

**ARLINGTON COUNTY, VIRGINIA**  
**Attachment G – Other agreements for Garages**

**See documents below:**

- |                               |                        |
|-------------------------------|------------------------|
| <b>1) Basic Agreement</b>     | <b>Pages 50 - 73</b>   |
| <b>2) Capitals Sublease</b>   | <b>Pages 74 - 115</b>  |
| <b>3) County-IDA Sublease</b> | <b>Pages 116 - 156</b> |
| <b>4) ParkingLease080184</b>  | <b>pages 157 - 199</b> |

BASIC AGREEMENT

THIS BASIC AGREEMENT is hereby made as of this 1st day of August, 1984, by and among ARLINGTON COUNTY, VIRGINIA (the "County"), MAY CENTERS, INC., a corporation organized and existing under the laws of the State of Missouri (the "Company"), THE MAY DEPARTMENT STORES COMPANY, a corporation organized and existing under the laws of the State of New York ("MDS"), and BALLSTON COMMON ASSOCIATES, L.P., a Delaware limited partnership (the "Partnership").

RECITALS:

A. MDS owns Parkington Shopping Center (the "Center") which contains approximately 585,078 square feet of land, approximately 505,832 square feet of gross retail building area, and a five level parking garage containing space for approximately 1,650 automobiles (the "Existing Garage"). The Center is situated within the County, is generally bounded by Glebe Road, Wilson Boulevard, and North Randolph Street, and is more particularly described by metes and bounds on Exhibit A.

B. MDS operates and will remodel a department store in the Center through the Hecht Co. division.

C. The Company, which is a wholly owned subsidiary of MDS, operates all of the Center, other than the Hecht Co. store.

D. The Company and Ballston Development Corporation, an Ohio corporation, have entered into the Partnership for the purpose of owning and redeveloping the Center, other than the Hecht

Co. store, the Existing Garage, and the Point Office Building (as defined in Paragraph F(2) herein). The Company has the right to develop the Point Office Building.

E. The Partnership proposes to redevelop the Center as a mix of approximately 775,000 square feet of gross retail building area and approximately 850,000 square feet of gross office building area. The County plans to purchase the Existing Garage and an expansion thereof (the "Expansion"), to accommodate approximately 2,900 automobile parking spaces which collectively constitute the "Parking Garage." The redeveloped Center, to be known as Ballston Common, is hereinafter referred to as the "Project."

F. It is intended that the Project be redeveloped in three phases, as follows:

(1) Phase I will consist of (i) a three level enclosed mall retail center containing approximately 220,000 square feet of net rentable area, a new anchor store of approximately 120,000 square feet, and approximately 25,000 square feet of office space in the basement of the mall, (ii) a remodeled Hecht Co. store containing approximately 150,000 square feet of retail space in the first three floors, and approximately 125,000 square feet of office space in the basement, floor four and floor five of the store, (iii) an office building ("Wilson Office Building") containing approximately 178,000 square feet, and (iv) the Parking Garage.

(2) A future phase will be an office building ("Point Office Building") situated at the intersection of Glebe Road and Wilson Boulevard containing approximately 368,000 square feet of

office space plus approximately 44,000 square feet of net rentable retail space.

(3) Another future phase is a potential development situated along Glebe Road containing approximately 145,000 square feet of office space and approximately 103,000 square feet of net rentable retail space to be added to the Center.

Nothing contained in this Paragraph F shall in any manner constitute an Amendment of the Site Plan Approval for the Project, which Site Plan Approval contains the limitations on the floor areas permitted to be constructed.

G. The Partnership will proceed with the redevelopment of the Center if the County does the following work. The County is willing to acquire certain rights-of-way necessary for public transportation improvements, to construct the required Offsite Improvements (as defined in Paragraph 6(a) hereof), to acquire the renovated Existing Garage, to construct, or to have constructed the Expansion into a public parking garage, and to perform or to have performed certain other construction, but only in accord with the terms and conditions set forth in this Basic Agreement and the Parking Garage Agreement.

THEREFORE, in consideration of the mutual agreements expressed herein and of other good and valuable consideration, the parties hereto do hereby contract, covenant, and agree as follows:

1. (a) On the Substantial Completion Date as defined in the Ground Lease, MDS will convey to the County the renovated

improvements of the Existing Garage in accordance with a certain sale agreement dated as of August 1, 1984 (the "Sale Agreement").

(b) The Company and the County will enter into a "Parking Garage Agreement" which will provide for the construction of the Expansion. The Expansion will include (i) the addition of two levels of parking and (ii) the construction of seven levels of deck parking and a ramp helix on an area adjacent to the Existing Garage.

(c) The Partnership will provide for the construction of its portion of a pedestrian bridge all in accordance with a design mutually approved by the Partnership and the County, and all in accordance with the Site Plan Approval for the Project. The Partnership will design the central mall count in such a fashion as to provide for the support of the bridge across Wilson Boulevard. The bridge will be so located as to be compatible with the design of the Project. If required by the County and if the County has obtained or made provision for the funding of the remainder of the bridge not funded by the Partnership, the Partnership will pay one-half the cost of the design and construction of the bridge across the Wilson Boulevard right-of-way and all costs of design and construction of the supports for the bridge on the Project site; provided, however, that this obligation of the Partnership shall expire on July 9, 1993. In the event that federal or other governmental sources (excluding Arlington County) of funds are made available to provide for the cost of constructing the bridge across Wilson Boulevard, then any such funds so obtained shall be used to reduce the obligation of the Part-

nership and County to build the bridge across Wilson Boulevard under this Paragraph 2(c) on an equal basis.

2. MDS and the County have entered into a lease, dated as of August 1, 1984 (the "Ground Lease"), by the terms of which MDS leased to the County the land underlying the Parking Garage. MDS and the County have also entered into a lease (the "Point Lease") by the terms of which MDS has leased to the County certain land located at the intersection of Glebe Road and Wilson Boulevard.

3. (a) All expenses of the Expansion will be paid by the County from the proceeds of the sale of \$22,300,000 Variable Rate Demand Revenue Bonds (Ballston Public Parking Project) (the "Bonds") to the extent provided in Section 4 (a) of the Parking Garage Agreement.

(b) The Bonds outstanding at any one time shall not exceed Twenty-Five Million Dollars (\$25,000,000) and the term of the Revenue Bonds and all refundings and renewals shall not exceed thirty three (33) years, including the construction period.

(c) Neither MDS nor the Company nor the Partnership shall have any responsibility for the payment of any principal or interest or expenses of issue of the Bonds.

(d) The Bonds may be secured by the County by a first deed of trust on the interest of the County in the Parking Garage and the leasehold estate of the County in the underlying land.

(e) The Bonds will be sold at a time specified pursuant to Paragraph 2 of the Parking Garage Agreement.

4. MDS will reserve the right, without having any obligation, for itself, the Company or the Partnership, to add a maxi-

num of one level of parking to the Parking Garage at any time during the term of the Ground Lease. If built, this additional level of parking will be in addition to the parking to be constructed as a part of Phase I of the Project. If MDS or its designee(s) adds this level of parking to the Parking Garage then such eighth level will be owned by MDS or its designee and the party so adding the parking will do so at its sole expense and will be entitled to receive revenues from the eighth level of the Parking Garage, as set forth in Paragraph 17 of the Parking Garage Agreement.

5. The County will acquire, by condemnation if necessary, either directly or through another condemning authority, any interests in land necessary for street and sidewalk rights of way and to permit the construction and operation of the Parking Garage to the extent of the County's authority or that of any other condemning authority that consents to be involved.

6. (a) The County will construct all improvements which lie outside of the face of the buildings constituting the Project, necessary for the construction of the Project, such improvements being more particularly identified on Exhibits B-1, B-2, B-3 and B-4 (the "Offsite Improvements"). Although this obligation is subject to the appropriation of funds by the County, the County intends to construct the Offsite Improvements. Offsite Improvements shall mean (i) the planning, design, and engineering of all improvements outside of the face of the buildings constituting the Project (except as provided in Paragraph 6(c) hereof), (ii) the widening of Glebe Road on its north-



Default hereunder, and the obligation may be enforced in whole or in part by one or more of the following remedies:

(a) perform for the defaulting party and be immediately reimbursed by the defaulting party for the cost of performance; provided that if the County is the defaulting party, the cost of performance shall be reimbursed solely from Available Sources, or

(b) obtain specific performance by the defaulting party of the obligation; provided that if the County is the defaulting party, the cost of performance shall be reimbursed solely from Available Sources, or

(c) terminate this Basic Agreement if the default is the failure to issue the Bonds within the time period specified in Paragraph 2 of the Parking Garage Agreement, to purchase the renovated Existing Garage or to renovate or construct the addition to the Existing Garage, or

(d) if the County is the defaulting party, terminate the Ground Lease, after notice and the expiration of applicable grace periods as provided therein, or

(e) If the default is under Paragraph 16 of this Basic Agreement, the County may terminate this Basic Agreement but only if the failure relates to the construction of either (i) the three level enclosed mall retail center containing approximately 220,000 square feet of net rentable area or (ii) both the new anchor store of approximately 120,000 square feet and the Wilson Office Building.

