



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of November 13, 2007
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DATE: October 22, 2007

SUBJECT: Approval of a Sublease Agreement between The County Board of Arlington County, Virginia, as Tenant, and Ellipse Fine Crafts, LLC, as Subtenant, to Occupy and Use a Portion of Store No. 2176 at Ballston Common Mall, 4238 Wilson Boulevard (RPC #14059035).

C. M. RECOMMENDATIONS:

1. Approve the attached Sublease Agreement between The County Board of Arlington County, Virginia, as Tenant (“County”) and Ellipse Fine Crafts, LLC, as Subtenant (“Ellipse”), to occupy and use a portion of Store No. 2176 of the Ballston Common Mall (“Mall”), 4238 Wilson Boulevard (RPC #14059035) (“Subleased Premises”).
2. Authorize the Real Estate Bureau Chief, or his designee, to execute on behalf of the County Board, the Sublease and all related documents, subject to approval as to form by the County Attorney.

ISSUE: None.

SUMMARY: Ellipse is an organization that operates a cooperative retail outlet for the sale of fine contemporary crafts and prints produced by local artists. Ellipse will share a small portion of the retail space being used by the Woodmont Weavers program (“Weavers”) administered by Saint Coletta of Greater Washington, Inc. (“Saint Coletta”). Following County Board approval and proper execution of the Sublease Agreement (“Sublease”), Ellipse would sublet a portion of the Subleased Premises and pay rent to the County, beginning November 15, 2007, continuing for consecutive one-year sublease terms, and expiring at 12:00 midnight thirty (30) days after the County provides written notice to Ellipse of termination, but in no case later than October 31, 2010. Ellipse would lease 250 square feet, more or less, of retail space known as Store No. 2176, located on the 2nd floor of Ballston Common Mall, 4238 Wilson Boulevard, Arlington, Virginia (as shown in the Floor Plan attached hereto as Exhibit B and the Vicinity Map attached hereto as Exhibit C), beginning November 15, 2007, until expiration of the term on October 31, 2010.

BACKGROUND: Until 2005, the art cooperative was run by the County Cultural Affairs Division. When the County discontinued the program, Ellipse was taken over as an independent limited liability company, but continues to be run as a cooperative.

County Manager: _____
County Attorney: _____
Staff: Betsy Herbst, Real Estate Bureau, DES

Before the Weavers had their own location, Ellipse sold Weaver's products in their shop. When the Weavers and Ellipse were both notified that their respective leases in Ballston Common Mall were not being renewed, they considered combining spaces to benefit both organizations.

Beginning November 1, 2007, the Woodmont Weavers Program is being relocated to a new, larger retail space on the 2nd floor of the Mall known as Store No. 2176. At the October 13, 2007 County Board meeting, the County Board approved the Lease for the County's right to rent Store 2176 on the second floor of the Ballston Common Mall, with a Sublease to Saint Coletta in order to administer the Woodmont Weavers Program. Ellipse will share a small portion of the premises with the Weavers to operate a cooperative retail outlet for the sale of fine contemporary crafts and prints by local artists, including weaving products made by the Weavers. Ellipse will remain open after the Weaver's usual business hours, allowing for additional sales of Weaver's products and exposure of the Weaver's program.

DISCUSSION: The Sublease, attached hereto as Exhibit A, has been structured to allow Ellipse to use 250 square feet of Store No. 2176 located within the Ballston Common Mall at 4238 Wilson Boulevard in payment of market rent. The Sublease allows Ellipse to sublease this space from the County for the purpose of providing Ellipse with a location to sell crafts and prints created by local artists. Some of the pertinent provisions of the Sublease are as follows:

- The Sublease is effective on November 15, 2007 for consecutive terms of one year, and shall expire at midnight thirty (30) days after the County serves notice to terminate the Sublease, but in any case, no later than October 31, 2010.
- Upon commencement of the Sublease, Ellipse will pay \$6,000.00 annual base rent, payable in monthly installments of \$500.00 on the 15th day of each month during the term, which includes a prorated portion of the real estate taxes and utility bills. The rent is subject to a 5% annual increase, effective each November 15th.
- The space will be used from Monday through Sunday during the hours of 4 p.m. to 10 p.m., including holidays in which Ballston Common Mall remains open.

