execute the financing and the project. The only change to the proposed ordinances and attachments is a correction in the mailing address of the principal office of the CDA.

BACKGROUND: The Ballston Common Mall has historically been one of the cornerstones of commercial development in Ballston, and as such, has been the focus of significant County investment. In the mid 1980’s, the County completed its first public-private partnership at the current Ballston site that transformed the Parkington Shopping Center into a regional mall. Subsequent land use changes include expansion of both retail and office in the area. Finally, in 2006, the County completed its second public-private partnership for the Kettler Iceplex.

Over the last decade, the retail market has evolved significantly, driven by changing demographics (particularly millennials) and demand for mixed use, entertainment-oriented developments that are very different than the current Ballston format. Increased regional competition from the Mosaic District in Fairfax and the Southwest Waterfront and other areas in the District have further deteriorated Ballston’s position, especially in light of the significant public subsidies provided to these developments. Finally, the Ballston market faces very specific challenges due to the pending move of the National Science Foundation and the U.S. Fish and Wildlife Service to other jurisdictions. The combination of these factors and the resulting impact on the County’s economic and fiscal position have driven Forest City and the County to pursue this transformative redevelopment project that will enable the mall to continue to be the catalyst for development in Ballston it has been envisioned to be in the County’s land use plans and policies, as well as in the broader County. The County Board first considered this proposed partnership at two separate meetings in June and July 2015, followed by approval of three site plan amendments and the LOI in November 2015.

DISCUSSION: As noted earlier, the combination of the significant public infrastructure investments needed and the complex construction requirements, the project has a current financing gap of approximately $53 million that cannot be fully supported by private investment (this gap is slightly less than the gap originally estimated in November of $55.5 million). The LOI lays out the parameters and tools for the County’s participation in the public-private partnership, including:

- Types of project costs that the partnership can fund
- Direct public funding of garage and transportation improvements
- CDA bond funding of other improvements with debt service paid by incremental sales, meals and property tax revenues generated by the project
- Other terms related to project development and phasing and participation in the event the project is sold or performs better than expected

Community Development Authority

The proposed actions that are the subject of this report are related specifically to the establishment of the CDA. As background, a CDA is a development tool authorized by state statute that has certain powers that can help facilitate redevelopment projects or public-private partnerships; in particular, CDAs, if allowed by the enabling ordinance adopted by the local government, has the ability to issue bonds to finance certain public improvements (including those of the type anticipated at Ballston Quarter.) CDAs also have the ability to impose a special assessment or tax within the CDA boundaries in the event of a default on bonds backed by tax increment revenues. The powers of a CDA are limited to those authorized specifically by the local governing body.

Attachment I is the proposed ordinance that would enable the County to accept petitions to establish a CDA in Arlington. This is a mandatory prerequisite to the establishment of a CDA for the Ballston Quarter. Attachment II is the proposed ordinance that would specifically establish the Ballston Quarter CDA. Included as a part of Attachment II is the articles of incorporation for the proposed CDA, the petition from the landowners requesting establishment of the Ballston Quarter CDA, and a list of the three real property parcels proposed to be included in the CDA.

As noted in the attachments, the Ballston Quarter CDA board would be composed solely of County Board members (similar to the Solid Waste Authority.) Included in Attachment II is the list of improvements that would be funded with either direct public funding and or the proposed CDA bond issue, including improvements to the Ballston Public Parking Garage; transportation improvements along Wilson, Randolph and Glebe; plaza and pedestrian connections; and internal circulation with public access and vertical improvements such as facades.

Plan of Finance

County staff and Forest City have been working over the last six months to finalize the plan of finance, particularly on the terms and structure of the proposed CDA bonds. Unlike County general obligation bonds that are secured by all General Fund revenues and the full faith and credit of the County, the proposed CDA bonds will be secured only by a portion of incremental real property, sales and meals taxes generated by the project and a backup special assessment on a portion of the bonds. Since the County’s general obligation pledge is not securing the CDA bonds, the CDA bonds are not considered debt of the County. Because of this more limited revenue stream, the bonds will be unrated and bond investors will have very specific requirements in terms of bond structure and security. Specifically, investors will demand debt service coverage of 120% and certain reserves and capitalized interest during project construction. In order to meet the debt service coverage requirements and provide security to
investors, the bonds will include a legal pledge of 65% of incremental revenues, although it is anticipated that this entire amount will not actually be used to pay debt service.

The proposed plan of finance also calls for two tranches (or series) of bonds to be issued. The first series will have a senior lien on incremental tax revenues and will be issued on a tax-exempt basis and thus have a lower interest rate. The second series will have a subordinate lien on incremental tax revenues (e.g., after payment of the first bond issue) and will also be secured by a back-up special assessment on the real property parcels owned by Forest City. The second series will be issued on a taxable basis and have a higher interest rate.

It is currently estimated that $44 million in project costs will be funded with proceeds from the CDA bond issue. Based on current market conditions, the preliminary par amount of the proposed CDA bond issue will be approximately $59 million in order to fund the investor-required reserves and capitalized interest. Other proposed terms of the bonds include a thirty year term with an amortization schedule that is structured to meet revenue projections. In addition, a revenue stabilization fund will be established to ensure that debt service coverage remains at 120%; this fund will be in place for ten years post-opening and any final balances in the fund released to the County at the end of ten years. Lastly, the CDA bonds are expected to be optionally redeemable within 10 years of issuance to allow for refinancing as market conditions present opportunities for savings.

