ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item
Meeting of July 10, 2010

DATE: June 21, 2010

SUBJECT:

Approval of: (1) a Letter of Notification from The County Board of Arlington County, Virginia, as Tenant, to FC Ballston Common, LLC, as Landlord, Exercising the County's Option to Extend the Lease Term under a Deed of Lease; (2) a First Amendment to Sublease Agreement between The County Board of Arlington County, Virginia, as Tenant, and Saint Coletta of Greater Washington, Inc., as Subtenant; and (3) a First Amendment to Sublease Agreement between The County Board of Arlington County, Virginia, as Tenant, and Ellipse Fine Crafts, LLC, as Subtenant, all Concerning Modification of Terms of such Subleases, and the Extension of the Lease Term for the County to Occupy Store No. 2176 at Ballston Common Mall, 4238 Wilson Boulevard, Arlington, Virginia (RPC #14059035).

C. M. RECOMMENDATIONS:

A. Approve the attached: (1) letter of notification from The County Board of Arlington County, Virginia, as Tenant, to FC Ballston Common, LLC, as Landlord, exercising the County's option to extend the lease term under a Deed of Lease; (2) a First Amendment to Sublease Agreement between The County Board of Arlington County, Virginia, as Tenant, and Saint Coletta of Greater Washington, Inc., as Subtenant; and (3) a First Amendment to Sublease Agreement between The County Board of Arlington County, Virginia, as Tenant, and Ellipse Fine Crafts, LLC, as Subtenant, all concerning modification of terms of such subleases, and the extension of the lease term for the County to occupy Store No. 2176 at Ballston Common Mall, 4238 Wilson Boulevard, Arlington, Virginia (RPC #14059035).

B. Authorize the Real Estate Bureau Chief, or his designee, to execute on behalf of the County Board the above referenced letter of notification and two First Amendments, subject to approval of such documents as to form by the County Attorney.

County Manager: MBonna

County Attorney: [illegible]

Staff: Betsy Herbst, DES Real Estate Bureau

Report Date: 6/21/2010

31.

ISSUE: In order to extend the term of the County's lease at Ballston Common Mall (the "Lease") with FC Ballston Common, LLC, and extend the term and modify other terms of the County's subleases with Saint Coletta of Greater Washington, Inc. ("Saint Coletta") and Ellipse Fine Crafts, LLC ("Ellipse"), the County Board is being requested to take various actions. These are to approve and authorize the execution of a letter of notification to FC Ballston Common, LLC exercising the County's option to renew under the Lease, and to approve and authorize the execution of First Amendments to Sublease Agreement with Saint Coletta (the"Saint Coletta Sublease") and Ellipse Fine Crafts (the "Ellipse Sublease"), to extend the sublease terms, respectively, for one year and to adjust the monthly rent with Ellipse.

SUMMARY: Upon County Board approval and execution of the letter of notification to FC Ballston Common, LLC exercising the County's option to renew ("Extension Letter"), the County's lease for retail space consisting of 3,119 square feet, more or less, Store No. 2176, located on the 2nd floor of Ballston Common Mall, 4238 Wilson Boulevard, Arlington, Virginia ("Premises"), would be extended for an additional year beginning November 1, 2010. The County would continue to pay rent until expiration of the Lease term on October 31, 2011. The County has a second option to extend the Lease for an additional year at the end of the first extended Lease term.

Similarly, following County Board approval and execution of the First Amendment to the Saint Coletta Sublease and the First Amendment to the Ellipse Sublease (collectively, the "Amendments"), Saint Coletta would continue to sublet the Premises and pay rent to the County, for an additional year beginning November 1, 2010 and expiring on October 31, 2011. Saint Coletta uses the Premises to operate the "Woodmont Weavers" program for persons with development disabilities. Ellipse uses a portion of the Premises during specified hours to sell arts and crafts created by local artists from the community.

BACKGROUND: Originally, County staff operated the Woodmont Weavers Program on the County's real property located at 2422 N. Fillmore St. In September 2002, the County and Ballston Common Associates entered into a License Agreement that granted permission for the County to use Store No. 3072 at Ballston Common Mall for a nominal fee. The program was relocated to Ballston Common Mall in January 2003 to increase visibility, and to enable the program to more fully involve and integrate the community. (See Vicinity Maps attached hereto as Attachments 1 and 2).

The County's Department of Human Services ("DHS") selected Saint Coletta to operate the Woodmont Weavers Program in 2004. Saint Coletta's staff has many years of experience working with persons with developmental disabilities.

In 2007, the Woodmont Weavers Program was relocated to Store 2176 in order to provide larger retail space. On October 13, 2007, the County Board approved the Lease for Store No. 2176 with FC Ballston Common, LLC, and the Saint Coletta Sublease, for an initial term of three (3) years. The Lease contains an option to renew under the same terms and conditions for two additional one-year terms upon at least 90 days prior written notice from the County to the Landlord of the County's intent to renew the Lease term.

The Saint Coletta Sublease does not contain an option to renew, so it is necessary that the County enter into a new agreement to extend the term of the Saint Coletta Sublease.

On November 13, 2007, the County Board also approved the Ellipse Sublease for an initial term of three (3) years for it to use a portion of the Premises during specified hours, generally during times of the day when the Woodmont Weavers program was not in operation. The Ellipse Sublease also does not contain an option to renew, so a new agreement is necessary to extend the term of the Ellipse Sublease.

DISCUSSION: The Extension Letter, attached as Exhibit A, will provide notice to the Landlord that the County is exercising its option to renew the Lease under the same terms and conditions, including a provision that allows for an annual escalation of the fixed minimum rent. The fixed minimum rent currently being paid by the County is in the amount of $ 64,906.39 annually or $5,408.87 per month. Beginning on November 1, 2010, under the escalation clause in the Lease, the new fixed minimum rent will be $66,216.37 annually or $5,518.03 per month. In addition, the County will continue to pay additional rent as required under the Lease to cover expenses for utilities and taxes. In FY 2010, the additional rent for reimbursement to the Landlord for real estate taxes, electricity, HVAC and water was in the amount of $21,831.87.

The Saint Coletta Sublease Amendment, attached as Exhibit B, extends the term of the original Saint Coletta Sublease for one additional year, beginning November 1, 2010 and ending at 11:59 p.m. on October 31, 2011. All other terms of the original Saint Coletta Sublease will remain the same, including the payment of nominal rent for the purpose of administering the Woodmont Weavers Program in the Premises.

In accordance with §15.2-953.B. of the Code of Virginia, 1950, as amended, localities may donate real or personal property, or money, to nonprofit recreational associations or organizations provided that the recreational association is not associated in whole or in part by any church or sectarian society. Saint Coletta is a non-sectarian, non-profit organization that operates school and adult day programs for children and adults with mental retardation and autism.

The Ellipse Sublease Amendment, attached as Exhibit C, extends the term of the original Ellipse Sublease for one additional year, beginning November 1, 2010 and expiring on October 31, 2011, and reduces the monthly base rent to be paid by Ellipse to the County by $100 per month. This slight reduction of rent was requested by Ellipse to help them to continue to operate the business in light of reduced sales and increased operating expenses. In considering this request, County staff has determined that Ellipse fulfills the function, as required under the County's Lease with FC Ballston, LLC, of keeping the store open during the hours when the mall is open. Without the presence of the Ellipse staff during these extended hours, the County would be in violation of the terms of the underlying lease because the Woodmont Weavers Program is completed by late afternoon.

Under the terms of the Ellipse Amendment, Ellipse will pay rent in the amount of five thousand four hundred fifteen dollars ($5,415.00) per annum or four hundred fifty-one and 25/100 ($451.25) per month, which reflects a reduction in rent of $100 per month from the amount currently being paid.

FISCAL IMPACT: The expenses to be paid by the County to the Landlord for rent and reimbursable real estate taxes, as required under the terms of the Lease, will be funded from the Intellectual and Developmental Vocational Services Fund (101.436183.53203.MRVO.0000.M425); the expenses for electric and HVAC will be funded from 101.432100.53203.MRVO.0000.M425; and the expenses for water will be paid from 101.432300.53203.MRVO.0000.M425. The revenue collected from Ellipse under the Ellipse Amendment will be used to reduce the Department of Human Services net tax support.

CONCLUSION: It is recommended that the County Board approve: (i) the Extension Letter to FC Ballston Common, LLC; (ii) the attached First Amendment to Sublease Agreement with Saint Coletta; and (iii) the attached First Amendment to Sublease Agreement with Ellipse, all as set forth in Exhibits A, B, and C hereto.

EXHIBIT A
EXTENSION LETTER

ARLINGTON
VIRGINIA

DEPARTMENT OF ENVIRONMENTAL SERVICES
Engineering and Capital Projects Division, Real Estate Bureau
2100 Clarendon Boulevard Suite 800 Arlington, VA 22201
TEL 703.228.3836 FAX 703.228 3789 bherbst@arlingtonva us

July , 2010

VIA Certified Mail

FC Ballston Common, LLC
Terminal Tower
50 Public Square
Suite 1360
Cleveland, Ohio 44113-2267

Mr. John J. Moore
Vice President & General Manager
Ballston Common Mall and Office Center
4238 Wilson Boulevard
Suite 106
Arlington, Virginia 22203

Re: Deed of Lease dated October 17, 2007, between FC Ballston Common, LLC, as Landlord, and the County Board of Arlington County, Virginia, as Tenant ("County")
Store No. 2176, Ballston Common Mall
4238 Wilson Boulevard
Arlington, Virginia ("Lease")

Dear Sirs:

Pursuant to Section 29 of the Lease, the County hereby exercises its option to renew the Lease under the same terms, covenants and conditions, including the Escalation of Annual Fixed Minimum Rent. The First Extended Term shall commence on November 1, 2010 and shall expire at midnight on October 31, 2011.

Thank you for your cooperation. If you have any questions, please let me know.