FISCAL IMPACT: If approved, the Sublease with Ellipse will provide approximately \$4,000 in revenue to the County for the remainder of FY 2008. The revenue will be used to reduce the Department of Human Services net tax support.

**EXHIBIT A TO BOARD REPORT
SUBLEASE AGREEMENT**

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT ("Sublease"), made and entered into as of the ____ day of _____, 2007, by and between THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body politic, interchangeably ("County") or ("Tenant") and ELLIPSE FINE CRAFTS, LLC, a Virginia limited liability corporation ("Ellipse" or "Subtenant").

WITNESSETH:

WHEREAS, the County entered into a Deed of Lease, dated October 16, 2007, attached hereto and incorporated herein as Exhibit A ("Lease"), with FC Ballston Common, LLC, a Delaware limited company authorized to do business in the Commonwealth of Virginia ("Owner") or ("Landlord") for certain premises in the building known as the Ballston Common Mall and Office Center, 4238 Wilson Boulevard, Arlington, Virginia 22203 ("Ballston Common Mall"), including retail space, work space and other rooms consisting of 3,119 square feet of space on the second floor of the Ballston Common Mall, Store 2176 ("Premises");

WHEREAS, the County entered into a Sublease Agreement for the Woodmont Weavers Program, dated October 16, 2007, attached hereto and incorporated herein as Exhibit B ("Woodmont Weavers Sublease"), with Saint Coletta of Greater Washington, Inc. ("Saint Coletta"), to use Store 2176 on a non-exclusive basis;

WHEREAS, Ellipse is an organization that operates a cooperative retail outlet for the sale of fine contemporary crafts and prints by local artists; and

WHEREAS, pursuant to the Lease, the County is permitted to sublease the Premises to others, and by the Lease, Landlord has granted permission for the County to sublet the Premises to others; and

WHEREAS, Tenant wishes to sublease a portion of the Premises to Ellipse, during such times as designated herein, and Subtenant agrees to exercise this permission to use a portion of the Premises in strict accordance with the Lease and this Sublease.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1. Premises.** The Tenant hereby subleases to the Subtenant, on a non-exclusive basis, a portion of certain premises in the building known as the Ballston Common Mall and Office Center, 4238 Wilson Boulevard, Arlington, Virginia 22203 ("Ballston Common Mall"), for retail space as shown on Exhibit C - Floor Plan, consisting of 250 square feet of space on the second floor of the Ballston Common Mall, within Store 2176 ("Subleased Premises").
- 2. Term.** The term of this Sublease ("Sublease Term") for the Subleased Premises shall commence on November 15, 2007 ("Commencement Date"), and continue for three consecutive one-year Sublease Terms ("Subsequent Terms"), but in any event, shall expire at 11:59 p.m. on October 31, 2010 ("Expiration Date"). Notwithstanding anything contained herein to the contrary, Tenant shall have the right to terminate this Sublease at any time upon giving at least thirty (30) days prior written notice to the other party. Upon the expiration or termination of the Sublease, Subtenant shall, at Subtenant's sole cost and expense, remove its property from the Subleased Premises and surrender the Subleased Premises in good order and condition, ordinary wear and tear and damage by fire and other unavoidable casualty excepted.
- 3. Base Rent.** Subtenant shall pay to Tenant base rent for the Subleased Premises in the amount of SIX THOUSAND AND 00/100 DOLLARS (\$6,000.00) per annum, payable in advance, without deduction or demand, on the fifteenth (15th) day of each month during the Subleased Term, in twelve equal installments of FIVE HUNDRED AND 00/100 DOLLARS (\$500.00) ("Base Rent"). The payment shall be made by check, payable to the Treasurer of Arlington County, Virginia, and delivered to the following address: Arlington County, Virginia, Department of Environmental Services, Engineering and Capital Projects Division, 2100 Clarendon Boulevard, Suite 900, Arlington, Virginia 22201, Attention: Real Estate Bureau, or to Landlord at such other place as Tenant may from time to time designate in writing.