In the event that this Basic Agreement is terminated for failure to issue the Bonds within the time period specified in Paragraph 2 of the Parking Garage Agreement, to purchase the renovated Existing Garage by the Partnership or to perform the renovations or construction of the additions to the Existing Garage, then the County, at the request of the Partnership or MDS, will advertise on the motion of the County Board outside the normal hearing dates for consideration of rezoning the entire Project site from C-O-2.5 to C-3.

In the event that any party shall not make any monetary payment within thirty days after delivery of written notice (notwithstanding that no Event of Default shall occur until 300 days after delivery of written notice) such payment shall constitute a loan by the party advancing such funds to the defaulting party which shall be repayable, solely from Available Sources, with interest from the date that the amount was repayable to the non-defaulting party at the rate of eight percent (8%) per annum if such interest is exempt from Federal income taxes and at the "base" rate of Citibank, N.A. (as adjusted from time to time) if such interest is not exempt from Federal income taxes.

If the County has given the other parties written notice of the name and address of the beneficiary of the deed of trust which secures the Bonds, then when delivering any notice of the default to the County, the nondefaulting party shall deliver a copy of such notice to the beneficiary of the deed of trust which secures the Bonds. If the beneficiary of the deed of trust which secures the Bonds gives to the nondefaulting parties, written

notice, on or before the date when such failure would become an Event of Default, of the intention of the beneficiary of the deed of trust which secures the Bonds to cure any default of County, then the nondefaulting party shall not have the right to exercise any remedy other than self help unless the failure is not cured by the beneficiary of the deed of trust which secures the Bonds during the thirty day period following the date of the Event of Default.

In the event of any nonmonetary default or in the event that any party fails to make any payment due to any person or entity, then any nondefaulting party may at its option, at any time after thirty days' written notice to the defaulting party (or such shorter period of time as may be reasonable under the circumstances in the event of an emergency) cure the default by payment or performance. Such payment or performance shall constitute a loan by the nondefaulting party to the defaulting party and shall thereafter be treated in the same manner as set forth above for repayment, solely from Available Sources, after a monetary default.

12. Notwithstanding any other provisions of this Basic Agreement, all of the County's obligations shall be satisfied solely from gross revenues from the Parking Garage, the proceeds of the Bonds and amounts which the County or its successors may elect, in its sole discretion, to make available for the purpose of performing any obligations under this Basic Agreement (collectively the "Available Sources"). However, if the County fails to perform its material obligations under this Basic Agreement within the time periods set forth in Section 11, whether or not

the failure to perform is due to the lack of funds from Available Sources, such failure to perform shall nevertheless constitute a default under this Basic Agreement.

13. By the execution of this Basic Agreement, the County hereby acknowledges and, as a contracting party, does not object to the fact that the Company, the Partnership, and MDS are developing other portions of the Project for their own account.

14. In the event that any party hereto shall be delayed, hindered in, or prevented from the performance of any obligation hereunder by reason of strikes, lock-outs, or other labor disputes; inability to procure materials, failure of power; riots, insurrection, or war; the act, failure to act, or default of any other party; the inability to obtain necessary permits or other necessary governmental approvals due to existing or future laws, regulations, or orders; or other reason beyond the control of such party (an "Unavoidable Delay"), then performance of such obligation shall be excused for the period of the Unavoidable Delay and the period for the performance of any such obligation shall be extended for a period equivalent to the period of such Unavoidable Delay; provided, however, that no such period of extended performance shall exceed one year.

15. No action taken by the County or the Company shall bind the other or its interest in the Existing Garage or the Parking Garage. Neither the County, the Partnership, nor the Company shall act as agent for the other and no party hereto will be bound by the actions of the other except as expressly permitted by the the provisions of this Basic Agreement.

16. Provided that the County has performed all of its obligations contained herein and under the Parking Garage Agreement, MDS, the Company, and the Partnership shall each use diligent efforts to cause the portion of Phase I set forth in paragraph F(1) of the Recitals hereof for which it is responsible to be open during the Spring of 1986; but nothing contained in this paragraph shall in any manner make a party responsible for the performance of any obligation of any other party.

17. The term of this Basic Agreement will begin on the date of its execution and will end upon the expiration of the term of the Ground Lease unless sooner terminated pursuant to the provisions of this Basic Agreement.

18. This Basic Agreement shall be construed in accord with the laws of or applicable to the Commonwealth of Virginia.

19. This Basic Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, no party shall have the right to assign its interest in this Basic Agreement except as expressly provided herein. The Company, MDS and the Partnership shall each have the right to transfer its interest under this Basic Agreement to any person or entity, and upon any such permitted transfer, the transferring party will be released from all obligations set forth in this Basic Agreement, except only those obligations, if any, which may have accrued prior to the date of any such transfer; provided, however, that this Paragraph 19 shall not in any way affect any limitation on such parties' transfer rights as may be set forth in other agreements with the

County. This Basic Agreement and the County's rights hereunder shall be assignable only to a governmental entity and only if the result of such transfer will not make the interest on the Bonds subject to federal income tax; provided, however, that a transfer of the County's interest to a lender as a result of a foreclosure of the lien of the deed of trust executed in accordance with the acquisition and construction of the Parking Garage, or as a result of a deed in lieu of foreclosure, and the first transfer thereafter by the lender shall be deemed to be permitted transfers.

20. All exhibits referenced in this Basic Agreement are to be attached hereto and by this reference are incorporated herein and made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Basic Agreement the date first above written.

ATTEST:

Alan Charlson  
Alan Charlson  
ASSISTANT SECRETARY

MAY CENTERS, INC.

By:

William Grafstrom  
William Grafstrom  
Chairman  
ARLINGTON COUNTY, VIRGINIA

By:

THE MAY DEPARTMENT STORES COMPANY

ATTEST:

Alan Charlson  
Alan Charlson  
ASSISTANT SECRETARY

By:

Henry A. Lay  
Henry A. Lay  
EXECUTIVE VICE PRESIDENT

ATTEST:

A handwritten signature in black ink, appearing to be "W. J. ...", written over a horizontal line.

BALLSTON COMMON ASSOCIATES, L.P.

By: Ballston Development Corporation,  
general partner

By

A handwritten signature in black ink, appearing to be "James ...", written over a horizontal line.

STATE OF OHIO )  
 ) ss.  
COUNTY OF CUYAHOGA )

On the 25<sup>th</sup> day of September, 1984, before me, a Notary Public duly authorized in and for said County in the State aforesaid to take acknowledgements, personally appeared James Kahan and William Warren, to me known and known to me to be the President and Secretary of BALLSTON DEVELOPMENT CORPORATION, the corporation that executed the foregoing instrument, said corporation being known to me to be the General Partner of Ballston Common Associates, L.P., the limited partnership that executed the within Instrument, and acknowledged that as such officers, being authorized so to do, they executed the foregoing Instrument on behalf of said corporation by subscribing the name of such corporation by themselves as such officers as their free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Clifford Glenn Savren  
Notary Public

My Commission Expires:

\_\_\_\_\_

CLIFFORD GLENN SAVREN, Attorney At Law  
Notary Public - State of Ohio  
My commission has no expiration date.  
Section 147.03 R. C.

1

STATE OF MISSOURI )  
 ) ss  
CITY OF ST. LOUIS )

On this 24<sup>th</sup> day of September, 1984, before me, the undersigned, a Notary Public in and for the said City and State, personally appeared William J. Graffstrom, known to me to be the Chairman and Alan Carlson known to me to be the ASSISTANT SECRETARY of MAY CENTERS, INC., the corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument, on behalf of the corporation herein named, and acknowledged to me that such corporation executed the within Instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal the day and year in this certificate first above written.