Sincerely,

Uri Arkin
Real Estate Bureau Chief

cc: Joanna Wise-Barnes
Don Conley

EXHIBIT B
FIRST AMENDMENT TO SUBLEASE AGREEMENT FOR THE WOODMONT WEAVERS PROGRAM

FIRST AMENDMENT TO SUBLEASE AGREEMENT
FOR THE WOODMONT WEAVERS PROGRAM

THIS FIRST AMENDMENT TO SUBLEASE AGREEMENT ("First Amendment"), made and entered into as of the _____ day of _____, 2010, by and between THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body politic, ("County" or "Tenant") and SAINT COLETTA OF GREATER WASHINGTON, INC., a non-stock corporation registered to do business in the Commonwealth of Virginia ("Saint Coletta" or "Subtenant").

W I T N E S S E T H:

WHEREAS, the County entered into a Deed of Lease, dated October 17, 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 as shown on Exhibit B - Floor Plans, consisting of 3,119 square feet of space on the second floor of the Ballston Common Mall, Store 2176 ("Premises");

WHEREAS, by letter dated July ___, 2010, the Tenant exercised its option to extend the term of the Lease for a one year period from November 1, 2010 until October 31, 2011 ("First Extended Term"), under the same terms, covenants and conditions as the Lease;

WHEREAS, Tenant and Subtenant entered into a Sublease Agreement for the Woodmont Weavers Program, dated October 17, 2007, commencing on November 1, 2007, that will expire at 11:59 p.m. on October 31, 2010 ("Sublease"); and

WHEREAS, Tenant and Subtenant desire to extend the term of the Sublease for the Premises to Saint Coletta for a one year period from November 1, 2010 until October 31, 2011 ("First Extended Sublease Term"), and Subtenant agrees to use the Premises during the First Extended Sublease Term in strict accordance with the Lease and this First Amendment.

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 amend the Sublease as set forth in this First Amendment:

1. **Term**. Section 2 of the Sublease is hereby amended by deleting the entire section and adding in its stead:

"Extended Term. The term of this Sublease for the Subleased Premises is hereby extended for a period of one year ("First Extended Sublease Term"), commencing on November 1, 2010 and expiring at 11:59 p.m. on October 31, 2011 ("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."

2. **Subordination of Sublease Term**. The First Extended Sublease Term is subject to, and contingent upon, the commencement of the First Extended Term.

3. **Ratification and Confirmation of Sublease**. Except as modified herein, all other terms and conditions of the Sublease remain in full force and effect. In the event the terms and conditions of this First Amendment conflict with the terms of the Sublease, then the terms and conditions of the First Amendment shall prevail and be controlling.

4. **Full Force and Effect**. Tenant and Subtenant each represent and warrant to the other that the Sublease, as amended is in full force and effect and has not been assigned, modified, supplemented or further amended in any way.

5. **Entire Agreement**. The Sublease, as amended, contains the entire agreement of the parties hereto with respect to the subject matter hereof. No representations, inducements, or agreements, oral or otherwise, between the parties not contained in the Sublease, as amended, shall be of any force and effect. The Sublease, as amended, may not be modified, changed or terminated, in whole or in part, in any manner other than by an agreement in writing signed by duly authorized representatives of the parties hereto.

6. **Incorporation of Recitals**. The above recitals are hereby incorporated into this Amendment.

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

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

TENANT:

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA
a body politic

Witness:_____

By:_____

Print Name:_____

Title:_____

Date:_____

SUBTENANT:

SAINT COLETTA OF GREATER WASHINGTON, INC., a non-stock corporation registered to do business in the Commonwealth of Virginia

Witness: _____

By: _____

Printed Name: Sharon B Raimo

Title: CEO

Date: June 8, 2018

Approved as to form:

_____
County Attorney

EXHIBIT A
DEED OF LEASE

L-10386

DEED OF LEASE

THIS DEED OF LEASE ("Lease") made this 17th day of October, 2007, between **FC BALLSTON COMMON, LLC** ("Owner" and "Landlord"), a Delaware limited company authorized to do business in the Commonwealth of Virginia, and **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body corporate ("Tenant").

RECITALS

WHEREAS, Landlord is the owner of the land and improvements, including the building known as the Ballston Common Mall, located at 4238 Wilson Boulevard, RPC #14059PAA ("Mall" or "Shopping Center");

WHEREAS, Landlord and Tenant (collectively, "Parties") entered into a License Agreement, dated September 5, 2002, for Store 3072, Ballston Common Mall, Arlington, Virginia, and Tenant entered into a Sublicense Agreement with Saint Coletta of Greater Washington, Inc., the Tenant's contractor ("Tenant's Contractor"), pursuant to which Saint Coletta temporarily occupied Store 3072 to administer the Woodmont Weaver's Program. The License Agreement and Sublicense Agreement have been terminated, effective as of August 31, 2007;

WHEREAS, Tenant desires to lease from Landlord and Landlord desires to lease to Tenant a portion of the Mall known as Store 2176 for Tenant's Contractor's use for purposes provided in this Lease, subject to the terms listed below;

WHEREAS, the Tenant and Tenant's Contractor will enter into a Sublease Agreement, dated Oct. 17, 2007, attached hereto and incorporated herein as Exhibit A, for the Tenant's Contractor's use of Store 2176 to administer the Woodmont Weaver's Program; and,

WHEREAS, it is further anticipated that the Tenant and Ellipse Fine Crafts, LLC ("EFC") will enter into a Sublease Agreement for a portion of the Premises in the near future.

WITNESSETH

NOW THEREFORE, in consideration of the sum of One Dollar ($1.00), the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **PREMISES.** The leased premises consists of 3,119 square feet, more or less, of retail space on the second floor of the Mall, which retail space is also known as "Store 2176", as shown on the floor plan attached hereto as Exhibit B ("Premises").

2. **TERM**. The term of this Lease ("Term") is for three (3) years, commencing on November 1, 2007 ("Commencement Date"), and expiring at 11:59 p.m. on October 31, 2010 ("Expiration Date"). Upon termination, Tenant shall surrender the Premises to the Landlord, broom-clean, in good condition, ordinary wear and tear excepted, and surrender all keys to the Landlord.

3. **TENANT'S USE OF PREMISES AND ACCESS**.

3.1 Tenant shall occupy and use the Premises for arts and crafts classes and workshops, retail sales of arts and crafts and associated uses. Tenant shall not use or occupy the Premises for any unlawful purposes, or in any manner that will violate governmental law and regulations. Tenant shall have the right, in Tenant's sole discretion, to permit subtenants to operate within the Premises, subject to all the terms and provisions of this Lease. Tenant shall remain obligated to Landlord under this Lease.

3.2 Unless exempt therefrom, Tenant shall, at its own expense, promptly obtain any and all permits and licenses required for Tenant to occupy the Premises for the purposed herein stated.

3.3 At a minimum, Tenant shall be open for business in the Premises Monday through Friday from 8 a.m. to 4 p.m., excluding holidays. Tenant shall make a good faith effort (through its own programs and those of Tenant's subtenants) to extend operating hours in the Premises to more closely match Shopping Center operating hours.

3.4 Tenant and subtenants, their employees, clients, customers and invitees shall have access to the Premises during Shopping Center operating hours, which as of the date of this Lease, are Monday through Saturday, 10 a.m. to 9 p.m. and 12 noon to 6 p.m. Sunday, excluding Easter Sunday, December 25th and Thanksgiving Day. Notwithstanding the above, Tenant and subtenants, their employees, clients, customers and invitees shall have access to the Premises from 7:30 a.m. to 6 p.m., Sunday, whether such time is consistent with Shopping Center operating hours or not, except for emergencies.

3.5 Prior to the Commencement Date of this Lease, Tenant shall remodel the Premises to include the following: (i) install new ceiling tiles throughout the Premises; (ii) demolish track lighting throughout the Premises; (iii) erect one partition separating the back of the Premises from the front area; (iv) bring toilet located within the Premises up to ADA compliance standards; (v) install new carpeting throughout the Premises; and (vi) apply new paint throughout the interior of the Premises. Tenant shall submit plans and specifications for the above work to Landlord for its written approval, which approval shall not be unreasonably withheld, denied, conditioned nor delayed. Tenant shall also submit to Landlord for its written approval a sign drawing depicting the storefront sign Tenant desires to use for the Premises, which approval shall not be unreasonably withheld, denied, conditioned nor delayed.

4. **TENANT'S USE OF COMMON AREAS.** Tenant and subtenants, their employees, clients, customers and invitees shall have the non-exclusive right to use the common areas of the Shopping Center for pedestrian ingress and egress to and from adjacent public streets, sidewalks and the parking garage during the times stated in Section 3.4.

5. **RENT AND OTHER EXPENSES.**

5.1 Tenant shall pay to Landlord annual fixed minimum rent ("Annual Fixed Minimum Rent") for the Premises in the amount of SIXTY TWO THOUSAND THREE HUNDRED EIGHTY AND 00/100 DOLLARS ($62,380.00), payable in advance on the first (1st) day of each month during the first twelve (12) months of the Term, in twelve equal installments of FIVE THOUSAND ONE HUNDRED NINETY EIGHT AND 00/100 DOLLARS ($5,198.33) ("Monthly Minimum Rent"). Thereafter, Fixed Minimum Rent shall be as set forth below. Each payment shall be made by check, payable to the FC Ballston Common, LLC, and delivered to the following address: FC Ballston

Common, LLC, c/o Forest City Management, Inc., P.O. Box 72529, Cleveland, Ohio 44192-0529, or to Landlord at such other place as Landlord may from time to time designate in writing.

Lease Year	Rate per Annum for Fixed Minimum Rent	Annual Fixed Minimum Rent	Monthly Fixed Minimum Rent	Annual Real Estate Taxes	Monthly Real Estate Taxes
Year 1: 11/1/2007-10/31/2008	$20.00	$62,380.00	$5,198.33	$6,393.95	$532.83
Year 2: 11/1/2008-10/31/2009	$20.40	$63,627.60	$5,302.30	t/b/d by assessment	
Year 3: 11/1/2009-10/31/2010	$20.81	$64,906.39	$5,408.87	t/b/d by assessment	

5.2 Commencing on the first anniversary of the Commencement Date, and continuing cumulatively on every anniversary of the Commencement Date throughout the Term of this Lease, Annual Fixed Minimum Rent shall increase by two percent (2%) per annum.