Again, the CDA bonds will not be considered debt of the County and will not be recorded on the County’s balance sheet. The CDA bonds will be unrated, and will not negatively impact the County’s bond ratings.

The County’s tax increment financing policy includes a requirement that amount of TIF reinvested within the TIF area cannot exceed 40 percent of the total expected TIF revenue (with the remaining 60 percent retained by the General Fund.) Over the life of the bond issue, it is anticipated that this 40 percent policy will be met. In meeting this policy, the County will use excess parking garage revenues to reimburse itself for CDA debt service associated with garage improvements. (Garage improvements total $9.2 million, with $3.5 million coming from current cash balance in the parking enterprise fund and the remainder from the proposed CDA bond issue.)

As noted earlier, the LOI anticipated direct public funding of certain garage and transportation investments. The proposed plan of finance includes $9 million in funds from both the Ballston Public Parking Garage Enterprise Fund and dedicated transportation funds. This funding has been included in the proposed FY 2017-2026 Capital Improvement Plan currently being considered by the County Board.

After approval of the CDA enabling ordinance and establishment of the Ballston Quarter CDA, next steps will include approval of a development agreement and bond documents. CDA bond issuance is anticipated to occur in fall.

**Other Jurisdictions’ Use of CDAs** – While the CDA / TIF approach has not been used before in Arlington, they have been used widely across the Commonwealth. Most recently, a CDA / TIF
bond structure was used for the Mosaic redevelopment project in Fairfax County; the CDA bond issue totaled $66 million. Fairfax County also accelerated and reprioritized various transportation projects to support the redevelopment; the total amount of public contribution approximated 21 percent of the total Mosaic development costs. Henrico County used a CDA structure for the Short Pump retail development (developed by Forest City) and two other retail / mixed use developments. Triple-A rated counties in Virginia using CDAs have included Prince William, Loudoun, Henrico, Hanover, Chesterfield, and Stafford for various projects including commercial and residential developments.

**FISCAL IMPACT:** Net of current, conservative projections of CDA debt service, incremental tax revenues generated directly by the project are projected at $143 to $157 million over the thirty year bond term. The County anticipates that the project will have a positive impact on other properties in Ballston (although not included in the projections above); similarly, incremental taxes associated with the commercial and industrial real property tax (dedicated to transportation) and the sanitary district tax (dedicated to stormwater) will accrue to those funds.
AN ORDINANCE OF THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA
ELECTING TO ASSUME THE POWER TO CONSIDER PETITIONS
FOR THE CREATION OF COMMUNITY DEVELOPMENT AUTHORITIES

WHEREAS, the Virginia Water and Waste Authorities Act, Chapter 51, Title 15.2, Code of Virginia of 1950, as amended (the “Act”), empowers any county, by ordinance, to elect to assume the power to consider petitions for the creation of community development authorities in accordance with the Act; and

WHEREAS, following a public hearing held in accordance with the Act, the County Board of Arlington County, Virginia has determined that it is in the best interest of Arlington County, Virginia (the “County”) for the County to elect to assume such power to consider petitions for the creation of community development authorities.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA:

1. The County hereby elects to assume the power to consider petitions for the creation of community development authorities in accordance with the Act.

2. This Ordinance shall become effective upon adoption.

The undersigned Clerk of the County Board of Arlington County, Virginia, certifies that the foregoing constitutes a true, complete and correct copy of an Ordinance adopted at a regular meeting of the County Board of Arlington County, Virginia, held on July 16, 2016.

_____________________________
Clerk, County Board of Arlington County, Virginia
ORDINANCE CREATING THE BALLSTON QUARTER
COMMUNITY DEVELOPMENT AUTHORITY

WHEREAS, the County Board of Arlington County, Virginia (the “Board”) has received a petition (the “Petition”) from FC Ballston Common, LLC, and Ballston Acquisition Company, LLC (collectively, the “Landowners”) for the creation of the Ballston Quarter Community Development Authority (the “CDA”), and the Landowners have represented that they own at least 51% of the land within the proposed CDA district (the “CDA District”); and

WHEREAS, a public hearing has been held on July 16, 2016 by the Board on the adoption of this Ordinance and notice has been duly provided as set forth in §15.2-1427 of the Code of Virginia of 1950, as amended, and §§15.2-5104 and 15.2-5156 of the Virginia Water and Waste Authorities Act, Chapter 51, Title 15.2, Code of Virginia of 1950, as amended (the “Act”); and

WHEREAS, the Board proposes to create the CDA in order to provide the public infrastructure, facilities and services described in the Petition; and

WHEREAS, the public infrastructure, facilities and services described in the Petition are consistent with the County’s long-term planning goals and vision for the Ballston area of a dynamic downtown area including a mix of commercial, office and residential uses; and

WHEREAS, the public infrastructure, facilities and services described in the Petition will contribute to the revitalization of the existing regional shopping center which is envisioned as the commercial core of the surrounding neighborhood and the catalyst for further development in the area; and

WHEREAS, the continued decline or loss of the existing regional shopping center would have broad impact on the viability and sustainability of the surrounding neighborhood and presents exceptional circumstances warranting considerations (such as the use of tax increment financing and a community development authority) not applicable to most redevelopment proposals; and

WHEREAS, the creation of the CDA to assist in financing the public infrastructure, facilities and services described in the Petition in connection with the proposed development within the CDA District will benefit the citizens of Arlington County, Virginia (the “County”) by promoting increased employment opportunities, a strengthened economic base, increased tax revenues and additional business, retail, tourism and recreational opportunities, and will meet the increased demands placed upon the County as a result of development or redevelopment within or affecting the CDA District; and

WHEREAS, the Landowners have waived in writing their right to withdraw their signatures from the Petition in accordance with §15.2-5156 of the Act.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA:
1. **Creation of Authority.** The Ballston Quarter Community Development Authority is hereby created as a political subdivision of the Commonwealth of Virginia in accordance with the applicable provisions of the Act. The CDA shall have the powers set forth in the Act.