If the Sublease is renewed for Subsequent Terms, commencing on the first anniversary of the Commencement Date, and continuing cumulatively on every anniversary of the Commencement Date throughout the Subsequent Terms of this Sublease, Annual Rent shall increase by five percent (5%) per annum.

Lease Year	Annual Rent	Base Rent
Year 1: 11/15/07-11/14/08	\$6,000.00	\$500.00
Year 2: 11/15/08-11/14/09	6,300.00	525.00
Year 3: 11/15/09-10/31/10	6,615.00	551.25

4. Delinquent Rent Charges. All Base Rent, and other monetary obligations of the Subtenant arising pursuant to this Sublease, not paid within ten (10) days of the date due under this Sublease shall (a) accrue interest thereafter at a rate of ten percent (10%) per annum, or the maximum rate then allowed by applicable law, whichever is less, on the unpaid balance until said balance is paid in full; and (b) incur a late payment charge equal to five percent (5%) of the amount due.

No payment by Subtenant or receipt and acceptance by Tenant of a lesser amount than the full amount then due and payable to Tenant for Base Rent or other payments to Tenant required pursuant to this Sublease shall be deemed to be other than part payment of the full amount then due and payable. No endorsement or statement on any check or any letter accompanying any check, payment of Base Rent or other payment, shall be deemed an accord and satisfaction. Tenant may accept such part payment without prejudice to Tenant's right to recover the balance due and payable or pursue any other remedy in this Sublease.

5. Utilities. Tenant shall supply water, sewerage and electricity to the Subleased Premises at no additional cost to Subtenant.

6. Use of Subleased Premises. Subtenant warrants and covenants that it, its employees, and agents shall use the Subleased Premises for retail sales and shall only use the Subleased Premises consistent with and as specifically provided in the Lease (see Exhibit A) and this Sublease Agreement. The Subtenant shall be permitted to use the Subleased Premises every day, Monday through Sunday, including such holidays that Ballston Common Mall is open for business, between the hours of 4:00 p.m. and 10:00 p.m. It is expected, and the Subtenant hereby agrees, that during a portion of such times, Saint Coletta also may be using the Subleased Premises. Subtenant shall ensure that the Subleased Premises is locked and secure upon leaving every day that Subtenant uses the Subleased Premises. Subtenant agrees to comply with all applicable provisions of the Lease, and shall not do anything that would constitute a violation of any part or condition of the Lease, including, but not limited to, making alterations or improvements to the buildings without the prior consent of Tenant and Landlord.

7. Custodial Services. Arlington County Department of Environmental Services (“DES”) shall provide custodial services. Subtenant shall report custodial issues such as custodial staff not arriving at agreed upon time to perform the cleaning services, bathrooms not cleaned or not having paper goods in them, trash cans not emptied, tile floors not moped, interior glass not cleaned, carpets not vacuumed, to the Trades Program Supervisor of DES at 703-228-4451.

8. Maintenance and Repairs. Subtenant shall review Section 9 of the Lease, and Subtenant shall immediately report general maintenance problems and repairs to Landlord at 703-243-6346.

9. Lease Agreement. Except as otherwise provided in this Sublease, the Subleased Premises are leased subject to and with the benefit of all of the provisions of the Lease, except for any renewal privileges, and all of the terms, conditions, and covenants of the Lease are hereby incorporated herein by reference and made a part hereof, including, but not limited to, the obligations to keep the Subleased Premises in good repair, order and condition, and to maintain insurance.

10. Subletting. The Subtenant shall not assign, transfer, or further sublet the Subleased Premises or any part thereof without the prior written consent of Tenant and Landlord. However, the Tenant may sublease to others the Subleased Premises, or any portion thereof.

11. Indemnification and Hold Harmless. The Subtenant shall indemnify and hold harmless the Tenant, its elected and appointed officers, officials, employees and agents against any claims, damages, losses or liabilities (including reasonable attorney’s fees) incurred by such entity and persons arising from any failure or breach by the Subtenant of any of the obligations, representations and warranties of this Sublease, including the applicable provisions of the Lease.