5.3 Upon the Commencement Date, Tenant shall pay Six Thousand, Three Hundred Ninety-Three and 95/100 Dollars ($6,393.95) per annum or Five Hundred Thirty-Two and 83/100 Dollars ($532.83) per month for the first twelve (12) months of the Term as Additional Rent for Tenant's pro rata share of Real Estate Taxes allocated to the Mall ("Real Estate Taxes"). Landlord and Tenant agree that Tenant's share represents the ratio that the area of the Premises bears to the total occupied rentable area of the Shopping Center (which shall in no event be less than ninety percent [90%] of total rentable area of the Shopping Center). The term "Real Estate Taxes" shall mean (1) all taxes, assessments, water, sewer, transportation or other excises, levies, license fees, permit fees, impact fees, inspection fees, and other authorization fees and other similar charges, in each case whether general or special, levied or assessed by any governmental or taxing authority, be assessed, levied, confirmed, or imposed on or in respect of the land and the building improvements of which the Premises are a part, and on any land and/or improvements now or hereafter owned by Landlord and/or others that provide the locality or the Premises with other services, programs, amenities or common facilities, (2) together with tax imposed on real estate or on owners of real estate generally, including taxes imposed on leasehold improvements which are assessed against the Landlord and taxes upon or with respect to any activity conducted on the land and improvements of which the Premises are a part of, and (3) Real Estate Tax exclusions: (i) all excess profits taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, estate taxes, federal and state net income taxes, and other taxes to the extent applicable to Landlord's net income (as opposed to rents, receipts or income attributable to operations at the Shopping Center), (ii) any penalties or interest on late payments by Landlord, (iii) any taxes imposed on the personal property of any tenant or occupant in the Mall, and (iv) any transfer or recordation fees.

Tenant shall have the right to request copies of Real Estate Tax bills, which shall be supplied to Tenant within a reasonable time after Tenant's written request. A tax bill issued by the appropriate government authorities shall be conclusive evidence of the amount of Real Estate Taxes.

6. **LANDLORD'S SERVICES**. During the Term, Landlord shall provide, at Landlord's sole cost and expense, security, common area maintenance, landscape and snow removal services to the Shopping

Center, including the Premises, (collectively, "Services") typical of services provided to tenants in other first class enclosed shopping centers in northern Virginia.

7. **UTILITIES**. Tenant shall pay Landlord for its pro rata share of the cost of trash removal, electricity, water and sewer services on the Premises, which expenses shall be billed monthly by Landlord to Tenant ("Utility Bills"). The pro-rata share of the Utility Bills shall be determined as follows: (i) the cost for trash removal shall be based upon a monthly bill from a third party contractor determined by Tenant's actual usage; (ii) the cost for electrical service shall be based upon a monthly estimate prepared in advance by an independent contractor and reconciled annually based upon an actual meter reading at the Premises; (iii) the cost for HVAC service shall be based upon Tenant's pro-rata share as determined by square footage of the Premises; (iv) the cost for water and sewer service shall be determined by an actual meter reading at the Premises.

8. **SIGNS**. Upon the Commencement Date, Tenant shall install any desired signs on the front exterior wall of the Premises. Tenant shall obtain and pay for all permits required for signs. The plans and specifications for all signs shall be subject to Landlord's approval, which shall not be unreasonably withheld, conditioned or delayed.

9. **TENANT'S MAINTENANCE AND REPAIRS**.

9.1 During the Term, Tenant shall maintain the non-structural portions of the Premises in good order, condition and repair. Tenant shall not cause any waste, damage or injury to the Premises. Tenant's obligations shall include repairing, maintaining and making replacements in the Premises to items such as floor coverings; walls (other than structural walls) and wall coverings; ceiling; fixtures, plumbing, electrical and other mechanical systems exclusively serving the Premises, the storefront; security grilles; doors, door frames, locks and closing devices; window sashes, casements and frames; and glass.

9.2 Except for Tenant's obligations in Section 9.1 hereof, Tenant shall not make any alterations, additions, or changes (jointly "Improvements") to the Premises without first obtaining Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. If Tenant elects to make Improvements to the Premises, then Tenant shall provide Landlord with plans and specifications for the proposed Improvements for approval. All Improvements made to the Premises and all replacements of items in Section 9.1 hereof, excluding Tenant's and subtenants' trade fixtures and personal property, shall at all times be and remain the property of the Landlord and shall not be removed by the Tenant and subtenants, nor shall Tenant and subtenants have the right to remove same from the Premises upon the expiration or termination of this Lease. Subtenants shall have no right to make any alterations, additions, or changes to the Premises.

9.3 No fixtures, equipment or machinery other than typical fixtures, equipment and machinery for retail sales, educational programs and the construction and assembly of art and craft products shall be installed in the Premises without Landlord's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed.

9.4 Any work performed by Tenant in the Premises shall be made at Tenant's own cost and expense in a good workmanship like manner in accordance with all applicable governmental laws, ordinances, rules, and regulations and the Ballston Common Mall Tenant Handbook in Exhibit D not attached hereto but incorporated herein by reference.

10. **LANDLORD'S REPAIRS AND MAINTENANCE**. During the Term and subject to Section 13 hereof, Landlord, at its sole cost and expense, shall maintain in good condition and repair the structural components of the Shopping Center and the Premises, the roof, foundation, exterior walls, elevator, heating, HVAC, as well as underground pipes and conduits and common areas. All work performed by Landlord shall be made at Landlord's sole cost and expense in a good workmanship like manner in accordance with all applicable governmental laws, ordinances, rules, and regulations.

11. **INSURANCE**.

11.1 During the Term, Tenant, at its sole cost and expense, shall maintain commercial general liability and property damage insurance which includes coverage for personal injury and death, property damage, advertising injury, completed operations and products coverage, and shall further maintain comprehensive automobile liability insurance covering automobiles owned by Tenant, with at least a single combined liability and property damage limit of $1,000,000.00 per occurrence and $2,000,000.00 in excess liability coverage insuring against all liability of Tenant and its authorized representatives arising out of or in connection with Tenant's use or occupancy of the Premises and the business conducted therein. Landlord shall be named as additional insureds on all purchased insurance policies required by this Section 11. All public liability insurance and property damage insurance shall insure Landlord with coverage no less in scope than that necessary to meet Tenant's obligations outlined in the indemnity provisions set forth elsewhere in this Lease. The policy shall contain an assumed contractual liability endorsement that refers expressly to this Lease.

Tenant shall require any subtenants permitted hereunder to obtain, 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.

11.2 During the Term, Tenant, at its cost, shall maintain fire and extended coverage insurance on all special or above building standard work and all other contents of the Premises in an amount sufficient so that no coinsurance penalty will be applied in case of loss.

11.3 All insurance required under this Lease shall be issued by insurance companies authorized to do business in the jurisdiction where the Premises is located. Such companies shall have a policyholder rating of at least "A" and be assigned a financial size category of at least "Class X" as rated in the most recent edition of "Best's Key Rating Guide" for insurance companies. If at any time during the Lease Term the rating of any of Tenant's insurance carriers is reduced below the rating required pursuant to the terms hereof, Tenant shall promptly replace the insurance coverage(s) maintained with such carrier with coverage(s) from a carrier whose rating complies with the foregoing requirements. If the Best's Key Rating Guide is discontinued or revised without substitution of a comparable rating system, Landlord shall reasonably determine its satisfaction with the insurance company issuing Tenant's policies. Each policy shall contain an endorsement requiring fifteen (15) days written notice from the insurance company to Landlord before cancellation or any change decreasing coverage, scope or amount of such policy and an endorsement naming Landlord as additional insureds. A certificate of insurance showing that the insurance is in effect, together with evidence of payment of premiums, shall be deposited with Landlord at the commencement of the Term

and thereafter upon any policy changes or substitutions, and renewal certificates and copies of renewal policies shall be delivered to Landlord at least ten (10) days prior to the expiration date of any policy.

11.4 Notwithstanding anything to the contrary contained herein, Landlord and Tenant hereby mutually waive and release their respective rights of recovery against each other for any loss of its property (in excess of a deductible amount for each of Landlord and Tenant that is reasonable in light of the size and status of each of Landlord and Tenant and applicable market conditions) capable of being insured against by fire and extended coverage insurance or any insurance policy providing property damage coverage, whether carried or not. Each party shall apply to its insurer to obtain said waiver and obtain any special endorsement, if required by its insurer to evidence compliance with the aforementioned waiver, and shall bear the cost therefore.

11.5 Notwithstanding anything to the contrary, in order to comply with this Section or other provisions of this Lease requiring Tenant to provide insurance coverage, Tenant shall have the right to self-insure as to all or any portion of the insurance coverage or coverages, which would otherwise have been required by a third party insurance carrier. If Tenant does not self-insure, then copies and certificates of said policies with evidence of premiums paid shall be delivered to Landlord on the Commencement Date, and renewal certificates shall be delivered to Landlord at least ten (10) days before expiration of any such policy. Each such policy shall require at least fifteen (15) days' prior written notice to all named insureds for any cancellation or amendment thereof to be effective.

11.6 Tenant shall obtain and maintain on behalf of its self, or any of its contractors or subcontractors all insurance protection required in Landlord's Tenant Handbook for the Shopping Center in effect as of the Effective Date of this Lease, as hereinafter described. Before commencement of any such work, Tenant shall deliver certificates to Landlord showing such insurance to be in effect.

11.7 Notwithstanding the fact that any liability of Tenant to Landlord may be covered by Tenant's insurance, Tenant's liability shall in no way be limited by the amount of its insurance recovery or the amount of insurance in force or required by any provisions of this Lease.

11.8 Notwithstanding anything to the contrary, in order to comply with Section 11.1 or other provisions of this Lease requiring Tenant to provide insurance coverage, Tenant shall have the right to self-insure as to all or any portion of the insurance coverage or coverages which would otherwise have been required by a third party insurance carrier.

11.9 Tenant shall promptly report to Landlord all accidents and incidents occurring on or about the Premises, the Mall which involve or relate to the security and safety of persons and/or property.

12. **LANDLORD'S INSURANCE.**

12.1 Landlord shall maintain, during the Term of this Lease, property and commercial general liability insurance covering the Mall. The property insurance shall include fire and extended coverage insurance, covering all structures and improvements. The commercial general liability insurance shall insure against claims for bodily injury and property damage occurring in or about the Mall, and shall provide total coverage of types and amounts commensurate with the insurance coverages maintained from time to time by institutional owners of similar buildings in the metropolitan Washington, D.C. area. Such insurance may be blanketed with other insurance carried by Landlord so

long as such blanketing with other insurance does not reduce the amount of insurance available to pay any claim with respect to the Mall.