2. **Boundaries of CDA.** The CDA boundaries shall initially include the property identified in the attached Exhibit A (the “Initial CDA District”). In accordance with §15.2-5157 of the Act, a copy of this Ordinance shall be recorded in the land records of the Circuit Court of Arlington County for each tax map parcel in the Initial CDA District as such Initial CDA District exists at the time of issuance of the CDA’s bonds (the “Bonds”) and the Initial CDA District shall be noted on the land records of the County. The boundaries of the Initial CDA District (a) may be expanded by the Board by subsequent ordinance upon petition filed pursuant to the Act and (b) may be adjusted by the County to exclude certain land as long as the owners of at least fifty-one percent (51%) of the land area or assessed value of land remaining in the Initial CDA District after the adjustment originally petitioned for the creation of the CDA.

3. **Facilities and Services.** The CDA is created for the purpose of exercising the powers set forth in the Act, including acquiring, financing, designing, constructing, equipping and providing for the construction, installation, operation, maintenance (unless dedicated to and accepted by the appropriate governmental entity other than the CDA), enhancement, replacement, relocation and alteration of all or portions of the public infrastructure, facilities and services more particularly described in the Petition (the “Infrastructure”), which description is incorporated herein by reference. The CDA shall have all the powers provided by the Act. The CDA shall not provide services which are provided by, or obligated to be provided by, any authority already in existence pursuant to the Act unless such authority provides the certification required by §15.2-5155 of the Act.

4. **Articles of Incorporation.** Attached hereto as Exhibit B are the proposed Articles of Incorporation of the CDA. The County Manager is authorized and directed to execute and file such Articles of Incorporation on behalf of the Board with the State Corporation Commission in substantially the form attached as Exhibit B with such changes, including insubstantial changes to the boundary description of the CDA District described therein, as the County Manager may approve. The County Manager is authorized to approve such changes or corrections to the Articles of Incorporation prior to filing with the State Corporation Commission as do not change the purpose or function of the CDA as set forth in this Ordinance and in the Petition.

5. **Capital Cost Estimates.** The Board hereby finds, in accordance with §15.2-5103(B) of the Act, that it is impracticable to include capital cost estimates, project proposals and project service rates, except as preliminarily summarized in the Petition.

6. **Membership of the Authority.**

   (a) The powers of the CDA shall be exercised by an authority board (the “CDA Board”) consisting of a number of CDA Board members equal to the number of members of the Board.
(b) In accordance with the provisions of §15.2-5113, it is hereby ordained that the initial and all subsequent members of the CDA Board shall be the then-current members of the Board.

(c) The initial members of the CDA Board shall be as set forth in the Articles of Incorporation for the terms set forth therein.

(d) Each CDA Board member shall receive such compensation from the CDA for his or her services as a CDA Board member as may be authorized from time to time by resolution of the CDA Board, provided that no member shall receive compensation in excess of $300 per meeting attended, exclusive of expenses, unless authorized by resolution of the Board.

7. Plan of Finance; Issuance of Bonds.

(a) The public infrastructure, facilities and services to be undertaken by the CDA as described herein and in the Petition shall be funded from all or some of the following sources: (i) the Bonds to be issued by the CDA; (ii) special assessments to be levied pursuant to Virginia Code Section 15.2-5158(A)(5); and (iii) contributions made by the County of certain incremental tax revenues generated within and around the CDA District as more particularly described in the Petition and in a memorandum of understanding and a special assessment agreement to be entered into by the CDA, the County and the Landowners or their successors in interest.

(b) The Bonds to be issued by the CDA will be issued in either tax-exempt or taxable series or both. The proceeds from the sale of the Bonds will be used to pay the costs of the Infrastructure as described herein and in the Petition (which costs will not exceed $44,000,000 unless approved by amendment to the Petition and amendment to this Ordinance), the costs of issuing the Bonds and any required reserves, and certain capitalized interest on the Bonds.

(c) Any bonds issued by the CDA or any other financing arrangements entered into by the CDA will be debt of the CDA, will not be a debt or other obligation of the County and will not constitute a pledge of the faith and credit of the County.

8. Effective Date. This Ordinance shall take effect immediately.

9. Recordation of Ordinance. The Board hereby directs that a copy of this Ordinance be recorded in accordance with §15.2-5157 of the Act before the Bonds are issued.
The undersigned Clerk of the County Board of Arlington County, Virginia, certifies that the foregoing constitutes a true, complete and correct copy of an Ordinance enacted at a regular meeting of the County Board of Arlington County, Virginia, held on July 16, 2016.