Michelle K. Davis  
Notary Public in and for said  
City and State

My Commission Expires:

(SEAL)

MICHELLE K. DAVIS  
NOTARY PUBLIC, STATE OF MISSOURI  
MY COMMISSION EXPIRES 2/12/88  
CITY OF ST. LOUIS

13

STATE OF MISSOURI )  
 ) ss  
CITY OF ST. LOUIS )

On this 21<sup>st</sup> day of September, 1984, before me, the under-  
signed, a Notary Public in and for the said City and State, per-  
sonally appeared HEAVY & CO., known to me to be the  
~~EXECUTIVE VICE PRESIDENT~~ Alan Charlson known to me to be the  
~~ASSISTANT SECRETARY~~ THE MAY DEPARTMENT STORES COMPANY, the corpora-  
tion that executed the within Instrument, known to me to be the  
persons who executed the within Instrument, on behalf of the cor-  
poration herein named, and acknowledged to me that such corpora-  
tion executed the within Instrument pursuant to its by-laws or a  
resolution of its board of directors.

WITNESS my hand and official seal the day and year in this  
certificate first above written.

Michelle K. Davis  
Notary Public in and for said  
City and State

My Commission Expires:

(SEAL)

MICHELLE K. DAVIS  
NOTARY PUBLIC, STATE OF MISSOURI  
MY COMMISSION EXPIRES 2/12/88  
CITY OF ST. LOUIS

~~XXXXXXXXXXXXXXXXXXXX~~ §  
DISTRICT OF COLUMBIA § ss.  
~~XXXXXXXXXXXXXXXXXXXX~~ §

The undersigned Notary Public in and for the jurisdiction aforesaid hereby certifies that Anton Gardner whose name as County Manager of the County of Arlington, Virginia is signed to the foregoing Instrument, acknowledged the same before me in my jurisdiction aforesaid.

Given under my hand this 26<sup>th</sup> day of September, 1984.

Rhonda D. Vines  
Notary Public

My Commission Expires:

May 14, 1988

EXHIBIT A

Beginning at a point on the Westerly R/W line of North Randolph Street marking the Northeastly corner of Lot 1, Glebe Wood Terrace; thence departing from the road and running with the boundary lines of Lots 1 thru 4 N 47° 33' 25" W, 125.70 feet and S 44° 22' 22" W, 89.54 feet to a point on the Northwestly R/W line of N. Glebe Road; thence with the Northeastly R/W line of Glebe Road the following courses: N 47° 31' 28" W, 1,216.44 feet; with a curve to the right whose radius is 166.00 feet (whose chord is N 42° 05' 56" W, 31.39 feet) an arc distance of 31.44 feet and with a curve to the right whose radius is 23.00 feet (whose chord is N 21° 02' 02" E, 38.89 feet) an arc distance of 46.33 feet to a point in the Southerly R/W line of Wilson Boulevard; thence with the Southerly R/W line of Wilson Boulevard the following courses: with a curve to the right whose radius is 166.00 feet (whose chord is N 84° 43' 33" E, 34.62 feet) an arc distance of 34.68 feet; S 89° 17' 21" E, 340.93 feet; with a curve to the right whose radius is 1,119.93 feet (whose chord is S 84° 54' 51" E, 170.87 feet) an arc distance of 171.03 feet; S 80° 32' 21" E, 155.51 feet; with a curve to the left whose radius is 1,180.88 feet (whose chord is S 85° 06' 15" E, 188.00 feet) an arc distance of 188.20 feet; S 89° 40' 14" E, 273.27 feet and with a curve to the right whose radius is 13.00 feet (whose chord is S 40° 50' 17" E, 19.57 feet) an arc distance of 22.16 feet to a point on the aforementioned Westerly R/W line of N. Randolph Street; thence with the said R/W line of Randolph Street the following courses: S 07° 59' 41" W, 344.84 feet; with a curve to the left whose radius is 604.00 feet (whose chord is S 04° 05' 15" W, 82.31 feet) an arc distance of 82.38 feet; S 00° 10' 56" W, 127.35 feet and with a curve to the right whose radius is 485.87 feet (whose chord is S 07° 46' 10" W, 128.3 feet) an arc distance of 128.68 feet and S 15° 21' 25" W, 155.14 feet to the point of beginning, containing 13.43155 acres of land.

EXHIBIT B-1

HIGHWAY IMPROVEMENTS

The County shall design and complete the following highway improvements along Glebe Road and N. Randolph Street in conjunction with the construction schedule of the Mall Building and timed so that their completion occurs no later than the Grand Opening of the Mall Building.

a. The widening of Glebe Road on the northeast side to provide a continuous third northwest-bound lane from N. Randolph Street to Wilson Boulevard. / Paver-type pedestrian crosswalks to be installed at the intersection of Wilson Boulevard and Glebe Road. These crosswalks will allow pedestrians to move from the Point Parking Lot north across Wilson Boulevard or south across Glebe Road.

b. The widening of Glebe Road at the intersection of N. Carlyn Springs Road to provide a dual left turn into the parking garage entrance. / Paver pedestrian crosswalks at the intersection of Glebe Road and N. Carlyn Springs Road to allow for pedestrian movements across Glebe Road north and south.

c. The widening of N. Randolph Street to provide a consistent 58-foot cross-section from Wilson Boulevard to Glebe Road. This widening will begin on N. Randolph Street approximately 430 feet north of the intersection with Glebe Road.

d. The construction of the N. Randolph Street-Glebe Road Intersection to provide for a free flow right-turn lane for traffic moving south on Randolph Street at Glebe Road.

EXHIBIT B-2

TRAFFIC SIGNALS

a. The County will design, purchase, and install a traffic signal on N. Randolph Street approximately 350 feet south of the intersection of Wilson Boulevard. This signal will be designed and positioned to control the flow of traffic into and out of the parking garage N. Randolph Street access.

b. The County will redesign and reconstruct, if necessary, the existing traffic signals at N. Carlyn Springs Road and Glebe Road and the existing traffic signals on N. Randolph Street and Glebe Road. The control and sequencing of these signals will be compatible with the highway improvements described in Exhibit B-1.

EXHIBIT B-3

PUBLIC SIDEWALK PARKING

The County will install a 14-foot 6-inch wide sidewalk section around the entire perimeter of the site during Phase I development. This sidewalk section will begin at the corner of Glebe Road and N. Randolph Street northwest along Glebe Road to the intersection with Wilson Boulevard, east along Wilson Boulevard to the intersection with N. Randolph Street, and south along N. Randolph Street to the intersection with Glebe Road. The 14-foot 6-inch dimension will be comprised of a 6-inch concrete curb, 4-foot planting/tree grate area, and 10-foot clear public paver walkway. As part of the installation of the public walkway, the County will include all trees and tree grates, all street lights, fire hydrants, meter boxes, utility vault covers and access panels, paver sidewalks, and other landscaping within the sidewalk section. The design and construction documents for this work are to be contracted for and paid for by the Partnership. The Partnership will deliver to the County a set of approved construction documents and specifications ready for the County to bid and construct. This construction shall be completed in accordance with the over-all construction schedule for the Mall Building and shall be completed to coincide with the Grand Opening of the Mall Building.

EXHIBIT B-4

UTILITIES

a. The County will design and install a new 12-inch water main from the intersection of N. Randolph Street and Glebe Road to the intersection of N. Randolph Street and Wilson Boulevard. This water line will be installed within the N. Randolph Street right-of-way and will connect to the existing 12-inch water main in Glebe Road and the existing 12-inch water main in Wilson Boulevard. Appropriate fire hydrants will be installed along N. Randolph Street and adequate valves to meet the anticipated development of this area.

b. The County will design and install a new 12-inch water main from the intersection of N. Carlyn Springs Road and N. Thomas Street to the intersection of N. Carlyn Springs Road and Glebe Road. This water main will be installed within the N. Carlyn Springs Road right-of-way and will connect an existing 20-inch water main in N. Thomas Street to the existing 12-inch water main in Glebe Road.

c. The County will design and install a new sanitary sewer line from the site to the Lubber Run sewer main at Wilson Boulevard and Abbingdon Street. This sewer line will be installed from Abbingdon Street within the Wilson Boulevard right-of-way to the intersection with Glebe Road, the sewer line will then turn in a southeasterly direction and be installed in the Glebe Road right-of-way on the northeast side to the intersection with N. Carlyn Springs Road. This sewer line shall be sized adequately to serve all of the development anticipated on the Ballston Common site and within the water shed served by the sewer line. Installation shall be at a depth which is sufficient to serve the buildings on the Ballston Common site at street grade or above.