12.2 Tenant, its officers, elected and appointed officials, and employees shall be named as additional insureds under all coverages maintained by Landlord hereunder except Workers' Compensation, Professional Liability, and Automobile Liability, and the certificate of insurance, or the certified policy must so state. Coverage afforded under this Section shall be primary as respects the Tenant, its elected and appointed officials, agents and employees. The following definition of the term "Tenant" applies to all policies issued under the Lease:

> "The County Board of Arlington County, Virginia and any affiliated or subsidiary Board, Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board, Authority, Committee, or Independent Agency is either a Body corporate created by The County Board of Arlington County, Virginia, or one in which controlling interest is vested in Arlington County; and Arlington County Constitutional Officers."

12.3 Landlord shall provide Tenant with a certificate of insurance evidencing the coverages required by this Section within thirty (30) days after the date of this Lease and thereafter on an annual basis during the Term.

12.4 During the term of any contract relating to subsequent alterations, Landlord shall cause Landlord's Contractor(s) to maintain in force, at its own expense, Builder's Risk Insurance on an all risks basis, covering all fixtures, materials, supplies, machinery and equipment to be used in, or incidental to, the construction. The policy shall include an occupancy clause granting occupancy of the project insured for the purpose it was intended and list Landlord as loss payee.

12.5 Tenant hereby waives any right it may have against Landlord or against any other tenant or occupants of space in the Mall on account of any loss or damage occasioned to Tenant, its property, the Premises or its contents arising from any risk generally covered by the fire and extended coverage insurance, whether or not such a policy shall be in force. Landlord hereby waives any rights it may have against Tenant on account of any loss or damage occasioned to Landlord, its property or to the Mall arising from any risk generally covered by fire and extended coverage insurance, whether or not such a policy shall be in force. If either Landlord or Tenant shall be unable, after using best efforts, to obtain and/or maintain the waiver of subrogation set forth in the immediately preceding sentence from its insurance carrier(s) (or from any other insurance carrier(s) without substantial increased cost) and shall so notify the other party of such inability within thirty (30) days thereafter, then such waiver of subrogation shall no longer be effective until obtainable.

13. **DAMAGE.**

13.1 In the event of damage or destruction of the Premises or a portion thereof by fire or any other casualty, then, except as otherwise provided in this Lease, this Lease shall not be terminated, but the Premises, including demising partitions and doors, shall be promptly and fully repaired and restored as the case may be by Landlord at its own cost and expense. Due allowance, however, shall be given for reasonable time required for adjustment and settlement of insurance claims, and for such other delays as may result from government restrictions, and controls on construction, if any, and for strikes, national emergencies and other conditions beyond the control of

Landlord. Restoration by Landlord shall not include replacement of Tenant's property or special or above building standard work. Tenant shall, at its expense, repair, restore and replace Tenant's property and all elements of the Premises excluded from the scope of Landlord's duty to restore pursuant to this Section. Tenant's restoration, replacement and repair work shall comply with this Section hereof and Tenant shall maintain adequate insurance on all such replacements, restoration and property pursuant to this Section. It is agreed that in any of the aforesaid events, this Lease shall continue in full force and effect.

13.2 If the condition referred to in this Section is such that the Premises are partially damaged or destroyed, and provided the damage or destruction was not caused by Tenant, its employees, agents, contractors, licensees, visitors, and guests, then during the period that Tenant is deprived of the use of the damaged portion of the Premises, Tenant shall be required to pay Monthly Minimum Rent and Additional Rent covering only that part of the Premises that Tenant is able to occupy, based on the ratio between the square foot area remaining that can be occupied and the total square foot area of the entire Premises covered by this Lease. Any unpaid or prepaid installment of Monthly Minimum Rent and Additional Rent for the month in which the condition referred to in this Section occurs shall be prorated.

13.3 If the condition referred to in this Section is such so as to make the entire Premises untenantable, and provided the damage or destruction was not caused by Tenant, its employees, agents, contractors, licensees, visitors, and guests, then the installment(s) of Monthly Minimum Rent and Additional Rent which Tenant is obligated to pay hereunder shall abate as of the date of the occurrence until the restoration of the Premises has been deemed substantially complete by Landlord to the extent of Landlord's obligations as described in this Section 13.3. Any unpaid or prepaid installment of Monthly Minimum Rent and Additional Rent for the month in which the condition referred to in this Section 13.3 occurs shall be prorated.

13.4 In the event the Premises are substantially or totally destroyed by fire or other casualty so as to be entirely untenantable and Landlord's independent architect determines that the restoration of the Premises cannot be completed within two hundred seventy (270) days after the date of the fire or other casualty, then Landlord shall have the unconditional right to cancel this Lease in its sole discretion, in which case Monthly Minimum Rent and Additional Rent shall be apportioned and paid to the date of said fire or other casualty. If Landlord elects not to cancel this Lease, then Landlord's independent architect shall determine and notify Tenant in writing, within sixty (60) days following the fire or other casualty, of the date by which the Premises can be restored by Landlord in accordance with the provisions of this Section. If the date determined by Landlord's independent architect for completion of restoration of the Premises is more than two hundred seventy (270) days after such fire or other casualty, then Tenant shall have the right, to be exercised by giving written notice to Landlord within ten (10) days following receipt of such notice from Landlord, to cancel and terminate this Lease. In the event the date by which Landlord's independent architect determines it can complete restoration of the Premises as herein provided is less than 270 days following such fire or other casualty, or Landlord or Tenant fails to terminate this Lease as herein provided in this Section 13.4, then this Lease shall remain in full force and effect and Landlord shall commence restoration of the Premises to the extent of Landlord's obligations as described in this Section. Due allowance, however, shall be given for reasonable time required for adjustment and settlement of insurance claims, for Landlord to reasonably be able to determine the time necessary for completion of the restoration and for other such delays as may result from government restrictions, and controls on construction, if any, and for strikes, national emergencies and other conditions beyond the control of

Landlord. Any delays as a result of the foregoing shall operate to postpone Landlord's obligation to complete restoration of the Premises by one day for each day of any such delay. Tenant shall commence any restoration to be performed by Tenant as required in this Section and Tenant shall reoccupy the Premises when restored. If Tenant's Monthly Minimum Rent and Additional Rent has been abated pursuant to the terms hereof, Tenant will recommence paying the same when Landlord's restoration of the Premises or the damaged portion thereof, as the case may be, is substantially complete.

13.5 Except as expressly provided in this Section, no compensation, or claim, or diminution of Monthly Minimum Rent or Additional Rent will be allowed or paid by Landlord, by reason of inconvenience, annoyance, or injury to business, arising from any fire or other casualty suffered by Tenant or the necessity of repairing or restoring the Premises or any portion of the Mall.

13.6 In addition to any other right of Landlord or Tenant to terminate this Lease pursuant to the provisions of this Section, in the event the Premises are damaged in whole or in material part by fire or other casualty during the last twelve (12) months of the Term (if Tenant has not exercised its renewal option) or the last twelve (12) months of the Renewal Term (if Tenant exercised its renewal option), then Landlord or Tenant, upon ten (10) days prior written notice to the other given within sixty (60) days of the date of the fire or casualty, may terminate this Lease, in which case the Monthly Minimum Rent and Additional Rent shall be apportioned and paid to the date of said fire or other casualty; provided, however, Tenant shall have no right to terminate this Lease hereunder if: (i) the damage or destruction was caused by Tenant, its employees, agents, contractors, licensees, visitors, and guests, or (ii) prior to receipt of Tenant's notice Landlord has commenced to repair or restore the Premises. Notwithstanding the foregoing, in the event of a termination of this Lease by Landlord as aforesaid as a result of damage to just a portion of the Premises, Tenant shall vacate the Premises pursuant to a reasonable schedule agreed to by Landlord and Tenant under all the relevant circumstances and any occupancy of undamaged portions of the Premises by Tenant after the effective date of termination shall be considered to be a consensual holdover under the terms of this Lease so long as Tenant continues to diligently endeavor to vacate such undamaged portions of the Premises and any such holdover shall not exceed sixty (60) days.

14. **DEFAULT BY TENANT**.

14.1 Each of the following events shall constitute a default ("Default") by Tenant under this Lease: (i) if Tenant fails to pay the Monthly Minimum Rent, Real Estate Taxes, or the Utility Bills within fifteen (15) days after the same shall be due and payable and Tenant has received written notice of such Default and has failed to cure; or (ii) if Tenant breaches or fails to observe or perform the terms, conditions and covenants of this Lease, other than those involving the payment of the Monthly Minimum Rent, Real Estate Taxes or the Utility Bills, and such breach or failure is not cured within thirty (30) days after Tenant's receipt of written notice thereof, unless such condition cannot reasonably be cured within such thirty (30) days, in which case Tenant shall commence such cure within said thirty (30) days and diligently pursue said cure to its completion (provided, however, if such breach or failure creates a hazard, public nuisance or dangerous situation, said thirty (30) days grace period shall be reduced to forty-eight (48) hours after Tenant's receipt of written notice).

14.2. If Default occurs, Landlord shall have all the rights and remedies available under this Lease and provided at law or in equity.

14.3 If this Lease is at any time terminated under this section, Tenant shall immediately surrender and deliver the Premises to Landlord. If Tenant fails to do so, Landlord shall be entitled to the benefit of all provisions of law with respect to the recovery of possession of the Premises (whether by summary proceedings or otherwise.)

14.4 Landlord may, subject to Landlord's written notice of Default to Tenant and Tenant's cure period, perform, on behalf of and at the expense of Tenant, any obligation of Tenant under this Lease which Tenant fails to perform, the reasonable cost of which shall be paid by Tenant within thirty (30) days after Landlord's performance of Tenant's obligation and Tenant's receipt of evidence of costs. The performance by Landlord of any such obligation shall not constitute a release or waiver of any of Tenant's obligations under this Lease.