Clerk, County Board of Arlington County, Virginia

Exhibits:
   A – Initial CDA District Boundaries
   B – Proposed Articles of Incorporation
Exhibit A

Initial CDA District Boundaries

Tax Map Parcel Numbers

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<th>Acreage</th>
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Total Acreage: 4.98905 acres
Exhibit B

Proposed Articles of Incorporation

Articles of Incorporation
of
Ballston Quarter Community Development Authority

The undersigned, pursuant to Chapter 51, Title 15.2 of the Code of Virginia, adopts the following Articles of Incorporation for the Ballston Quarter Community Development Authority and states as follows:

Article I

Name

The name of this Authority is BALLSTON QUARTER COMMUNITY DEVELOPMENT AUTHORITY (the “Authority”).

Article II

Organization

Pursuant to an ordinance adopted by the County Board of Arlington County, Virginia (“County Board”) on July 16, 2016 (the “Ordinance”), the Authority shall be organized by Arlington County, Virginia (the “County”) under the Virginia Water and Waste Authorities Act (Chapter 51, Title 15.2 of the Code of Virginia of 1950, as amended) (the “Act”), as a public body corporate and politic and a political subdivision governed by the laws of the Commonwealth of Virginia.

Article III

Members

The affairs of the Authority shall be conducted by an authority board of a number of authority board members (“CDA Board”) equal to the number of members of the County Board. The initial CDA Board members are as set forth in Exhibit A attached hereto and incorporated by reference. As ordained by the County Board in accordance with the Act, the initial and all subsequent members of the CDA Board shall be the then-current members of the County Board. The initial members shall serve the terms of office set forth in Exhibit A hereto. The election of officers of the Authority shall be as set forth in the By-Laws of the Authority. Qualifications and appointment of members of the CDA Board shall be consistent with the requirements of the Act.
The CDA Board shall have the powers and duties set forth in the Act and in these Articles of Incorporation and the By-Laws, to the extent that such powers and duties are not inconsistent with the Act.

**Article IV**

**Principal Office**

The Authority’s initial principal office shall be c/o County Manager, Arlington County, Virginia, 2100 Clarendon Boulevard, Arlington, Virginia 22201. The Authority may conduct its business and maintain offices for such purposes at such other places within or without the County as may from time to time be deemed advisable by the CDA Board, and not in conflict with the requirements of the Act.

**Article V**

**Authority District**

The land initially encompassed within the Authority is set forth in Exhibit B attached hereto (the “Initial Authority District”) provided that the boundaries of the Initial Authority District (a) may be expanded by the County Board by subsequent ordinance upon petition filed pursuant to the Act and (b) may be adjusted by the County to exclude certain land as long as the owners of at least fifty-one percent (51%) of the land area or assessed value of land remaining in the CDA district after the adjustment originally petitioned for the creation of the CDA.

**Article VI**

**Purposes and Powers**

The Authority is organized for the purpose of exercising all powers granted by the Act, including financing, planning, acquiring and constructing the public infrastructure, facilities and services generally described in the Petition to create the Authority attached hereto as Exhibit C. The Authority shall have all powers granted to a “community development authority” under the Act.

**Article VII**

**Not-for-Profit**

The Authority shall not be organized or operated for pecuniary gain or profit. No part of the net earnings of the Authority shall inure to the benefit of, or be distributable to any member, director, officer, or any other private person, except that the Authority shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments in furtherance of the purposes set forth in Article VI.
Article VIII

Amendment of Articles

These Articles of Incorporation may be amended at any time and from time to time by the County Board as now or hereafter prescribed by the Act.

Article IX

Registered Office and Registered Agent

The address of the initial registered office of the Authority is Stephen A. MacIsaac, Arlington County Attorney, 2100 Clarendon Boulevard, Suite 403, Arlington, Virginia 22201. The initial Registered Agent of the Authority is Stephen A. MacIsaac, whose business address is identical to that of the initial registered office and who is a resident of Virginia and a member of the Virginia State Bar.

Article X

Initial Members

The names and addresses of the initial members of the CDA Board are as set forth on the attached and incorporated Exhibit A.

Article XI

Indemnification

(a) For purposes of this Article XI the following definitions shall apply:

(i) “expenses” include counsel fees, expert witness fees, and costs of investigation, litigation and appeal, as well as any amounts expended in asserting a claim for indemnification;

(ii) “liability” means the obligation to pay a judgment, settlement, penalty, fine, or other such obligation;

(iii) “legal entity” means a corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise; and

(iv) “proceeding” means any threatened, pending, or completed action, suit, proceeding or appeal whether civil, criminal, administrative or investigative and whether formal or informal.

(b) In every instance in which the Virginia Nonstock Corporation Act, as it exists on the date hereof or may hereafter be amended, permits the limitation or elimination of liability of
directors or officers of a corporation to the corporation, the members, directors and officers of the
Authority shall not be liable to the Authority.

(c) The Authority shall indemnify any individual who is, was or is threatened to be
made a party to a proceeding (including a proceeding by or in the right of the Authority) because
such individual is or was a member, director or officer of the Authority or because such individual
is or was serving the Authority or any other legal entity in any capacity at the request of the
Authority while a member, director or officer of the Authority, against all liabilities and reasonable
expenses incurred in the proceeding except such liabilities and expenses as are incurred because
of such individual’s willful misconduct or knowing violation of the criminal law. Service as a
member, director or officer of a legal entity controlled by the Authority shall be deemed service at
the request of the Authority. The determination that indemnification under this paragraph (c) is
permissible and the evaluation as to the reasonableness of expenses in a specific case shall be
made, in the case of a member or director, as provided by law, and in the case of an officer, as
provided in Section (d) of this Article; provided, however, that if a majority of the members of the
Authority has changed after the date of the alleged conduct giving rise to a claim for
indemnification, such determination and evaluation shall, at the option of the person claiming
indemnification, be made by special legal counsel agreed upon by the CDA Board and such person.
Unless a determination has been made that indemnification is not permissible, the Authority shall
make advances and reimbursements for expenses incurred by a member, director or officer in a
proceeding upon receipt of an undertaking from such member, director or officer to repay the same
if it is ultimately determined that such member, director or officer is not entitled to indemnification.
Such undertaking shall be an unlimited, unsecured general obligation of the member, director or
officer and shall be accepted without reference to such member’s, director’s or officer’s ability to
make repayment. The termination of a proceeding by judgment, order, settlement, conviction, or
upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that a
member, director or officer acted in such a manner as to make such member, director or officer
ineligible for indemnification. The Authority is authorized to contract in advance to indemnify
and make advances and reimbursements for expenses to any of its members, directors or officers
to the same extent provided in this paragraph (c).