EXHIBIT C

Beginning at a point on the Westerly R/W line of North Randolph Street, marking the Northeasterly corner of Lot 1, GlebeWood Terrace Subdivision; thence departing from the road with the Northeasterly line of Lots 1 through 4, GlebeWood Terrace N 47° 33' 25" W, 125.70 feet; to a point marking the most Northerly corner of Lot 4; thence with the Northwesterly line of Lot 4 S 44° 22' 22" W, 89.54 feet; to a point on the Northeasterly R/W line of North Glebe Road; thence with the Northeasterly R/W line of North Glebe Road N 47° 31' 28" W, 272.03 feet to a point; thence departing from the road and running through the property of The May Department Stores Company the following courses: N 21° 36' 13" E, 46.10 feet; S 68° 23' 47" E, 200.75 feet; S 21° 36' 13" W, 13.00 feet; S 68° 23' 47" E, 34.67 feet; N 21° 36' 13" E, 7.00 feet and S 68° 23' 47" E, 160.04 feet to a point of the aforementioned Westerly R/W line of North Randolph Street; thence with the Westerly R/W line of North Randolph Street S 15° 21' 25" W, 99.77 feet to a point of beginning, containing 0.800986 Acres of land.

As shown on plat entitled "A Resubdivision of Parcels 'A' through 'I,' the Hecht Company Property, and GlebeWood Terrace Lot 'A'," dated May 4, 1984 (revised July 6, 1984), prepared by Dewberry & Davis, Fairfax, Virginia, certified land surveyors and recorded in Deed Book 2149, Page 100, Arlington County Records.

C/AEC/1  
(28/AEC/2)

*Bot of PAC #14-05703*

Prepared by  
McGuireWoods LLP  
One James Center  
Richmond, Virginia 23219

**DEED OF LEASE**

**Between**

**INDUSTRIAL DEVELOPMENT AUTHORITY OF THE  
ARLINGTON COUNTY, VIRGINIA**

**As Lessor**

**and**

**LINCOLN BALLSTON LLC**

**As Lessee**

**As of March 24, 2005**

WREA160006v40

## TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS.....	1
2. LEASE OF LEASED PREMISES; TERM OF LEASE; QUIET ENJOYMENT.....	5
2.1 Lease.....	5
2.2 Term.....	5
2.3 Quiet Enjoyment.....	5
3. RENT.....	6
3.1 Rent.....	6
3.2 Interest Upon Default in Rental Payments.....	6
3.3 "Net" Lease.....	6
3.4 Additional Consideration.....	7
3.5 Reserves.....	7
3.5.1 Operating Reserve.....	7
3.5.2 Maintenance and Replacement Reserve.....	7
3.5.3 General.....	8
3.6 Acceleration of Rent.....	8
3.7 Skating Facilities Revenues, Financial Reports.....	8
4. IMPOSITIONS.....	9
4.1 Payment.....	9
4.2 Contests.....	9
4.3 Assessed Valuation.....	10
4.4 Joinder by Lessor.....	10
5. SKATING FACILITIES.....	10
5.1 Approval of Plans and Specifications.....	10
5.2 Construction of Skating Facilities.....	10
5.2.1 Inspections.....	10
5.2.2 Compliance with Laws.....	10
5.3 Title to Skating Facilities.....	11
6. MAINTENANCE, USE AND ALTERATION.....	11
6.1 Acceptance.....	11
6.2 Maintenance of the Skating Facilities; Inspection for Leaks.....	11
6.3 Use.....	11
6.3.1 Required Use.....	11
6.3.2 Use Restrictions.....	11
6.4 Waste.....	12
6.5 Compliance with Laws.....	12
6.6 Alterations.....	13
6.6.1 Permitted Activities.....	13

6.6.2	Prohibited Activities .....	14
6.7	Environmental Matters.....	15
6.8	Parking.....	16
6.9	Compliance with Ground Lease.....	16
7.	INSURANCE; INDEMNITY .....	16
7.1	Coverage .....	16
7.1.1	All Risk Insurance.....	16
7.1.2	Liability Insurance .....	16
7.1.3	Use and Occupancy Insurance .....	17
7.1.4	Other Insurance.....	17
7.2	Policies.....	17
7.2.1	General Requirements.....	17
7.2.2	Insureds.....	17
7.2.3	Renewal and Cancellation.....	17
7.3	Indemnification.....	18
8.	DAMAGE OR DESTRUCTION.....	18
8.1	Damage or Destruction .....	18
8.2	Insurance Proceed Deficits .....	19
8.3	Non-Abatement of Rent.....	19
9.	CONDEMNATION.....	19
9.1	General.....	19
9.2	Complete or Partial Taking .....	19
9.3	Temporary Taking .....	20
9.4	Condemnation Proceedings .....	20
9.5	Notice of Condemnation.....	20
10.	ASSIGNMENTS, SUBLEASES , AND MORTGAGES; SINGLE PURPOSE ENTITY .....	20
10.1	Assignments.....	20
10.2	Subleases.....	20
10.3	Leasehold Mortgages on Lessee's Interest.....	21
10.4	Single Purpose Entity.....	21
10.4.1	Single Asset .....	21
10.4.2	No Other Business .....	21
10.4.3	Agreements with Affiliates.....	21
10.4.4	No Indebtedness.....	21
10.4.5	Organizational Formalities.....	21
10.4.6	Books and Records .....	21
10.4.7	Entity Separateness.....	21
10.4.8	Adequate Capital; Solvency.....	22
10.4.9	Dissolution .....	22
10.4.10	Independent Manager.....	22

11.	DEFAULTS .....	22
11.1	Events of Default .....	22
11.1.1	Failure in Payment .....	22
11.1.2	Failure in Performance .....	22
11.1.3	Insolvency .....	22
11.1.4	Levy .....	23
11.1.5	Failure to Complete .....	23
11.2	Force Majeure .....	23
11.3	Remedies .....	23
11.3.1	Acceleration of Rent .....	23
11.3.2	Taking of Possession .....	23
11.3.3	Operation .....	23
11.3.4	Termination .....	24
11.3.5	Enforcement .....	24
11.4	Application of Funds .....	24
11.5	No Remedy Exclusive .....	24
11.6	Agreement to Pay Attorney's Fees and Expenses .....	24
11.7	Holding Over .....	25
11.8	Interest from Maturity .....	25
12.	MISCELLANEOUS PROVISIONS .....	25
12.1	Recording and Filing .....	25
12.2	Lessor's Rights of Access .....	25
12.3	Surrender of Leased Premises .....	25
12.4	Notices .....	25
12.4.1	Notice to Lessor .....	26
12.4.2	Notice to Lessee .....	26
12.4.3	Notice to May .....	26
12.4.4	Notice to the County .....	26
12.5	Fees and Commissions .....	26
12.6	No Waiver .....	27
12.7	Performance of Lessee's Obligations .....	27
12.8	Severability .....	27
12.9	Status Reports .....	27
12.10	Amendment .....	27
12.11	Terminology .....	27
12.12	Counterparts .....	28
12.13	Binding Agreement .....	28
12.14	Interpretation .....	28
12.15	Governing Law .....	28
12.16	Relationship of Parties .....	28
12.17	Limitation to Appropriated Funds .....	28
12.18	Assignment by Lessor .....	28
12.19	Time of Essence .....	28
12.20	Lessee's Obligations Survive .....	28

**Exhibit A - Encumbrances**  
**Exhibit B - Description of Skating Facilities**  
**Exhibit C - Rules and Regulations**

**DEED OF LEASE**

THIS DEED OF LEASE, made and entered into as of the 24<sup>th</sup> day of March, 2005, by and between the INDUSTRIAL DEVELOPMENT AUTHORITY OF ARLINGTON COUNTY, VIRGINIA a political subdivision of the Commonwealth of Virginia, as Lessor, and LINCOLN BALLSTON, LLC, a Delaware limited liability company, as Lessee;

**WITNESSETH, That**

WHEREAS, Lessor leases certain real property and air rights pursuant to the terms of that certain Deed of Lease and Grant of Air Rights of even date herewith, as thereafter amended, between Lessor, as lessee, and Arlington County, Virginia, as lessor (the "IDA Lease")

WHEREAS, Lessor desires to lease the Leased Premises (as hereinafter described) to Lessee, and Lessee desires to lease the Leased Premises from Lessor, such leasing to be in accordance with the terms, conditions and provisions of this Lease.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration in hand paid by each Party hereto to the other at and before the sealing and delivery of these presents, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee, intending to be legally bound, do hereby covenant and agree as follows:

1. **Definitions**. For purposes of this Lease, and in addition to terms defined elsewhere in this Lease, the following defined terms shall have the meanings ascribed thereto in this Article 1.

"Affiliate" means, with respect to any Entity, (a) any Entity five percent (5%) or more of the beneficial ownership of which is owned by the Entity in question, (b) any Entity which owns more than five percent (5%) of the beneficial interest of the Entity in question, or (c) any Entity which managerially controls, or is managerially controlled by, or is under common managerial control with, the Entity in question.