12. Insurance. During the Sublease Term and Subsequent Terms, Subtenant shall carry and maintain worker’s compensation insurance and employer’s liability insurance as required by the jurisdiction in which the Shopping Center is located and commercial general liability insurance providing on an occurrence basis a minimum combined single

limit of at least \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate. Subtenant shall include Tenant, its elected and appointed officials, officers, employees and agents, and Landlord, as additional insureds on all policies of insurance. Prior to the beginning of the Sublease Term and each continuing term thereafter, Subtenant shall provide Tenant with evidence of such insurance.

13. Termination. This Sublease may be terminated for any reason by Tenant, without liability or cost to the Tenant, and without any further obligation whatsoever of Tenant to the Subtenant, upon thirty (30) days prior written notice from the Tenant to Subtenant. In addition, this Sublease shall automatically, immediately, terminate upon the expiration, termination or cancellation of the Lease. Upon the expiration, termination, or cancellation of the Lease or this Sublease, all obligations hereunder of the parties hereto shall be extinguished. Upon termination of this Sublease, this Sublease shall not be renewed by Tenant if the Subleased Premises or any portion thereof is required for any of the purposes mentioned in Virginia Code §15.2-1639 or any successor Code provisions. Any improvements remaining on the Subleased Premises upon expiration termination or cancellation shall revert to the Tenant and shall be free of any encumbrance at the time of such reversion.

14. Appropriation of Funds. All obligations of Tenant under the Sublease are subject to the appropriation of funds by the County Board of Arlington County, Virginia for the specific purpose of satisfying any payment and other obligations of Tenant under this Sublease.

15. Notices. Except as otherwise specifically provided herein, any notice required or permitted to be given under this Sublease shall be given in writing and shall be deemed given

(A) on the delivery date, as certified by Airborne Express or Federal Express or UPS; or

(B) delivered by hand, in any case addressed to the parties as follows:

To Tenant: County Manager
Arlington County, Virginia
2100 Clarendon Blvd., Suite 302
Arlington, Virginia 22201

with a copy to: Real Estate Bureau Chief
Arlington County, Virginia
Department of Environmental Services
2100 Clarendon Blvd., Suite 900
Arlington, Virginia 22201

with a copy to: Arlington County, Virginia
Department of Human Services
Mental Retardation/Developmental Disabilities Services
3033 Wilson Boulevard, Suite 700B
Arlington, Virginia 22201
Attn: Coordinator

To Subtenant: Ellipse Fine Crafts, LLC
232 N. Greenbrier Street
Arlington, VA 22203
Attn: Executive Director

or to other persons or entities as may be provided by Tenant or Subtenant, in writing and in accordance with this paragraph.

16. Applicable Law. This Sublease shall be construed, interpreted, and governed by the laws of the Commonwealth of Virginia.

17. Binding Agreement. This Sublease shall not be valid and binding on Subtenant and Tenant unless and until it has been completely executed by and delivered to both parties.

18. Recitals. The recitals are incorporated into this Sublease.

IN WITNESS WHEREOF, the undersigned parties have duly executed this Sublease as of the day and year first above written.

TENANT:

THE COUNTY BOARD OF ARLINGTON COUNTY,
VIRGINIA
a body politic

Witness: _____

By: _____

Print Name: _____

Title: _____

Date: _____

SUBTENANT:

ELLIPSE FINE CRAFTS, LLC,
a Virginia limited liability company

Witness: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

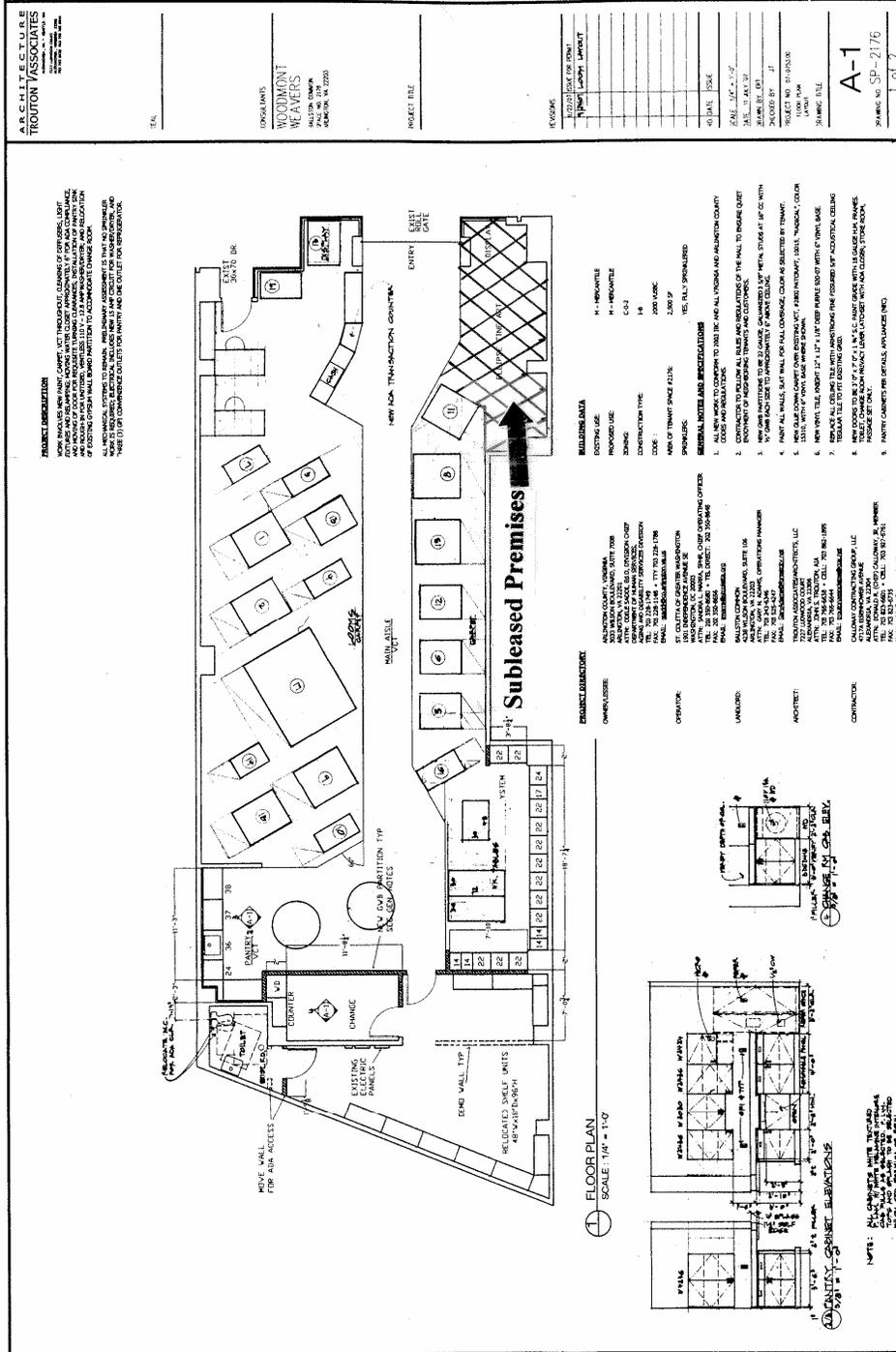
Approved as to form:

County Attorney

**EXHIBIT A
DEED OF LEASE**

EXHIBIT B
WOODMONT WEAVERS SUBLEASE

EXHIBIT C FLOOR PLAN FOR SUBLEASED PREMISES- STORE 2176



ARCHITECTURE
TROUTON ASSOCIATES
1000 W. BROADWAY
SUITE 200
ANN ARBOR, MI 48106
TEL: 734.769.1234
FAX: 734.769.1235

TITLE

CONSULTANTS
**WOODMONT
WEAVERS**
HALLIDAY COMPANY
1000 W. BROADWAY
SUITE 200
ANN ARBOR, MI 48106

PROJECT FILE

REVISIONS	
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PROJECT DESCRIPTION
THIS FLOOR PLAN IS THE PROPERTY OF TROUTON ASSOCIATES, INC. AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF TROUTON ASSOCIATES, INC. THE CLIENT HAS AGREED TO HOLD TROUTON ASSOCIATES, INC. HARMLESS FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, THAT MAY BE ASSERTED AGAINST TROUTON ASSOCIATES, INC. BY ANY THIRD PARTY AS A RESULT OF THE CLIENT'S USE OF THIS FLOOR PLAN FOR ANY PURPOSES OTHER THAN THOSE INTENDED BY TROUTON ASSOCIATES, INC. THE CLIENT HAS AGREED TO HOLD TROUTON ASSOCIATES, INC. HARMLESS FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, THAT MAY BE ASSERTED AGAINST TROUTON ASSOCIATES, INC. BY ANY THIRD PARTY AS A RESULT OF THE CLIENT'S USE OF THIS FLOOR PLAN FOR ANY PURPOSES OTHER THAN THOSE INTENDED BY TROUTON ASSOCIATES, INC.