(d) The Authority may, to a lesser extent or to the same extent that it is required to
provide indemnification and make advances and reimbursements for expenses to its members,
directors and officers pursuant to paragraph (c) of this Article, provide indemnification and make
advances and reimbursements for expenses to its employees and agents, the members, directors,
officers, employees and agents of its subsidiaries and predecessor entities, and any person serving
any other legal entity in any capacity at the request of the Authority, and may contract in advance
to do so. The determination that indemnification under this paragraph (d) is permissible, the
authorization of such indemnification and the evaluation as to the reasonableness of expenses in a
specific case shall be made as authorized from time to time by general or specific action of the
CDA Board, which action may be taken before or after a claim for indemnification is made, or as
otherwise provided by law. No person’s rights under paragraph (c) of this Article shall be limited
by the provisions of this paragraph (d).
(e) The rights of each person entitled to indemnification under this Article shall inure to the benefit of such person's heirs, executors and administrators. Special legal counsel selected to make determinations under this Article may be counsel for the Authority. Indemnification pursuant to this Article shall not be exclusive of any other right of indemnification to which any person may be entitled, including indemnification pursuant to a valid contract, indemnification by legal entities other than the Authority and indemnification under policies of insurance purchased and maintained by the Authority or others. However, no person shall be entitled to indemnification by the Authority to the extent such person is indemnified by another, including an insurer. The Authority is authorized to purchase and maintain insurance against any liability it may have under this Article or to protect any of the persons named above against any liability arising from their service to the Authority or any other legal entity at the request of the Authority regardless of the Authority's power to indemnify against such liability. The provisions of this Article shall not be deemed to preclude the Authority from entering into contracts otherwise permitted by law with any individuals or legal entities, including those named above. If any provision of this Article or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this Article, and to this end the provisions of this Article are severable.

(f) No amendment, modification or repeal of this Article shall diminish the rights provided hereunder to any person arising from conduct or events occurring before the adoption of such amendment, modification or repeal.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles of Incorporation as of the ____ day of ______, 2016, as duly authorized by Ordinance adopted by the County Board of Arlington County, Virginia on July 16, 2016.

By:_______________________________________

County Manager, Arlington County,
Virginia
## Exhibit A

### Names and Addresses of Initial Members

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<th>Terms of Office</th>
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<td>Libby Garvey</td>
<td>Commences: July 16, 2016</td>
<td>Arlington County Board 2100 Clarendon Blvd. Suite 300 Arlington, VA 22201</td>
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Exhibit B

Description of Initial Authority District

Tax Map Parcel Numbers

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<td>Ballston Acquisition Company, LLC</td>
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<td>FC Ballston Common, LLC</td>
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<tr>
<td>14059035</td>
<td>FC Ballston Common, LLC</td>
<td>3.05861</td>
</tr>
</tbody>
</table>

Total Acreage: 4.98905 acres
Exhibit C

Petition to Create Authority
PETITION PURSUANT TO VIRGINIA CODE SECTION 15.2-5153
FOR THE CREATION OF
THE BALLSTON QUARTER COMMUNITY DEVELOPMENT AUTHORITY
TO THE BOARD OF SUPERVISORS OF
THE COUNTY OF ARLINGTON, VIRGINIA

WHEREAS, the County Board (the "Board") of Arlington County, Virginia (the "County"), has elected to assume the power, pursuant to § 15.2-5152 of the Code of Virginia of 1950, as amended (the "Virginia Code"), to consider petitions for the creation of local community development authorities; and

WHEREAS, the undersigned (the "Petitioners") are the fee simple owners of certain real property located in the County of Arlington, Virginia (the "County"), more particularly shown on Exhibit A attached hereto and incorporated herein by this reference (collectively, the "Property"); and

WHEREAS, the Petitioners desire to develop and redevelop generally the Property and surrounding areas as a regional commercial, residential and retail center and to create new public space and enhance existing public space in and around the Property; and

WHEREAS, on November 17, 2015, the Board approved a Letter of Intent between the Board and the Petitioners, expressing the desire by the parties to enter into a public-private partnership that will facilitate the development and redevelopment of the Property; and

WHEREAS, pursuant to the provisions of such Letter of Intent, the Petitioners desire to join with the Board to create a mechanism for the funding of certain infrastructure improvements, facilities and services, as more specifically described herein, and that are necessary or desirable for development or redevelopment within or affecting the Property or to meet the increased demands placed on the County as a result of the development or redevelopment within or affecting the Property; and

WHEREAS, the Petitioners have determined that a community development authority (the "CDA") affords the best mechanism for providing such infrastructure improvements, facilities and services; and