15. **DEFAULT BY LANDLORD**. If Landlord shall breach, or fail to perform or observe any agreement or condition in this Lease that Landlord is obligated to perform or observe, and if Landlord shall not cure such breach or failure within thirty (30) days after Landlord's receipt of written notice from Tenant specifying such breach or failure (or, if such breach or failure shall reasonably take more than thirty (30) days to cure, and Landlord shall not have commenced to cure within thirty (30) days and diligently prosecuted the cure to completion), Tenant may, at Tenant's option, cure such breach or failure for the account of Landlord and the amount paid or incurred by Tenant in so doing shall be deemed paid or incurred for the account of Landlord, and Landlord shall reimburse Tenant therefore; provided, however, Tenant may cure any such breach or failure as aforesaid prior to the expiration of said cure period if an emergency situation exists and the immediate curing of such breach or failure is necessary to protect the Premises, property located therein, or public health safety and welfare. Landlord shall pay Tenant the amount paid or incurred by Tenant within thirty (30) days from the date Landlord receives documentation of costs from Tenant. Notwithstanding anything to the contrary in the foregoing, Tenant's right to cure Landlord's breaches or failure shall be limited to the performance of Landlord's obligations under this Lease which directly relate to or affect the Premises.

16. **NOTICES**. All notices required or desired to be given hereunder by either party to the other shall be given by certified or registered mail and addressed as follows:

If to Landlord: FC Ballston Common, LLC
Terminal Tower
50 Public Square
Suite 1360
Cleveland, Ohio 44113-2267

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

With copy to: Real Estate Bureau Chief
Arlington County, Virginia
Department of Environmental Services
Real Estate Bureau
2100 Clarendon Boulevard, Suite 900
Arlington, Virginia 22201

Either party may, by like or written notice, designate a new address to which such notices shall be directed. Notices personally delivered shall be deemed effective upon delivery; notices sent by certified or registered mail shall be deemed effective upon the earlier of (i) the date of receipt or rejection by the addressee, or (ii) three (3) calendar days following the date of mailing (excluding Sundays and holidays on which mail is not delivered by the United States Postal Service). Notwithstanding the foregoing, any notice pertaining to a change of address of a party shall be deemed effective only upon receipt or rejection by the party to whom such notice is sent.

17. **SEVERABILITY**. If any term or provision of this Lease shall be invalid or unenforceable, the remainder of this Lease, other than those terms or provisions which are held to be invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

18. **LANDLORD'S ACCESS TO PREMISES**. With prior notice to Tenant, Landlord reserves the right to enter the Premises at all reasonable times: (a) for the purpose of making inspections and repairs, (b) to show the space to others, and (c) for emergency purposes. Except as necessary for emergency situations, Landlord shall not interfere with Tenant and subtenants' operations in the Premises in connection with such entry.

19. **LANDLORD'S COVENANT OF AUTHORITY**. Landlord shall, concurrently with the execution of this Lease, furnishing Tenant certified copies of all documents, resolutions and consents indicating the specific authority of the persons executing this Lease to bind the Landlord. Each individual executing this Lease on behalf of Landlord hereby represents and covenants that he/she is duly authorized to execute this Lease and bind the Landlord.

20. **QUIET ENJOYMENT**. Landlord covenants that if Tenant shall perform all of its obligations hereunder, then Tenant shall during the Term enjoy possession and occupancy of the Premises without hindrance by Landlord or any party claiming through or under this Lease.

21. **REHABILITATION OF SHOPPING CENTER**. Landlord may, at its sole cost and expense, at any time elect to alter, rehabilitate or renovate all or any portion of the Shopping Center of which the Premises is a part so long as such construction does not substantially and unreasonably interfere with Tenant's access to the Premises or substantially and unreasonably interfere with Tenant's use of the Premises.

22. **GOVERNING LAW AND JURISDICTION**. This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. The Parties hereto agree that all disputes arising hereunder shall be brought in the state courts of Arlington County, Virginia, which shall be the proper forum for any dispute arising hereunder, and in no other courts.

23. **APPROVAL OF LEASE BY TENANT**. This Lease shall not become effective unless and until the County Board approves this Lease. Such approval by the County Board shall be evidenced by the execution of this Lease by the Real Estate Bureau Chief or other person designated by the County Board ("Effective Date"). Upon the execution and delivery by Landlord of a Lease that is acceptable to the County Manager, Tenant shall use reasonable efforts to promptly obtain the approval of the County Board to the Lease consistent with the County process for the review and submission of documents to the County Board for consideration. If this Lease is not approved by the County Board within ninety

(90) days after execution and delivery of this Lease by Landlord, then this Lease shall be null and void and no liability whatsoever shall accrue to Landlord or Tenant and Landlord and Tenant shall have no obligations whatsoever to each other.

24. **NO WAIVER OF SOVEREIGN IMMUNITY BY TENANT**. Notwithstanding any other provisions of this Lease to the contrary, nothing in this Lease, nor any action taken by Tenant pursuant to this Lease, nor any document which arises out of this Lease shall constitute, or be construed as a waiver of either the sovereign immunity or governmental immunity of Tenant or of its elected and appointed officials, officers and employees.

25. **NO RIGHTS IN THIRD PARTIES**. The Parties hereto mutually agree that no provision of this Lease shall create in the public, or in any person or entity other than those persons and entities executing this Lease, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for personal injury, property damage, or breach of contract pursuant to the terms of this Lease or otherwise.

26. **APPROPRIATION OF FUNDS**.

26.1 Notwithstanding any other term or condition of this Lease, all of Tenant's obligations under this Lease are subject to appropriation of funds by the County Board of Arlington County, Virginia for the specific purpose of satisfying the payment and performance of such obligations. In the event that funds are not appropriated at the beginning of any Tenant's fiscal year for the specific purpose of satisfying the obligations of the Tenant under this Lease, then this Lease shall become null and void and shall terminate on the last day of the Tenant's fiscal year for which appropriations were received for such purpose, without any termination fee or other liability whatsoever to the Tenant. If funds for the Tenant's obligations under this Lease are not appropriated, then the Tenant shall vacate the Premises prior to the beginning of the Tenant's next fiscal year.

26.2 It is agreed by both Landlord and Tenant that, notwithstanding any provision in this Lease to the contrary, this clause shall supersede any and all obligations imposed by any other provision of this Lease or the Exhibits or any Addenda hereto. No subsequent Amendment of, or Addendum to, this Lease shall compromise the full legal implication of this Section between the parties hereto or their respective successors or assigns.

27. **TENDER OF POSSESSION; POSTPONEMENT OF DATES**. INTENTIONALLY OMITTED.

28. **ROLE OF THE TENANT/TENANT DECISIONS; NO WAIVER**. Landlord hereby acknowledges that Tenant has entered into this Lease in its role as tenant under the Lease and not as a governing authority. Accordingly, the Tenant's execution of this Lease shall neither constitute nor be deemed to be governmental approval for any actions or interests contemplated herein, including without limitation, for the construction and occupancy of the Premises, or for any other governmental approval or consent required to be obtained by Landlord; however, Tenant as a tenant shall not interfere with or block Landlord's efforts to obtain any such governmental approvals or consents. Whenever in this Lease, Tenant is required to join in, consent, give its approval, or otherwise act under this Lease, it is understood that such obligations are meant to apply to the Tenant acting in its capacity as a tenant and not in its capacity as a governing authority. Further, Landlord hereby acknowledges that any and all decisions, determinations, consents, notifications or any other actions taken or to be

taken by Tenant pursuant to this Lease, whether or not specifically contemplated hereunder, may be taken by the County Manager or by another Arlington County official or body pursuant to any means, mechanism or process as determined by Arlington County in its sole discretion, and Landlord shall have no right to question or challenge the propriety, authority or legality of any such Arlington County official or body, or means, mechanism or process by which any such decision, determination, consent, notification, or other action is taken or to be taken hereunder by Tenant. Notwithstanding the foregoing, nothing in this Lease shall be construed to waive any of Tenant's powers, rights or obligations as a governing authority or local governing body, whether or not affecting the Premises, including, but not limited to its police power, right to grant or deny permits, right to collect taxes or other fees, or any other power, right or obligation whatsoever.

29. **RENEWAL OPTION.**

29.1 Provided that Tenant has not been in default of any of the terms and conditions of this Lease at any time before the date Tenant gives written notice affirmatively exercising its renewal option in accordance with this Lease, and Tenant is not thereafter in default through the commencement date of the extended term, and further provided that Tenant gives Ninety (90) days prior written notice to Landlord of Tenant's intention to exercise its renewal option, time being of the essence, Tenant shall have the right to extend the term of this Lease for a further term of One (1) year (the "First Extended Term"). This provision shall be contingent on Tenant occupying the entire Premises on the date Tenant gives written notice as provided above and on the commencement date of the extended term. Such extension shall be under the same terms, covenants and conditions of this Lease, including the escalations of Annual Fixed Minimum Rent then in effect for the length of the extended term, and Annual Fixed Minimum Rent shall continue to escalate just as if the First Extended Term were part of the original Term of the Lease.

29.2 Provided that Tenant has not been in default of any of the terms and conditions of this Lease at any time before the date Tenant gives written notice affirmatively exercising its renewal option in accordance with this Lease, and Tenant is not thereafter in default through the commencement date of the extended term, and further provided that Tenant gives Ninety (90) days prior written notice to Landlord of Tenant's intention to exercise its renewal option, time being of the essence, Tenant shall have the right to extend the term of this Lease for a further term of One (1) year (the "Second Extended Term"). This provision shall be contingent on Tenant occupying the entire Premises on the date Tenant gives written notice as provided above and on the commencement date of the extended term. Such extension shall be under the same terms, covenants and conditions of this Lease, including the escalations of Annual Fixed Minimum Rent then in effect for the length of the extended term, and Annual Fixed Minimal Rent shall continue to escalate just as if the Second Extended Term were part of the First Extended Term of the Lease.

30. **INDEMINIFICATION AND HOLD HARMLESS.** Notwithstanding any other term or provision of this Lease to the contrary, Tenant shall have no obligation to explicitly or implicitly indemnify or hold harmless the Landlord or any third party or parties from any liability whatsoever.