"Approve," "Approved" or "Approval" mean, as to the subject matter thereof, an express approval contained in a written statement signed by the approving Entity.

"Basic Rent" shall have the meaning ascribed to such term in Section 3.

"Claims" has the meaning set forth in Section 7.3 hereof.

"Commencement Date" means the day upon which the first of the following events occurs (i) opening of the Leased Premises for business or occupation by Lessee, (ii) issuance of a Certificate of Occupancy for the Leased Premises by Arlington County, (iii) the Initial Payment Date under Section 3.1 hereof, or (iv) twenty four (24) months after issuance of the Notice to Proceed pursuant to the Development Agreement.

"Cooperation Agreement" means that certain Cooperation Agreement by and between Lessor and the County entered into with respect to the IDA Bonds.

"County" means Arlington County, Virginia.

"Deed of Trust Trustees" shall have the meaning ascribed to such term in the Indenture if the IDA Bonds are secured by a Leasehold Mortgage.

"Development Agreement" means that certain Development Agreement dated of even date herewith among Lessor, the County and Lincoln Holdings, LLC, as amended, modified, supplemented or restated from time to time.

"Eighth Level Slab" means the concrete slab constructed by the County upon the Parking Garage consisting of approximately 95,000 square feet

"Encumbrances" means those matters, other than Impositions neither delinquent nor in default, affecting title to the Leased Premises as of the date of this Lease and more particularly described in Exhibit "A" attached hereto and by reference made a part hereof.

"Entity" means any person, corporation, limited liability company, partnership (general or limited), joint venture, association, joint stock company, trust or other business entity or organization.

"Event of Default" means any of those events, occurrences and circumstances so designated in Section 11.1.

"Expire," "Expired" or "Expiration" mean the expiration of the Term of this Lease by reason of lapse of time, and not by reason of any Event of Default.

"Garage Parcel" means that certain parcel of land situated in Arlington County, Virginia containing 4.41394 acres and more particularly described as Parcel E-1 on a plat entitled "A Resubdivision of Parcels 'A' through 'T,' the Hecht Company Property, and Gleewood Terrace Lot 'A'," dated May 4, 1984, revised July 6, 1984, prepared by Dewberry & Davis, Fairfax, Virginia, recorded in the Clerk's Office of the Circuit Court of Arlington, County, Virginia in Deed Book 2194, page 100.

"IDA Bonds" means the revenue bonds in the maximum principal amount of \$35,700,000 to be issued by the Lessor to finance a portion of the cost of the Skating Facilities.

"IDA Lease" has the meaning set forth in the recitals hereto.

"Impositions" means all taxes, assessments, use and occupancy taxes, transit taxes and other charges, general and special, ordinary and extraordinary, payable to any governmental body, which shall or may during the Term be assessed, levied, charges or imposed upon or accrue or become due or payable out of or on account of or become a lien on the Leased Premises, or any part thereof. Impositions shall include, without limitation, charges for gas, water, sewer, electricity and other utilities serving the Leased Premises. Impositions shall not include any income taxes, capital levy, estate, succession, inheritance or transfer taxes or similar

tax of Lessor, any taxes imposed with respect to the Parking Garage, or any franchise taxes imposed upon the owner of the fee of the Parking Garage Parcel or any income, profits or revenue tax, assessment or charge imposed upon the Rent or other benefit received by Lessor under this Lease unless such taxes are due in lieu of Impositions.

"Indenture" means that certain Indenture of Trust securing the IDA Bonds.

"Lease" means this Deed of Lease, together with any amendments, modifications, supplements, restatements or replacements thereof.

"Leased Premises" means, collectively, (i) the Skating Facilities (ii) an exclusive right and easement on the Randolph Street side of the Parking Garage sufficient for construction and operation of an exterior elevator to serve the Skating Facilities as shown in the Plans and Specifications and an exclusive right and easement sufficient for the construction and operation of certain portions of the Skating Facilities that extend below the Eighth Level Slab as shown in the Plans and Specifications, (iii) non-exclusive rights of access to the Skating Facilities, over and through the Parking Garage and the Eighth Level Slab, including any and all elevators, stairways, walkways and driveways, (iv) non-exclusive rights of access and easements to the utilities, utility lines, ducts and shafts existing in the Parking Garage and rights to connect to existing, or install additional, water and sewer, electrical, and other lines to provide utilities to the Skating Facilities, all as shown on the Plans and Specifications and in such a manner as will not interfere with or overload existing service to others being served, and (v) non-exclusive rights of lateral support of the Skating Facilities through the existing Parking Garage structure (including the Eighth Level Slab); provided that the non-exclusive rights of access described in (ii), (iv) and (v) above are subject to reasonable interruption for maintenance, repairs and replacements and as a result of damage or condemnation.

"Leasehold Mortgage" means any deed of trust, mortgage, security agreement or other instrument in the nature thereof at any time and from time to time constituting a lien upon the leasehold estate of Lessor under the Prime Lease to the extent required to secure the IDA Bonds and any refunding of the IDA Bonds.

"Leasehold Mortgagee" means the holder or, collectively, the holders of the note(s) or other obligations secured by a Leasehold Mortgage.

"Lessee" means Lincoln Ballston LLC, a Delaware limited liability company, and the successors and permitted assigns thereof.

"Lessor" means the Industrial Development Authority of Arlington County, Virginia, a political subdivision of the Commonwealth of Virginia, and the successors, and assigns thereof.

"Mall" means that certain shopping center containing, as of the date hereof, a Hecht's department store, a Hecht's furniture store, an enclosed passageway and adjacent tenant space and other components, commonly known as the Ballston Commons Mall.

"May" means The May Department Stores Company, a New York corporation, its successors and assigns.

"Notice" means a written advice or notification required or permitted by this Lease, as more particularly provided in Section 12.4.

"Parking Facilities" means the parking areas located on the Eighth Level Slab and leased by the Lessor to the County pursuant to the Parking Lease.

"Parking Garage" means the parking structure (excluding the Eighth Level Slab) located on the Garage Parcel consisting of seven levels of parking and approximately 2,805 parking spaces, as such may exist from time to time.

"Parking Lease" means that certain Parking Lease by and between the Lessor, as lessor and the County, as lessee by which the Lessor subleases the Parking Facilities to the County for the operation of public parking.

"Parties" means all parties to this Lease; that is, Lessor and Lessee.

"Party" means any party to this Lease, that is, Lessor or Lessee.

"Plans and Specifications" means the Plans and Specifications approved by May as set forth in the Direct Agreement and all permitted amendments thereto.

"Rent" means the sums to be paid by Lessee to Lessor pursuant to the provisions of Article 3

"Rules and Regulations" means those rules and regulations attached hereto as "Exhibit C."

"Site Plan" means the site plan for the Arlington Ice Skating Facility project approved by the County Board of Arlington County as an amendment to Site Plan #193 on February 9, 2002 and as amended on June 14, 2003 and December 14, 2004, as the same may be amended from time to time and approved by May.

"Skating Facilities" means the improvements described in Exhibit B hereto.

"Skating Facility Agreement" means that certain Skating Facility Agreement of even date herewith, among May, the County, Lessor, Consortium Ballston LLC, FC Ballston Common LLC, Ballston Office Center, LLC, NDH II Point Holdings LLC and Lincoln Holdings LLC, Lincoln Hockey LLC and Lessee.

"Skating Facility Available Sources" means gross revenues received by the Lessor under this Lease and all other revenues received by the Lessor with respect to the Skating Facilities.

"Sublease" means, generally, any one of the Subleases.

"Subleases" means all written leases, rental agreements, licenses, concessions, easements, occupancies or other agreements or arrangements for use or hire of, or in respect to, any portion of the Leased Premises permitted by this Lease.

"Subrents" means the aggregate of all rent and other charges or sums from time to time and at any time due or payable by Subtenants under Subleases.

"Subtenant" means any Entity which is or may hereafter be the sublessee or subtenant under any Sublease.

"Term" means the term of this Lease described in Section 2.2.

"Terminate," "Terminated" and "Termination" mean the termination of the Term of this Lease by reason of an Event of Default, condemnation or casualty as provided in this Lease, or by reason of Section 2.2(b), or by mutual consent, and not by reason of lapse of time.

"Transfer" means any transfer, sale, conveyance, grant, assignment, encumbrance, pledge, hypothecation or other disposition of the Leased Premises in whole or in part by Lessee. A transfer, sale, conveyance or assignment of the ownership of Lessee, in whole or in part, shall be deemed a Transfer.

"Trustee" shall have the meaning ascribed to such term in the Indenture.