WHEREAS, the provision of the proposed infrastructure improvements, facilities and services will facilitate the successful expansion of the County’s tax base through increased real property tax revenues, sales and use tax revenues and meals tax revenues from the expansion of the tax base contemplated within and around the proposed CDA district;

NOW, THEREFORE, the undersigned Petitioners, pursuant to Virginia Code § 15.2-5153, do hereby petition the Board to establish, by ordinance pursuant to Virginia Code § 15.2-5155, the CDA. In support of this Petition, the Petitioners state as follows:

1. **Petitioners and District.** The Petitioners are the fee simple owners of more than fifty-one percent (51%) of the land area proposed to be included within the geographic boundaries of the CDA (such real property to be located within the boundaries of the CDA is herein referred to collectively as the "CDA District"). Legal descriptions of the parcels to be
included within the CDA District are attached to this Petition as Exhibit A, and the tax map parcel numbers of the parcels to be included within the CDA District are attached to this Petition as Exhibit B, all of which are incorporated herein by this reference. All parcels within the CDA District are located exclusively within the County. The CDA District boundaries are shown on the map attached to this Petition as Exhibit C and incorporated herein by this reference, but (a) may be expanded by the Board by subsequent ordinance upon petition filed pursuant to the Virginia Code and (b) may be adjusted to exclude certain land as long as the owners of at least fifty-one percent (51%) of the land area or assessed value of land remaining in the CDA District after the adjustment petitioned for the creation of the CDA. The Petitioners request that the CDA be called the “Ballston Quarter Community Development Authority.”

2. **Description of Infrastructure, Facilities and Services.** The CDA shall be formed for the purposes of, among other things, acquiring, financing, designing, constructing, equipping and providing for the construction, installation, operation, maintenance (unless dedicated to and accepted by the appropriate governmental entity other than the CDA), enhancement, replacement, relocation and alteration of all or portions of the public infrastructure, facilities and services identified on Exhibit D, including, without limitation, (a) sanitary sewer mains and lines; (b) water mains and lines, pump stations and water storage facilities; (c) storm sewer mains and lines; (d) landscaping and related site improvements; (e) parking facilities; (f) sidewalks and walkway paths; (g) storm water management and retention systems (including best management practices, water quality devices and erosion and sediment control); (h) lighting (including street and decorative lights in public rights of way); (i) street and directional signage; (j) public park, plaza and recreational facilities; (k) new or enhanced public access and open space areas; (l) wetlands mitigation; (m) roads, curbs and gutters (inclusive of rights of ways and easements related thereto); and (n) any and all facilities and services appurtenant to the above (collectively, all such existing and new public roads, utilities, improvements, facilities and services, the “Infrastructure”). The CDA may contract for and incur all necessary expenses to accomplish the above and all related purposes, and all such operating expenses of the CDA, including, without limitation, administrative, underwriting, accounting, engineering and legal (collectively, the “Operation of the CDA”), may be included within the scope of any bonds issued by the CDA. The CDA may perform or cause to be performed all work necessary to accomplish these purposes, including, without limitation, right-of-way and easement acquisition, permitting, and/or relocation of existing utilities.

3. **Description of Provision and Financing of Infrastructure and Operation of the CDA.** The Infrastructure shall be constructed or acquired by, or on behalf of, the CDA or the County, and the costs thereof shall be paid for, or reimbursed by, the CDA or the County, upon availability of funding. As set forth in paragraph 2 above, the CDA may contract for all services required for the Operation of the CDA and the provision of the Infrastructure. The County and the CDA may contract with each other and with other parties necessary or desirable for the Operation of the CDA and the provision of the Infrastructure or services directly related to the Operation of the CDA.

The proposed plan for the Operation of the CDA and the provision of the Infrastructure within the CDA District is as follows:
(a) The Petitioners propose that the CDA request the Board to establish a special assessment upon taxable real property within the CDA District to finance all or a portion of the Infrastructure and the Operation of the CDA as provided in Virginia Code § 15.2-5158(A)(5) (the “Special Assessment”).

(b) The CDA may issue revenue bonds, in one or more series, in the maximum aggregate principal amount of $65 million, for (i) the Operation of the CDA, (ii) the provision of the Infrastructure or any portion thereof and (iii) the administrative and other authorized costs and expenses of issuing such bonds and performing the work necessary to provide the Infrastructure or any portion thereof. The bonds will be payable solely from revenues received by the CDA.

(c) Petitioners propose that the Board approve a plan to make certain advances of County funds to the CDA using certain incremental tax revenues generated by the development or redevelopment within and around the CDA District, and to finance a portion of the cost of the Infrastructure and the Operation of the CDA pursuant to the terms of a memorandum of understanding to be entered into by the County, the CDA and the Petitioners.

4. Expected Benefits from the Provision of Proposed Infrastructure and the Operation of the CDA. The provision of the Infrastructure and the Operation of the CDA will facilitate the County’s efforts to attract new business and economic development to the County in furtherance of the County’s business development and revitalization strategies. The Infrastructure and the Operation of the CDA are necessary or desirable for development or redevelopment within or affecting the CDA District or to meet the increased demands placed upon the County as a result of development or redevelopment within or affecting the CDA District. The development or redevelopment of the area within the CDA District, which will be enabled by the Infrastructure, will enhance the County’s tax base by increasing tax revenues and real property values of property within and around the CDA District.