31. **REASONABLENESS OF LANDLORD AND TENANT**. Provided Tenant is not then in Default beyond the applicable notice and cure period of any of the terms or conditions of this Lease, whenever Landlord's consent or approval is required hereunder, it shall not be unreasonably withheld, conditioned or delayed unless another standard is specified as to a particular issue elsewhere in this Lease. Provided Landlord is not then in default beyond the applicable notice and cure period of any of

the terms or conditions of this Lease, whenever Tenant's consent or approval is required hereunder, it shall not be unreasonably withheld, conditioned or delayed.

32. **ENTIRE LEASE; AMENDMENTS.** This Lease, and all Exhibits hereto are intended by the Parties as a final expression of their agreement and a complete and exclusive statement of the terms thereof, all negotiations, considerations and representations between the Parties having been incorporated herein. No course of prior dealings between the Parties or their officers, partners, employees, agents or affiliates shall be relevant or admissible to supplement, explain or vary any of the terms of this Lease. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement between the Parties, their agents or their affiliates shall not be relevant or admissible to determine the meaning of any of the terms of this Lease. Tenant hereby acknowledges that Landlord and their respective agents and employees made no representations, warranties, understandings or agreements pertaining to the condition of the Premises, or otherwise, which have induced Tenant to execute, or have been relied upon by Tenant in the execution of this Lease, other than those specifically set forth herein. This Lease can be modified only by a writing signed by both parties hereto. The Lease and Exhibits may not be amended, modified, changed or terminated in whole or in part, in any manner other than by an agreement in writing approved by The County Board of Arlington County, Virginia and duly signed by all properly authorized individuals of all parties to this Lease. The language of this Lease shall in all cases be construed as a whole and according to its fair meaning, and not strictly for or against either Landlord or Tenant. The interpretation or construction of this Lease shall be unaffected by any argument or claim, whether or not justified, that this Lease has been prepared, wholly or in substantial part, by or on behalf of Landlord or Tenant. Any consent or approval required or desired of Landlord, or any decision under this Lease committed to the discretion of Landlord hereunder, shall not be unreasonably withheld, delayed, conditioned or exercised by Landlord unless the provision of this Lease requiring such consent or approval, or decision under this Lease committed to the discretion of Landlord, expressly states otherwise.

33. **RECITALS.** The recitals are incorporated into this Lease.

IN WITNESS WHEREOF, the Landlord and the Tenant have each executed this Lease under seal on the day described below.

ATTEST:

_____

LANDLORD:

FC BALLSTON COMMON, LLC,
a Delaware limited liability company

By: FC Ballston Member, LLC,
a Delaware limited liability company,
its sole member

By: Ballston Common Associates, L.P.,
a Delaware limited partnership, its sole member

By: Ballston Development Corporation,
General Partner

By: _____
Duane F. Bishop, Jr., Vice President

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

BEFORE ME, the undersigned Notary Public in and for said County and State, personally appeared the above named FC BALLSTON COMMON LLC, a Delaware limited liability company, by FC Ballston Member, LLC, a Delaware limited liability company, its sole member, by Ballston Common Associates, L.P., a Delaware limited partnership, its sole member, by Ballston Development Corporation, General Partner, by Duane F. Bishop, Jr., its Vice President, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed and the free act and deed of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 3rd day of October, 2007.

Doris Dowd
Notary Public

NOTARIAL SEAL STATE OF OHIO

DORIS DOWD
Notary Public, State of Ohio
My Commission Expires May 20, 2012
Recorded in Cuyahoga County

WITNESS:

TENANT:

COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate

By: _____
Uri Arkin

Title: Real Estate Bureau Chief

Date: October 17, 2007

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Arlington

The foregoing instrument was acknowledged before me this 17th day of October, 2007, by Uri Arkin, Real Estate Bureau Chief for the County Board of Arlington County, Virginia.

_____
Notary Public

My Commission expires: Dec. 31, 2010

Registration No.: 196484

BETSY M. HERBST
Notary Public
Commonwealth of Virginia
My Commission Expires December 31, 2010
Commission ID# 196484

Approved as to form:

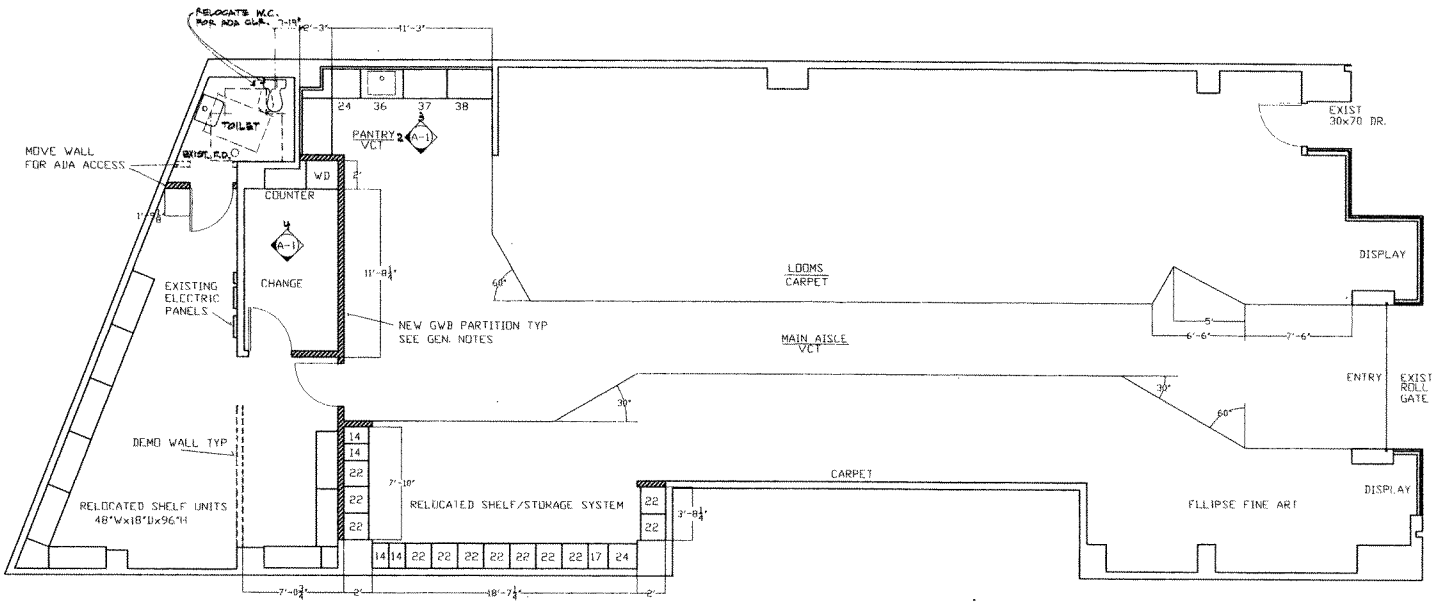
_____
County Attorney

EXHIBIT B
FLOOR PLAN – STORE 2176

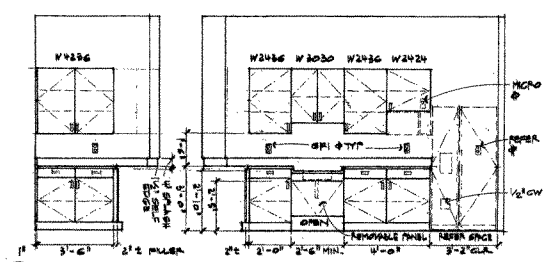
PROJECT DESCRIPTION

WORK INVOLVES NEW PAINT, CARPET, VCT THROUGHOUT, CLEANING OF DIFFUSERS, LIGHT FIXTURES AND RELAMPING; MOVING WATER CLOSET APPROXIMATELY 6" FOR ADA COMPLIANCE, AND MOVING OF DOOR FOR REQUISITE TURNING CLEARANCES; INSTALLATION OF PANTRY SINK AND ROUGH-IN FOR UNITISED, VENTLESS 110 V – 12.8 AMP WASHER/DRYER; AND RELOCATION OF EXISTING GYPSUM WALL BOARD PARTITION TO ACCOMMODATE CHANGE ROOM.

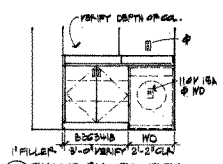
ALL MECHANICAL SYSTEMS TO REMAIN. PRELIMINARY ASSESSMENT IS THAT NO SPRINKLER WORK IS REQUIRED; ELECTRICAL INCLUDES NEW 15 AMP CIRCUIT FOR WASHER/DRYER, AND THREE (3) GFI CONVENIENCE OUTLETS FOR PANTRY AND ONE OUTLET FOR REFRIGERATOR.



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



2/3 PANTRY CABINET ELEVATIONS
3/8" = 1'-0"



4 CHANGE RM CAB. ELEV.
3/8" = 1'-0"

NOTE: ALL CABINETS WHITE TEXTURED P.L.M. W/ WHITE MELAMINE INTERIORS. CAB PULLS AS SELECTED. P.L.M. TOPS AND SPLASH TO BE SELECTED FROM STD FORMICA OR EQUAL.