## 2. Lease of Leased Premises; Term of Lease; Quiet Enjoyment

2.1 Lease. Lessor, in consideration of the rents, covenants, agreements and conditions herein set forth, which Lessee hereby agrees shall be paid, kept and performed by Lessee, does hereby grant and lease to Lessee, and Lessee does hereby accept, rent and lease from Lessor, all right, title and interest of Lessor in and to the Leased Premises. The interest in the Leased Premises created hereby shall be deemed to be an estate for years under the laws of the Commonwealth of Virginia.

TO HAVE AND TO HOLD the Leased Premises and all rights, privileges and appurtenances thereunto appertaining unto Lessee, for and during the Term, unless sooner Terminated in accordance with any of the provisions of the Lease, subject to the Encumbrances and Impositions neither delinquent nor in default.

2.2 Term. (a) This Lease is and shall remain in full force and effect from and after the Commencement Date. The term of this Lease shall begin on the Commencement Date and end at midnight (e.s.t.) on December 30, 2031 or such earlier termination date as may result from (i) any of the provisions of this Lease, (ii) as a result of the termination of the Ground Lease (as defined in the Skating Facility Agreement) or (iii) an event of default under the IDA Lease.

(b) Notwithstanding the foregoing, this Lease shall terminate if the County is required to remove the Skating Facilities or the Eighth Level Slab pursuant to the Ground Lease or the Declaration (as such terms are defined in the Skating Facilities Agreement).

2.3 Quiet Enjoyment. Lessor represents and warrants that subject to Encumbrances it has full right and authority to execute and deliver this Lease and to perform its obligations hereunder, and that Lessee, while paying the Rent and other sums payable under this Lease and performing its other covenants and agreements herein set forth, shall peaceably and

quietly have, hold and enjoy the Leased Premises for the full Term without hindrance or molestation from Lessor, subject to the terms, conditions and provisions of this Lease and to the Encumbrances. Lessor further warrants that, to the best of Lessor's knowledge, the execution, delivery and performance of this Lease by Lessor do not conflict with, or cause a violation of, any agreement or instrument binding upon the Lessor.

3. Rent

3.1 Rent. Lessee shall pay to Lessor rent (the "Basic Rent") for the Leased Premises on the dates and in the amounts as are set forth in a separate agreement between Lessor and Lessee (the "Rent Payment Agreement"). Basic Rent shall be equal to the greater of (i) Annual Debt Service or (ii) an annual amount equal to \$2,100,000 provided that Basic Rent shall not exceed an annual amount equal to \$2,400,000 except as may be set forth in the Rent Payment Agreement. For purposes of this section Annual Debt Service shall mean the principal and interest due in any year with respect to the IDA Bonds plus all fees and charges required to be paid in such year with respect to the IDA Bonds, including (i) the fees of the Trustee for services rendered and expenses incurred by it as Trustee under the Indenture, as bond registrar and as paying agent on the IDA Bonds, including any attorney's fees incurred by the Trustee and any cost and expense necessary to cancel and discharge the Indenture upon payment of the IDA Bonds, and all other amounts that Lessor has assumed or agreed in the Indenture to pay, including, any fee assessed by the issuer of the IDA Bonds. (ii) any amounts due to Lessor or the Deed of Trust Trustees, if any, for their respective expenses, including attorney's fees and costs, (iii) all fees and charges payable with respect to any letter of credit or other security for the IDA Bonds, and (iv) any and all amounts required to reimburse Lessor for the costs of Lessor's insurance pursuant to Section 7.1.1 herein.

3.2 Interest Upon Default in Rental Payments. Any installment of Basic Rent or Additional Rent not paid on or before its due date will bear interest from and after such date until paid at the Prime Rate plus four hundred (400) basis points (the "Default Rate"). "Prime Rate" shall mean the prime rate of interest as published in the Wall Street Journal from time to time. Notwithstanding the foregoing, in no event shall the Default Rate be lower than four percent (4%) or greater than twelve percent (12%) (but in any event not greater than permitted by law).

3.3 "Net" Lease. This Lease shall be deemed and construed to be a completely and absolutely net lease and Lessee shall pay to Lessor, net throughout the Term, the Rent hereunder free of all offsets, abatements and other deductions whatsoever and without notice (including any Notice) or demand. Under no circumstances or conditions, whether now existing or hereafter arising, or whether or not beyond the present contemplation of the Parties, shall Lessor be required to make any payment of any kind whatsoever with respect to this Lease or be under any other obligation or liability hereunder except as herein otherwise expressly set forth herein.

3.4 Additional Consideration. The following items shall be provided by Lessee to Lessor as additional consideration hereunder:

(a) five hundred (500) hours per calendar year (pro rated for any partial calendar year during the Term) during which Lessor shall have use of the "ice sheets" and related facilities free of charge, including changing and spectator seating areas, for purposes of community use, at times reasonably agreed upon by Lessor and Lessee on a quarterly basis. Lessee will provide all necessary services to Lessor, including skate rental, heating, cooling and ventilation systems and personnel to operate the ice skating facilities, without charge to the Lessor during such times of use by Lessor. Lessee shall establish a reservation system reasonably satisfactory to Lessor. Lessee shall at all times have the first right to use the ice sheets and related facilities provided that Lessee's scheduling of Lessor's allocated use shall be reasonably acceptable to Lessor.

(b) Lessor shall have the right of first refusal for fifteen (15) additional hours, subject to availability, in addition to the hours provided under (a) above of use of the ice sheets and related facilities, including changing and spectator seating areas, per week during the months of November through February of each Lease Year to accommodate high school and/or junior club hockey programs with the Northern Virginia Scholastic Hockey League. On September 1<sup>st</sup> of each year, Lessee shall provide Lessor with a schedule of times during which Lessor shall have such right of first refusal to use the ice sheets. Lessor shall have fifteen (15) business days from the date it receives such notice to accept or reject the offered time periods. Lessee reserves the right to charge Lessor the market rate (initially estimated to be \$275.00/hour) for such use.

**3.5 Reserves.** Lessee shall fund and maintain the following reserves:

**3.5.1 Operating Reserve.** On or before the Commencement Date, Lessor shall provide initial funding in the amount of One Million Dollars (\$1,000,000) from proceeds of the IDA Bonds for an operating reserve (the "Operating Reserve"). The Lessee shall maintain the Operating Reserve in an amount equal to One Million Dollars (\$1,000,000) and after the first twelve (12) months of operation in an amount equal to the greater of One Million Dollars (\$1,000,000) or six (6) months of operating expenses of the Skating Facilities, as shown on two most recent financial reports furnished pursuant to Section 3.7, and shall maintain such reserve at such level for the term of this Lease. Lessee shall have the right, during the first 12 months following the Commencement Date, to draw upon the Operating Reserve to pay accrued and unpaid operating costs of the Skating Facilities, provided (i) Lessee makes request therefor in writing with such supporting documentation as Lessor may reasonably require, (ii) the balance of the Operating Reserve shall never be less than Two Hundred Fifty Thousand (\$250,000) and (iii) all sums so drawn by Lessee shall be repaid to the Operating Reserve in sixteen (16) equal quarterly payments beginning on the first anniversary of the Commencement Date. After the first 12 months following the Commencement Date Lessee may draw funds from the Operating Reserve only with the consent of Lessor, which may be withheld in Lessor's sole discretion.

**3.5.2 Maintenance and Replacement Reserve.** Lessee shall fund a reserve for maintenance and replacement costs (the "Maintenance and Replacement Reserve") at the rate of \$50,000 per year beginning on the second anniversary of the Commencement Date and continuing annually thereafter; provided, however, that the amount in the maintenance and replacement reserve need not exceed \$400,000, increasing two percent (2%) per year beginning with the third anniversary of the Commencement Date. Lessee shall have the right at any time

during the Term to draw upon the Maintenance and Replacement Reserve to pay costs of maintenance and repair of the Skating Facilities, provided (i) Lessee makes request therefor in writing with such supporting documentation as Lessor may reasonably require, and (ii) Lessor has approved the use of such funds, such approval not to be unreasonably withheld.

**3.5.3 General.** All reserve accounts shall be maintained in a separate bank account by Lessor, segregated from other accounts and assets of Lessor. Lessee hereby grants to Lessor a security interest in such bank account as security for Lessee's obligations under this Lease. All interest earned on each account shall be deposited in and become a part of the account. Upon default under this Lease by Lessee, Lessor may, without notice to Lessee, draw upon either such account to satisfy the obligations of Lessee hereunder. The depository is hereby authorized to honor payment requests from Lessor. Lessee shall execute such documents and provide such further assurances as Lessor or the depository may request to effect and perfect this security interest and Lessor's rights hereunder. Lessee's obligation to restore such accounts shall continue notwithstanding any such withdrawal by Lessor.