GENERAL NOTES AND SPECIFICATIONS

- ALL WORK TO COMPLY TO THE IBC AND ALL LOCAL AND NATIONAL CODES AND REGULATIONS.
- CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE IBC AND ALL LOCAL AND NATIONAL CODES AND REGULATIONS.
- NEW WORK SHALL BE TO BE 3/4" THICK GALVANIZED STEEL STUDS AT 16" OC WITH 1/2" THICK GYPSUM BOARD TO BE PERMITTED BY LOCAL CODES.
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PROJECT INFORMATION

OWNER: WOODMONT WEAVERS, HALLIDAY COMPANY, 1000 W. BROADWAY, SUITE 200, ANN ARBOR, MI 48106, TEL: 734.769.1234, FAX: 734.769.1235

OPERATOR: WOODMONT WEAVERS, HALLIDAY COMPANY, 1000 W. BROADWAY, SUITE 200, ANN ARBOR, MI 48106, TEL: 734.769.1234, FAX: 734.769.1235

LANDSCAPE: WOODMONT WEAVERS, HALLIDAY COMPANY, 1000 W. BROADWAY, SUITE 200, ANN ARBOR, MI 48106, TEL: 734.769.1234, FAX: 734.769.1235

ARCHITECT: TROUTON ASSOCIATES, INC., 1000 W. BROADWAY, SUITE 200, ANN ARBOR, MI 48106, TEL: 734.769.1234, FAX: 734.769.1235

CONTRACTOR: WOODMONT WEAVERS, HALLIDAY COMPANY, 1000 W. BROADWAY, SUITE 200, ANN ARBOR, MI 48106, TEL: 734.769.1234, FAX: 734.769.1235

REVISIONS

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NOTES: ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED. ALL WORK SHALL BE TO BE IN ACCORDANCE WITH THE IBC AND ALL LOCAL AND NATIONAL CODES AND REGULATIONS. THE CLIENT HAS AGREED TO HOLD TROUTON ASSOCIATES, INC. HARMLESS FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, THAT MAY BE ASSERTED AGAINST TROUTON ASSOCIATES, INC. BY ANY THIRD PARTY AS A RESULT OF THE CLIENT'S USE OF THIS FLOOR PLAN FOR ANY PURPOSES OTHER THAN THOSE INTENDED BY TROUTON ASSOCIATES, INC.

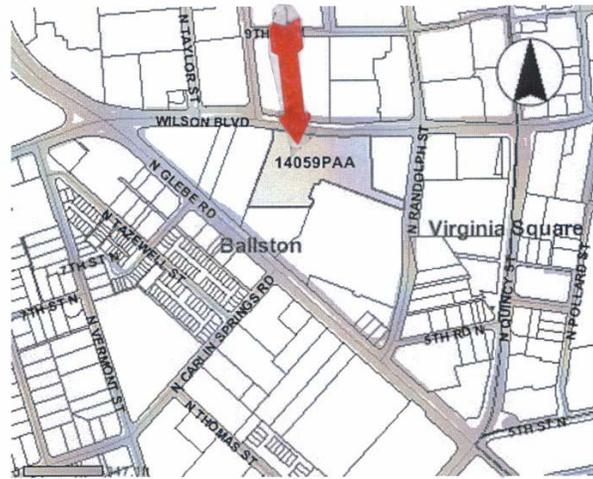
SCALE: 1/4" = 1'-0"