PROJECT DIRECTORY

OWNER/LESSEE: ARLINGTON COUNTY, VIRGINIA
3033 WILSON BOULEVARD, SUITE 700B
ARLINGTON, VA 22201
ATTN: ODILE SADDI, Ed.D, DIVISION CHIEF
DEPARTMENT OF HUMAN SERVICES,
AGING AND DISABILITY SERVICES DIVISION
TEL: 703 228-1749
FAX: 703 228-1148 • TTY 703 228-1788
EMAIL: osaddi@co.arlington.va.us

OPERATOR: ST. COLETTA OF GREATER WASHINGTON
1901 INDEPENDENCE AVENUE SE
WASHINGTON, DC 20003
ATTN: SANDRA L. MARRA, SPHR, CHIEF OPERATING OFFICER
TEL: 202 350-8680 • TEL DIRECT: 202 350-8645
FAX: 202 350-8656
EMAIL: smarra@stcoletta.org

LANDLORD: BALLSTON COMMON
4238 WILSON BOULEVARD, SUITE 105
ARLINGTON, VA 22203
ATTN: GARY N. ADAMS, OPERATIONS MANAGER
TEL: 703 243-6346
FAX: 703 525-4247
EMAIL: GaryAdams@forestcity.net

ARCHITECT: TROUTON ASSOCIATES/ARCHITECTS, LLC
7227 LUDWOOD COURT
ALEXANDRIA, VA 22306
ATTN: JOHN S. TROUTON, AIA
TEL: 703 765-6638 • CELL: 703 862-1895
FAX: 703 765-6644
EMAIL: troutonassociates@cox.net

CONTRACTOR: CALLOWAY CONTRACTING GROUP, LLC
4717A EISENHOWER AVENUE
ALEXANDRIA, VA 22304
ATTN: DONALD R. (CHIP) CALLOWAY, JR, MEMBER
TEL: 703 823-6601 • CELL: 703 927-5761
FAX: 703 823-6735
EMAIL: chip@callowaycontracting.com

BUILDING DATA

EXISTING USE:	M – MERCANTILE
PROPOSED USE:	M – MERCANTILE
ZONING:	C-0-2
CONSTRUCTION TYPE:	I-B
CODE :	2000 VUSBC
AREA OF TENANT SPACE #2176:	2,900 SF
SPRINKLERS:	YES, FULLY SPRINKLERED

GENERAL NOTES AND SPECIFICATIONS

1. ALL NEW WORK TO CONFORM TO 2003 IBC AND ALL VIRGINIA AND ARLINGTON COUNTY CODES AND REGULATIONS.
2. CONTRACTOR TO FOLLOW ALL RULES AND REGULATIONS OF THE MALL TO ENSURE QUIET ENJOYMENT OF NEIGHBORING TENANTS AND CUSTOMERS.
3. NEW GWB PARTITIONS TO BE 22 GAUGE, GALVANIZED 3 5/8" METAL STUDS AT 16" CC WITH ½" GWB EACH SIDE TO APPROXIMATELY 6" ABOVE CEILING.
4. PAINT ALL WALLS, SLAT WALL FOR FULL COVERAGE; COLOR AS SELECTED BY TENANT.
5. NEW GLUE DOWN CARPET OVER EXISTING VCT, #2802 PATCRAFT, 10015, "RADICAL", COLOR 15310, WITH 6" VINYL BASE WHERE SHOWN.
6. NEW VINYL TILE, KNIGHT 12" x 12" x 1/8" DEEP PURPLE 920-07 WITH 6" VINYL BASE.
7. REPLACE ALL CEILING TILE WITH ARMSTRONG FINE FISSURED 5/8" ACOUSTICAL CEILING TEGULAR TILE TO FIT EXISTING GRID.
8. NEW DOORS TO BE 3' 0" x 7' 0" x 1 ¾" S.C. PAINT GRADE WITH 18 GAUGE H.M. FRAMES. TOILET, CHANGE ROOM PRIVACY LEVER LATCHSET WITH ADA CLOSER; STORE ROOM, PASSAGE SET ONLY.
9. PANTRY CABINETS PER DETAILS; APPLIANCES (NIC).

ARCHITECTURE
TROUTON ASSOCIATES
ALEXANDRIA, VA • SEATTLE WA
7227 LUDWOOD COURT
ALEXANDRIA, VIRGINIA 22306
703 765 6638 FAX 703 765 6644

SEAL

CONSULTANTS

WOODMONT WEAVERS
BALLSTON COMMON
SPACE NO 2176
ARLINGTON, VA 22203

PROJECT TITLE

REVISIONS

NO.	DATE	ISSUE
	11/22/07	ISSUE FOR PERMIT

SCALE 1/4" = 1'-0"
DATE 11 JULY '07
DRAWN BY ER
CHECKED BY JT
PROJECT NO 07-1175.100

DRAWING TITLE
FLOOR PLAN
LAYOUT

A-1

DRAWING NO SF-2176

ATTACHMENT 1
Vicinity Map
Ballston Common Mall
4238 Wilson Boulevard

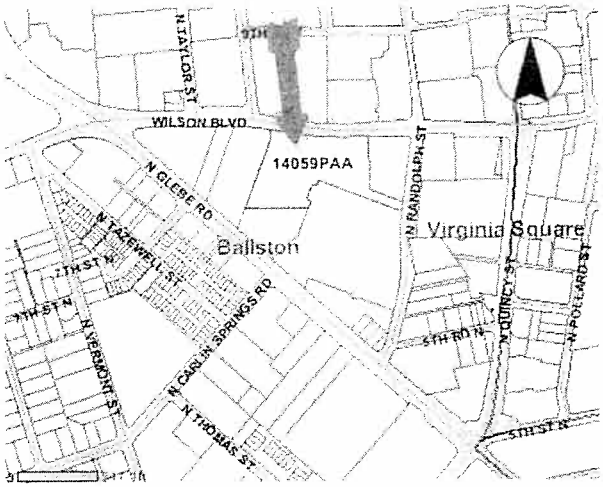


EXHIBIT C

FIRST AMENDMENT TO SUBLEASE AGREEMENT
ELLIPSE FINE CRAFTS, LLC

FIRST AMENDMENT TO SUBLEASE AGREEMENT

THIS FIRST AMENDMENT TO SUBLEASE AGREEMENT ("First Amendment"), made and entered into as of the _____ day of _____, 2010, by and between THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body politic, ("County" or "Tenant") and ELLIPSE FINE CRAFTS, LLC, a Virginia limited liability corporation ("Ellipse" or "Subtenant").

W I T N E S S E T H:

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 as shown on Exhibit B – Floor Plans, 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 here 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, Tenant and Ellipse entered into a Sublease Agreement dated November 19, 2007, that commenced on November 15, 2007 and will expire at 11:59 p.m. on October 31, 2010 ("Sublease");

WHEREAS, by letter dated July ___, 2010, from the Tenant to the Landlord, the Tenant exercised its option to extend the term of the Lease for a one year period from November 1, 2010 until October 31, 2011 ("First Extended Term"), under the same terms, covenants and conditions as the Lease;

WHEREAS, Tenant and Saint Coletta, contemporaneously herewith, have entered into a First Amendment to Sublease Agreement to extend the term of Saint Coletta's sublease for a one year period from November 1, 2010 until October 31, 2011 ("First Amendment to Sublease with Saint Coletta"); and

WHEREAS, Tenant and Ellipse desire to extend the term of the Sublease for the Premises to Ellipse for one year, from November 1, 2010 until October 31, 2011 ("First Extended Sublease Term"), and Subtentant agrees to use the Premises during the First Extended Sublease Term in strict accordance with the Lease and this First Amendment.

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 amend the Sublease as set forth in this First Amendment:

1. **Term**. Section 2 of the Sublease is hereby amended by deleting the entire Section 2 and adding in its stead:

"Extended Term. The term of this Sublease for the Subleased Premises is hereby extended for a period of one year ("First Extended Sublease Term"), commencing on November 1, 2010 and expiring at 11:59 p.m. on October 31, 2011 ("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."

2. **Base Rent**. Section 3 of the Sublease is hereby amended by deleting the entire Section 3 and adding in its stead:

"Base Rent. For the First Extended Sublease Term, Subtenant shall pay to Tenant base rent for the Subleased Premises in the amount of FIVE THOUSAND FOUR HUNDRED FIFTEEN AND 00/100 DOLLARS ($5,415.00) per annum, payable in advance, without deduction or demand, on the first (1st) day of each month during the First Extended Sublease Term, in twelve equal installments of FOUR HUNDRED FIFTY-ONE AND 25/100 DOLLARS ($451.25) ("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 800, Arlington, Virginia 22201, Attention: Real Estate Bureau, or to Landlord at such other place as Tenant may from time to time designate in writing."

3. **Subordination of Sublease Term**. The First Extended Sublease Term is subject to, and contingent upon, the commencement of the First Extended Term.

4. **Ratification and Confirmation of Sublease**. Except as modified herein, all other terms and conditions of the Sublease remain in full force and effect. In the event the terms and conditions of this First Amendment conflict with the terms of the Sublease, then the terms and conditions of the First Amendment shall prevail and be controlling.

5. **Full Force and Effect**. Tenant and Subtenant each represent and warrant to the other that the Sublease, as amended is in full force and effect and has not been assigned, modified, supplemented or further amended in any way.

6. **Entire Agreement**. The Sublease, as amended, contains the entire agreement of the parties hereto with respect to the subject matter hereof. No representations, inducements, or agreements, oral or otherwise, between the parties not contained in the Sublease, as amended, shall be of any force and effect. The Sublease, as amended, may not be modified, changed or terminated, in whole or in part, in any manner other than by an agreement in writing signed by duly authorized representatives of the parties hereto.

7. **Incorporation of Recitals**. The above recitals are hereby incorporated into this Amendment.

IN WITNESS WHEREOF, the undersigned parties have duly executed this First Amendment 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: LISA ANN NORRIS