5. Members of the CDA. The CDA shall have five members appointed by the Board pursuant to the terms of Virginia Code § 15.2-5113.

6. Duration/Abolition of the CDA. The CDA may be abolished at any time by appropriate action of the Board, provided that no such abolition shall occur while any CDA obligation remains outstanding. Furthermore, it is contemplated that the CDA shall continue to exist beyond the retirement of all of its obligations to the extent necessary and/or appropriate for the continued operation of the CDA.

7. Waiver. The Petitioners intend to provide waivers of the thirty (30) day period to withdraw their signatures from this Petition as provided in Virginia Code § 15.2-5156(B).

ACCORDINGLY, for the reasons above, and in reliance upon the assurances and covenants set out herein, the Petitioners respectfully request that the Board establish the Ballston Quarter Community Development Authority for the purposes set forth in this Petition.

[SIGNATURE PAGES FOLLOW]
IN WITNESS WHEREOF, the Petitioners have executed this Petition pursuant to due authority this 21st day of June, 2016.

FC Ballston Common, LLC,
a Delaware limited liability company

By: ____________________________
Name: William T. Ross
Title: Vice President

STATE OF OHIO
COUNTY OF CUYAHOGA

The undersigned Notary Public in and for the jurisdiction aforesaid hereby certifies that the foregoing instrument was acknowledged before me in the jurisdiction aforesaid by William T. Ross, Vice President, on behalf of FC Ballston Common, LLC.

Given under my hand this 21st day of June, 2016.

My commission expires: 4/23/2017

Notary Public

My registration number is: 2012-RE-412291
Ballston Acquisition Company, LLC,  
a Delaware limited liability company

By: ____________________________
Name: William T. Ross  
Title: Vice President

STATE OF OHIO

COUNTY OF CUYAHOGA

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Given under my hand this 21st day of June, 2016.

My commission expires: 4/23/2017

Notary Public

My registration number is: 2012-RE-412291
Exhibits:

Exhibit A – Parcel Descriptions in the CDA District
Exhibit B – Tax Map Parcel Numbers
Exhibit C – Map of CDA District
Exhibit D – Description of Proposed Infrastructure
EXHIBIT A

PARCEL DESCRIPTIONS IN THE CDA DISTRICT

[See attached descriptions prepared by VIKA Virginia LLC]
EXHIBIT A

February 23, 2016

Description Of
Parcel "A-1"
Ballston Acquisition Company, LLC
Deed Book 4721 Page 789
Arlington County, Virginia

Being all of Parcel "A-1" Ballston Acquisition Company, LLC recorded in Deed Book 4721 Page 789 among the Land Records of Arlington County, Virginia and being more particularly described as follows:

Beginning for the same at a point of curvature marking the intersection of the southerly right-of-way line of Wilson Boulevard and the westerly right-of-way line of North Randolph Street; thence with the westerly right-of-way line of North Randolph Street 22.16 feet along the arc of a curve to the right with a radius of 13.00 feet and a chord bearing and distance of South 40°50'16" East, 19.57 feet to a point of tangency; thence running with the westerly right-of-way line of North Randolph Street

1. South 07°59'41" West, 267.50 feet to a point; thence departing from North Randolph Street and running with the common property lines of Parcel "F-1A" as recorded in Deed Book 3430 at page 329 among the aforementioned Land Records the following (2) courses and distances

2. North 68°23'47" West, 151.91 feet to a point; thence

3. North 00°19'46" East, 224.73 feet to a point on the aforementioned southerly right-of-way line of Wilson Boulevard, thence

4. South 89°40'14" East, 164.35 feet to the point of beginning, containing 40,935 square feet or 0.93974 acres of land, more or less.
February 23, 2016

Description Of
Parcel “F-1A”
FC Ballston Common, LLC Property
Deed Book 3430 Page 329
Less and Except
Parcel “F-2”
Ballston Office center, LLC
Deed Book 3830 Page 363
Arlington County, Virginia

Being all of Parcel “F-1A” FC Ballston Common, LLC recorded in Deed Book 3430 Page 329 among the Land Records of Arlington County, Virginia and being more particularly described as follows:

Beginning for the same at a point on the westerly right-of-way line North Randolph Street said point being the southeastern most corner of Parcel “A-1” Ballston Acquisition Company, LLC as recorded in deed book 4721 at page 789, among the aforementioned land records; thence with the westerly right-of-way line of North Randolph Street South 07°59'45" West, 41.50 feet thence departing from North Randolph Street and running the following thirteen (13) courses and distances

1. North 68°23'47" West, 362.21 feet to a point; thence
2. South 21°36'13" West, 25.50 feet to a point; thence
3. North 68°23'47" West, 10.38 feet to a point; thence
4. South 21°36'13" West, 65.00 feet to a point; thence
5. North 68°23'47" East, 19.46 feet to a point; thence
6. South 21°36'13" West, 28.44 feet to a point; thence
7. North 68°23'47" West, 1.00 feet to a point; thence
8. North 21°36'13" East, 0.12 feet to a point; thence
9. North 21°36'00" West, 305.73 feet to a point; thence
10. North 00°19'47" West, 47.53 feet to a point on the southerly right-of-way line of Wilson

VIKA Virginia, LLC
8180 Greensboro Drive, Suite 200  Tyson Corner, Virginia 22102  703.442.7800  Fax 703.761.2787
Tyson Corner, VA  Germantown, MD  Washington, DC
www.vika.com
14. Boulevard thence running with the southerly right-of-way line of Wilson Boulevard the following (3) courses and distances

15. South 80°32'21" East, 132.74 feet to a point of curvature; thence

16. 188.20 feet along the arc of a curve to left with a radius of 1,180.88 feet and a chord bearing

17. and distance of South 85°06'17" East, 188.00 feet to a point of tangency; thence

18. South 89°40'14" East, 108.91 feet to a point; thence departing the southerly right-of-way line of

19. Wilson Boulevard and running contiguous with the westerly line of aforementioned Parcel "A-1"

20. the following two (2) courses and distances

21. South 00°19'46" West, 224.73 feet to a point; thence

22. South 68°23'47" East, 151.91 feet to the point of beginning containing 133,233 square feet or 3.05861 acres of land, more or less.