DATE: 10/15/2010

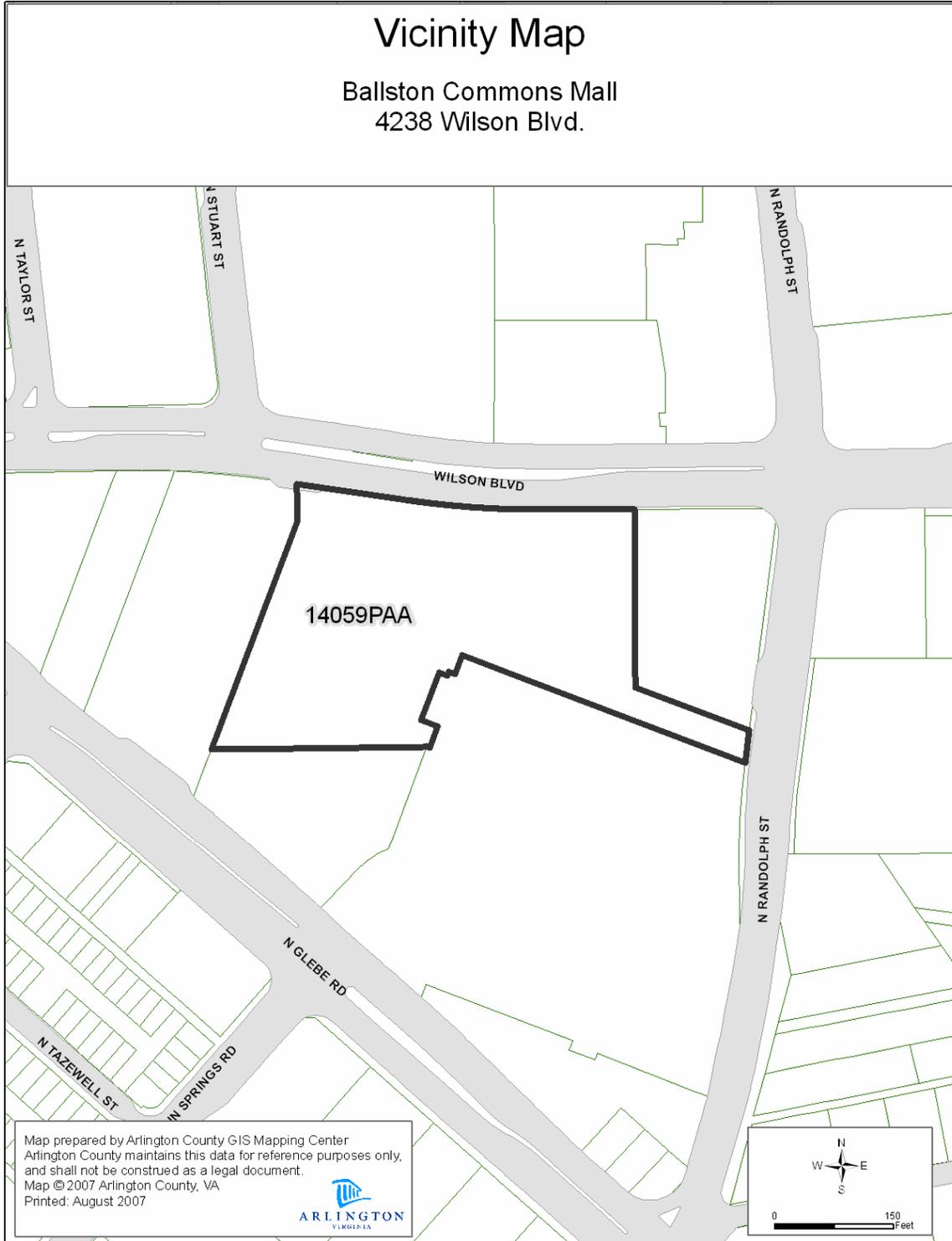
BY: [Signature]

CHECKED: [Signature]

ATTACHMENT 1
Vicinity Map
Ballston Common Mall
4238 Wilson Boulevard



**EXHIBIT C TO BOARD REPORT
VICINITY MAP**



Map prepared by Arlington County GIS Mapping Center
Arlington County maintains this data for reference purposes only,
and shall not be construed as a legal document.
Map © 2007 Arlington County, VA
Printed: August 2007