**3.6 Acceleration of Rent** Notwithstanding any of the foregoing or any other provision of this Lease to the contrary, Lessee hereby agrees that Lessee shall

(a) Operate and occupy the Leased Premises as Lessee's principal training facility and office headquarters for the Washington Capitals Hockey Team or any successor (the "Team") for a period of at least ten (10) years from the Commencement Date (except that ancillary services such as accounting and marketing may be located elsewhere); and

(b) Without the consent of Lessor, which will not be unreasonably withheld, conditioned or delayed, refrain from constructing, obtaining or operating another skating facility within the northern Virginia area for a period of ten (10) years from the Commencement Date. For the purposes of this Subsection 3.7(b), the "northern Virginia area" means the Virginia counties of Arlington and Fairfax, the Virginia cities of Alexandria, Fairfax, Falls Church and Leesburg. Lessee acknowledges that it is not unreasonable for Lessor to withhold consent if Lessor believes the proposed facility will materially adversely affect the revenues or patronage of the Leased Premises.

If Lessee is in breach of any of the covenants above, and in addition to the rights and remedies of Lessor under Section 11 herein, Lessee shall pay to Lessor all amounts of Basic Rent due or to become due, upon demand.

**3.7 Skating Facilities Revenues; Financial Reports.** All revenues generated at or out of the Skating Facilities shall be the property of Lessee and applied to costs of the Skating Facilities including, without limitation, Rent and operating expenses directly related to the Skating Facilities. Lessee shall deliver to Lessor within thirty (30) days after the end of each calendar quarter during the Term operating statements showing all revenues and expenses of the Skating Facilities and receipts and disbursements of funds relating thereto. Lessee shall maintain on the Leased Premises complete books and records in accordance with generally accepted accounting principles of all revenues and expenses related to the Leased Premises, and shall retain such books and records for a period of five (5) years after the expiration of the period to

which they relate. Lessor, or its assignee, shall have the right to inspect and to copy such books and records at any reasonable time after reasonable notice.

4. Impositions.

4.1 Payment. Lessee will pay or cause to be paid all Impositions, as and when the same shall become due, except that all Impositions for the fiscal year or tax year in which this Lease Expires shall be apportioned so that Lessee shall pay the portions of the Impositions that are applicable to the period prior to Expiration of this Lease and Lessor shall pay or cause to be paid the portion thereof applicable thereafter. Lessee shall, if possible, pay all such Impositions directly to the taxing authority, and as soon as possible thereafter deliver to Lessor satisfactory evidence of such payment; provided, however, that Lessor may require Lessee to pay the Impositions directly to Lessor, and Lessor shall deliver to Lessee satisfactory evidence of payment of Impositions. The certificate, advice, bill or statement issued or given by the appropriate officials authorized or designated by law to issue or give the same or receive payment of any of the Impositions, of the existence, non-payment or amount of such Impositions shall be prima facie evidence of the existence, payment, non-payment and amount of such Impositions.

4.2 Contests. Lessee, if Lessee shall so desire, may contest the validity or amount of any Impositions, in which event Lessee may defer payment thereof during the pendency of such contest provided that, prior to the date on which the same shall have become due, Lessee shall have deposited with the applicable governmental authority the amount required thereby, or if no such sum is required by such authority, Lessee shall have deposited with Lessor an amount sufficient to pay such contested item, together with the interest and penalties thereon, which amount shall be applied to the payment of such item when the amount thereof shall be finally fixed and determined. In lieu of such deposit with Lessor, Lessee may deliver to Lessor a surety company bond in an amount, with a company and in substance Approved by Lessor (which Approval shall not be unreasonably withheld, conditioned or delayed). Nothing herein contained, however, shall be construed to allow such items to remain unpaid for such length of time as shall permit the Leased Premises or any part thereof, to be sold by any governmental or quasi-governmental authority or a lien with respect thereto to be foreclosed for the non-payment of the same. If at any time, in the reasonable judgment of Lessor, it shall become necessary to protect Lessor's interest, Lessor after Notice to Lessee may use the funds deposited with Lessor to pay or apply to the contested Impositions. If the amount of deposited funds shall exceed the amount of such payment, the excess shall be paid to Lessee. In case there shall be any deficiency, Lessee shall pay or cause to be paid the amount of such deficiency promptly to Lessor. If such deficiency is not paid by Lessee to Lessor and if Lessor pays the amount of such deficiency on the contested Impositions, Lessee shall pay or cause to be paid on demand to Lessor the amount of such deficiency as additional rent with interest thereon as described in Section 11.8.

4.3 Assessed Valuation. Lessee may, if Lessee shall so desire, endeavor at any time or times to obtain a lowering of the assessed valuation upon the Skating Facilities or any part thereof, for any year for the purpose of reducing Impositions thereon. Lessee shall be authorized to collect any tax refund payable as a result of any proceeding which Lessee may institute for that purpose and any such refund shall be the property of Lessee to the extent to

which it may be based on a payment made by Lessee, subject, however, to apportionment between Lessor and Lessee with respect to taxes paid or contributed by Lessor in the year in which this Lease Expires, after deducting from such refund the reasonable costs and expenses, including reasonable legal fees, incurred in connection with obtaining such refund.

4.4 Joinder by Lessor. Lessor shall not be required to join in any action or proceeding referred to in Sections 4.2 or 4.3 unless required by law or any rule or regulation in order to make such action or proceeding effective, in which event Lessor shall take such action or proceeding, if acceptable to Lessor in its reasonable discretion, but without cost or expense to Lessor. Lessee shall hold Lessor harmless from all costs, expenses, claims, losses or damages by reason of, in connection with, on account of, growing out of or resulting from any such action or proceeding. Such hold harmless agreement shall expressly survive the Expiration or earlier Termination of this Lease.

## 5. Skating Facilities

5.1 Approval of Plans and Specifications. Lessor and Lessee hereby acknowledge and agree that Lessee has reviewed and Approved the plans and specifications for the Skating Facilities. Lessee acknowledges that Lessor does not warrant the suitability, safety or compliance with any law of such plans and specifications, and Lessor assumes no responsibility or liability in connection with such plans and specifications or the construction contemplated thereby.

5.2 Construction of Skating Facilities. Lessor cause Lincoln Holdings, Inc. ("Lincoln") to construct and complete the Skating Facilities in accordance with the Skating Facility Agreement, the Site Plan and the Development Agreement within two (2) years after the issuance of a building permit for the same.

5.2.1 Inspections. During construction and development work on or about the Leased Premises, Lessor, the County and May may inspect the Skating Facilities in the course of construction and on their completion, and all elements of the work and materials thereof and Lessee will permit Lessor, the County and May to examine the plans, drawings and specifications relating thereto, or in the alternative, shall furnish Lessor and May with copies of same. Lessor shall have the right to object to any material deviation from such plans and specifications as so approved and upon receipt of any such objection, Lessee shall or shall cause Lincoln to take such steps as shall be necessary to correct such deviation.

5.2.2 Compliance with Laws. Lessee shall, in the performance of all construction work, comply, or cause compliance, with applicable zoning ordinances and building codes and all other laws, ordinances, rules, orders and regulations of all governmental and quasi-governmental authorities have jurisdiction thereof, and the Skating Facilities, upon completion of any construction, shall comply with all applicable laws, ordinances, rules, orders and regulations of any and all governmental and quasi-governmental authorities have jurisdiction thereof and of the local Board of Fire Underwriters or any similar body, and shall comply with all matters to which this Lease is subject as then in effect.

**5.3 Title to Skating Facilities.** Title to the Skating Facilities shall be and remain in Lessee during the Term. Upon Termination or Expiration, the Skating Facilities shall be the sole and absolute property of Lessor as of such Termination and shall be surrendered to Lessor at that time; provided, however, if this Lease is terminated as a result of a default on the part of Lessor, Lessee shall, in addition to all other rights or remedies afforded at law or in equity, have the right to recover from Lessor the fair market value of its leasehold interest in the Leased Premises so surrendered by Lessee.

**6. Maintenance, Use and Alteration.**

**6.1 Acceptance.** Lessee has leased the Leased Premises after a full and complete physical examination of the Parking Garage and the Eighth Level Slab upon which the Skating Facilities will be constructed and by taking possession of the Leased Premises when completed shall accept the same in the physical condition or state in which the Leased Premises and the Parking Garage and the Eighth Level Slab are then held without any representation or warranty, express or implied in fact or by law, by Lessor, County or May and without recourse against Lessor, County or May as to the physical nature, condition or usability thereof.