Title: OWNER - EFC

Date: 6/10/10

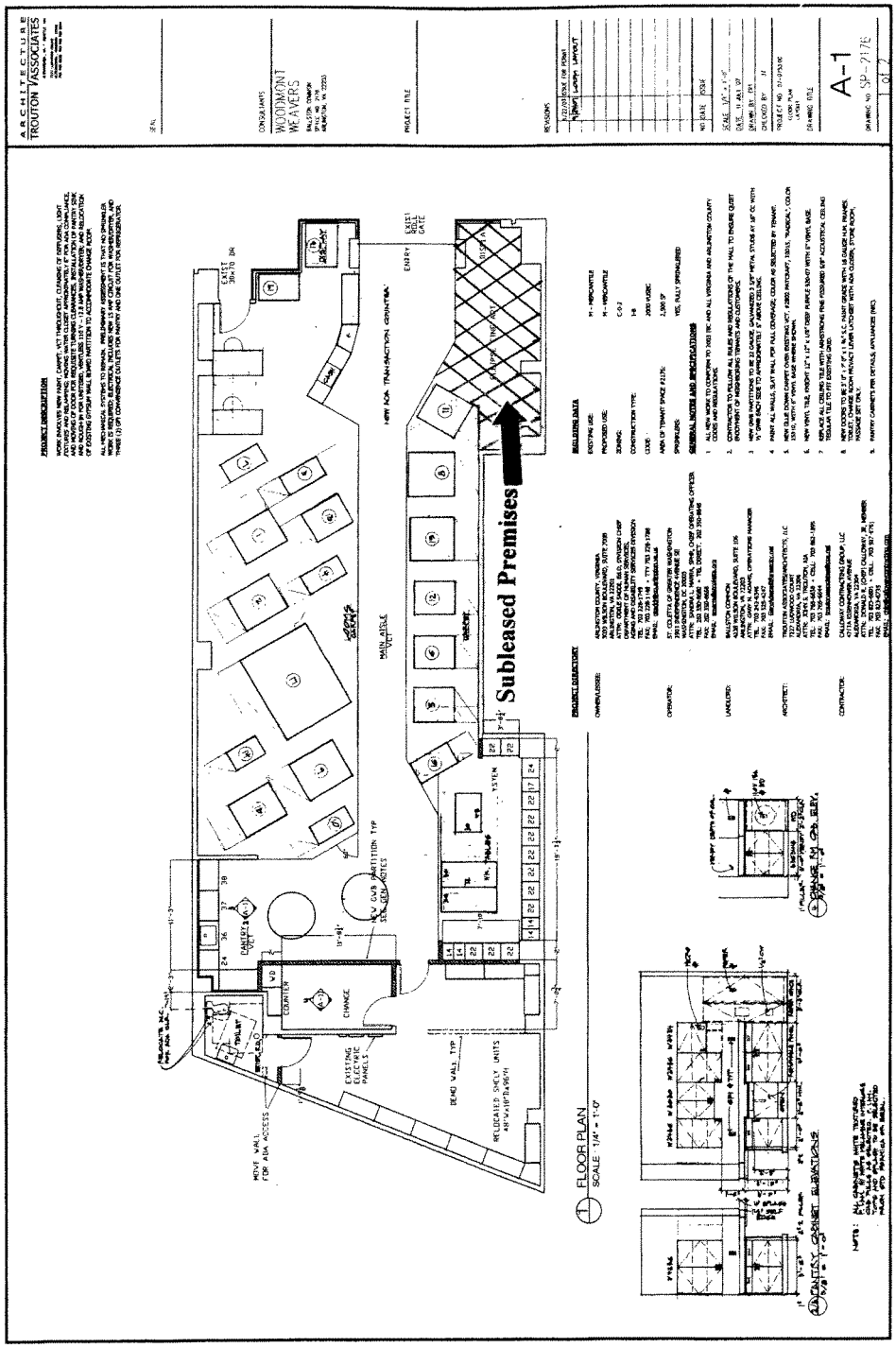
Approved as to form:

_____

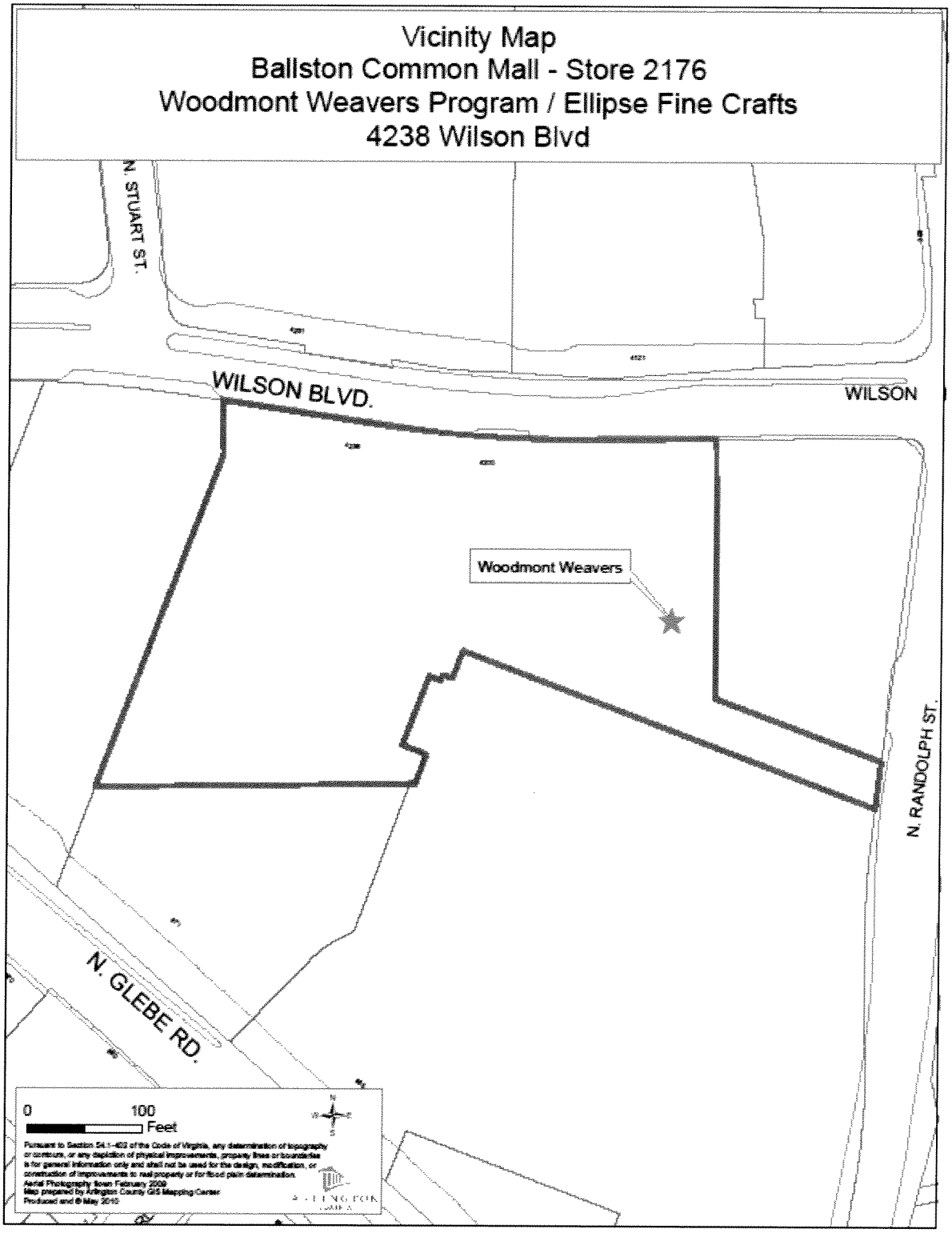
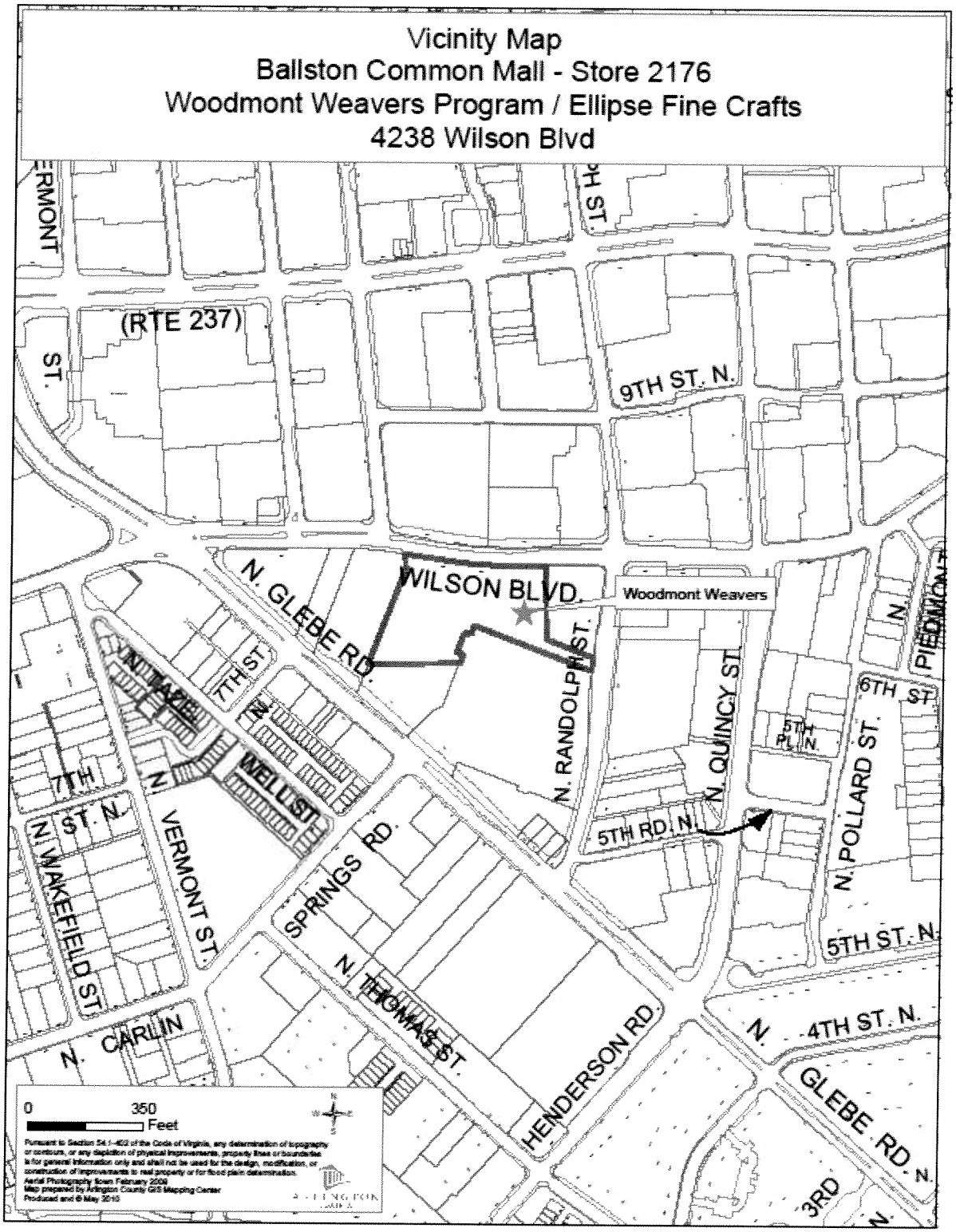
EXHIBIT A
DEED OF LEASE

EXHIBIT B
WOODMONT WEAVERS SUBLEASE

EXHIBIT C
FLOOR PLAN FOR SUBLEASED PREMISES–
STORE 2176



ATTACHMENT 1



ATTACHMENT 2