Less and Except
Parcel "F-2"
Ballston Office center, LLC
Deed Book 3830 Page 363
At Elevation 324.25 feet and Above
Arlington County, Virginia

Beginning for the same at a point marking the intersection of the southerly right-of-way line of Wilson Boulevard and the westerly right-of-way line of North Randolph Street, being a remote point of beginning; thence running with the follow three (3) courses and distances to the true point of beginning

1. North 89°40'14" West, 164.36 feet to a point; thence

2. South 00°19'46" West, 11.50 feet to a point; thence

3. North 89°40'14" West, 64.58 feet to the true point of beginning; thence

4. South 00°19'46" West, 6.50 feet to a point; thence

5. South 89°40'14" East, 6.50 feet to a point; thence

6. South 00°19'46" West, 88.00 feet to a point; thence

7. North 89°40'14" West, 6.50 feet to a point; thence

8. South 00°19'46" West, 6.50 feet to a point; thence
9. North 89°40'14" West, 213.00 feet to a point; thence
10. North 00°19'46" East, 6.50 feet to a point; thence
11. North 89°40'14" West, 5.50 feet to a point; thence
12. North 00°19'46" East, 88.00 feet to a point; thence
13. South 89°40'14" East, 6.50 feet to a point; thence
14. North 00°19'46" East, 6.50 feet to a point; thence
15. South 89°40'14" East, 213.00 feet to the point of beginning containing 22,657 square feet or 0.52013 acres of land, more or less.
EXHIBIT A

February 23, 2016

Description Of
Parcel "F-1B"
FC Ballston Common, LLC Property
Deed Book 3430 Page 329
At Elevation 351.00 feet and Below
Arlington County, Virginia

Being all of Parcel "F-1B" FC Ballston Common, LLC recorded in Deed Book 3430 Page 329 among the Land Records of Arlington County, Virginia having a vertical upper limit of elevation 351.00 and no vertical lower limit and being more particularly described as follows:

Beginning for the same at a point on the northerly right-of-way line North Glebe Road said point being the southeasterly corner of Parcel "C-1A", recorded in deed book 4718 at page 443, among the aforementioned Land Records; thence with a common property line of said Parcel "C-1A"

1. North 21°36'00" East, 93.25 feet to a point marking the southeasterly most corner of Parcel "F-1A" as recorded in Deed Book 2912 at Page 212 among the aforementioned Land Records; thence

2. South 89°40'29" East, 272.65 feet to a point; thence

3. South 21°36'13" West, 137.88 feet to a point of curvature (non-tangent); thence

4. 43.05 feet along the arc of a curve to the left with a radius of 105.50 feet and a chord bearing and distance of South 57°01'29" West, 42.75 feet to a point; thence

5. South 45°20'09" West, 100.01 feet to a point, on the aforementioned North Glebe Road thence running with the northerly right-of-way line of North Glebe Road

6. North 47°31'28" West, 202.30 feet to the point of beginning containing 43,155 square feet or 0.99070 acres of land, more or less.
EXHIBIT B

TAX MAP PARCEL NUMBERS

Parcel F-1B – RPC #14059036
Parcel A-1 – RPC #14059028
Parcel F-1A – RPC #14059035
MAP OF CDA DISTRICT

[See Attached]
DESCRIPTION OF PROPOSED INFRASTRUCTURE TO BE FUNDED BY CDA
REVENUE BONDS AND OTHER FUNDS

Site Improvements
- Wilson Blvd Streetscapes/Narrowing
- Wilson & Randolph Streetscapes
- Glebe Road Streetscapes

Horizontal Improvements
- West Entrance: Open up the Building Façade
- West Entrance: Create Sunken Plaza to Concourse Level
- Center Corridor: Create Exterior Plaza/Mews
- East Entrance: Create New Courtyard

Interior/Exterior Access Easements

Vertical Improvements
- Remodel the Wilson Street Façade
- West Entrance: Open up the Building Façade
- East Entrance: New Façade
- Center Corridor: Create Exterior Plaza/Mews
- East Entrance: Create New Courtyard

Garage Improvements
- Garage Entrance from Residential Plaza/Mews
- Garage Elevator Lobby Improvements & Elevator Refurbishments
- Glebe Road Bridge Façade/Garage Façade Upgrades
- Garage Wayfinding & Traffic Control

Other Improvements
- Ice Rink Connection/Mall & Vertical Circulation Improvements @ Blade
- Wilson Rd. Bridge Demolition & Reconstruction

Such other eligible uses of funds in connection with the development of a regional commercial, residential and retail center that meet the requirements of the Virginia Code and are approved by the County

Total Estimated Cost* $53.3 Million

* Includes estimates for related architectural, engineering, contingency and development fees.