**6.2 Maintenance of the Skating Facilities; Inspection for Leaks.** (a) Lessee shall operate and maintain the Skating Facilities in a good, tenable, first-class and safe condition and repair and in accordance with all applicable laws and in accordance with the Rules and Regulations attached hereto as Exhibit C throughout the Term. Lessee shall promptly make any and all repairs and replacements (interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen) required to maintain such condition and state of repair. Lessor shall not be required to furnish any services or facilities, or to make any repairs or alterations, of any nature whatsoever with respect to the Leased Premises. Lessee hereby assumes the full and sole responsibility for the condition, construction, operation, repair, replacement, maintenance and management of the Skating Facilities.

(b) Lessee shall inspect the Skating Facilities for any leaks on a daily basis and shall repair immediately any leaks or other conditions that if left unrepaired will damage or threaten to damage the Parking Garage or any vehicles parked in the Parking Garage.

**6.3 Use.**

**6.3.1 Required Use.** Lessee shall operate the Leased Premises for the uses set forth in the Skating Facility Agreement and pursuant to the terms and conditions of the Skating Facility Agreement, the Rules and Regulations and the Operative Documents (as defined in the Skating Facility Agreement). Any change in use shall require the prior Approval of Lessor, the County and May, which may be withheld in their sole discretion.

**6.3.2 Use Restrictions.** In addition to those restrictions set forth in the Skating-Facility Agreement, Lessee shall not use or occupy, or permit the use or occupancy of, the Leased Premises and not do or permit anything to be done in or to the Leased Premises, in whole or in part, in a manner which (i) would in any way make void or voidable any insurance then in force with respect to the Leased Premises, the Parking Garage, the former Penney's Building or the Mall, or (ii) may make it impossible to obtain (at standard rates therefor and from

responsible companies) fire or other insurance thereon required to be furnished by Lessee hereunder or required with respect to the Parking Garage, or (iii) would cause structural injury to the Skating Facilities, the Eighth Level Slab or the Parking Garage or any part thereof, or (iv) would constitute a public or private nuisance or noxious use, or (v) would permit the sale or consumption of any alcoholic beverage other than beer and wine to be sold and consumed in certain designated areas, or (vi) would cause injury or damage to person or property, or (vii) would cause a default under the Ground Lease (as defined in Exhibit A) or the IDA Lease. Lessee shall not use or occupy, or permit the use or occupancy of, the Leased Premises, in whole or in part, in a manner which violates any present or future, ordinary or extraordinary, foreseen or unforeseen laws, regulations, orders, rules, ordinances or requirements of any governmental or quasi-governmental authority now existing or hereafter created, having jurisdiction over the Leased Premises. Lessee shall, at no cost or expense to Lessor, diligently comply with all of the foregoing. Lessee shall indemnify, defend and hold harmless Lessor, the County and May (the "Indemnified Parties") from and against any and all Claims to which the Indemnified Parties may be subject or which the Indemnified Parties may sustain, including, without limitation, reasonable attorney's fees and expenses, arising in connection with any breach of this Subsection 6.3.2, or any other portion of this Lease or in connection with Lessee's use or occupancy of the Leased Premises, or by reason of any action or proceedings which may be brought against the Indemnified Parties or against the Leased Premises or any part thereof, by virtue of violation of any such laws, regulations, ordinances or requirements relating to the use and occupancy of the Leased Premises or by virtue of any such present or future law of the United States of America, or of the Commonwealth of Virginia, the County of Arlington or other municipal, public or quasi-public authority now existing or hereafter created, having jurisdiction. The within and foregoing indemnification and hold harmless agreement shall expressly survive the Expiration or earlier Termination of this Lease.

6.4 Waste. Lessee will not do or permit or suffer any waste, damage, disfigurement or injury to or upon the Leased Premises or any part thereof. Lessee shall have the right at any time and from time to time to sell or dispose of any equipment or personal property subject to this Lease which may have become obsolete or unfit for use or which is no longer useful, necessary or profitable in the conduct of Lessee's business, provided that if such equipment or property be necessary or desirable for the operation of the Skating Facilities, Lessee shall substitute for the same, other building equipment or personal property not necessarily of the same character, but capable of performing the same function as that performed or was to have been performed by the property so disposed of, and suitable for its intended purpose.

6.5 Compliance with Laws. Lessee shall diligently comply, at Lessee's own expense during the Term, with any and all present and future laws, acts, rules, requirements, orders, directions, ordinances and regulations, ordinary and extraordinary, foreseen or unforeseen, concerning the condition or use of the Leased Premises, or any part thereof, or the street adjacent thereto, of all Federal, State, municipal or other public departments, bureaus, offices and authorities and of the National Board of Fire Underwriters, or other body having similar functions, and of all liability, fire or other insurance companies having policies outstanding with respect to the Leased Premises whether or not such laws, acts, rules, requirements, orders, directions, ordinances and regulations require the making of structural alterations or the use or application of portions of the Leased Premises for compliance therewith

or interfere with the use and enjoyment of the Leased Premises, and shall protect, hold harmless and indemnify Lessor, the County and May against and from all Claims of every kind and nature arising out of any failure by Lessee to comply with any such laws, acts, rules, requirements, orders, direction, ordinances and regulations. Lessee may, however, in good faith (without expense to Lessor), and after having secured Lessor, the County and May to Lessor's, the County's and May's reasonable satisfaction by cash or by a surety company bond in an amount, in a company and in substance Approved by Lessor, the County and May (which Approval shall not be unreasonably withheld, conditioned or delayed), against loss or damage, contest the validity of any law, act, rule, requirement, order, direction, ordinance or regulation.

**6.6 Alterations.** Except as provided in Subsection 6.6.1, Lessee shall not demolish nor undertake any alterations which are structural or visible from adjoining properties to the Skating Facilities. Under no circumstances shall Lessee make any alterations which would affect the structural integrity of the Parking Garage, alter the interior of the Parking Garage, be visible from the outside of the Parking Garage, impair ingress or egress to and from the Parking Garage, or lessen the value of the Leased Premises without the prior written consent of Lessor, the County and May, which consent Lessor, the County and May may grant or withhold in their sole discretion.

**6.6.1 Permitted Activities.** Lessee may, at any time during the Term, at no cost or expense to Lessor, make or permit to be made any alteration, change or addition of, in or to the interior of the Skating Facilities (that is, the "Work"), subject, however, to the conditions and covenants set forth in Section 6.6 and in the Skating Facility Agreement and Sections 6.6.1.1 through 6.6.1.9.

**6.6.1.1 No Defaults.** There is no existing and unremedied default on the part of Lessee, and of which Lessee has received Notice, under any of the terms, covenants or conditions herein on the part of Lessee to be observed and performed.

**6.6.1.2 No Adverse Effect.** The proposed Work shall not affect the use or operation of the Parking Garage.

**6.6.1.3 Due Diligence.** The Work shall be performed with diligence and in a first-class workmanlike manner and all costs thereof shall be paid in a timely manner.

**6.6.1.4 Compatibility.** All alterations shall be architecturally compatible with the Skating Facilities, the Eighth Level Slab and the Parking Garage. No demolition of any Skating Facilities shall be commenced without the prior Approval of Lessor and the County. Prior to commencement of Work, Lessee shall have delivered to Lessor and the County detailed plans and specifications and a construction schedule for same. Lessor and the County shall have the right to Approve any such plans and specifications and schedule by delivering Notice of Approval or disapproval to Lessee within thirty (30) days after receipt by Lessor and the County of Notice of such plans and specifications; provided, however, such Approval shall not be unreasonably withheld, conditioned or delayed. Any such alterations contemplated by such plans and specifications (i) shall be architecturally compatible with the Skating Facilities, the Parking Facilities and the Parking Garage, (ii) will not adversely affect the

structural integrity of the Eighth Level Slab, the Skating Facilities or the Parking Garage, (iii) will not adversely affect the existing mechanical, electrical and other systems within the Eighth Level Slab, Skating Facilities and the Parking Garage, and (iv) during and after construction shall not adversely affect the operation of the Eighth Level Slab, the Skating Facilities or the Parking Garage, as same are then operated.

**6.6.1.5 Insurance.** Lessee, Lessee's contractor and the contractor performing the Work shall provide and maintain, at its own cost and expense, full workers' compensation insurance with waivers of subrogation in respect to such Work and all risk builder's risk insurance in an amount not less than the replacement cost of such Work as well as any other insurance in respect to such Work as may then be required by law. Certificates of all such policies shall be delivered to Lessor, the County and May prior to commencement of such Work.

**6.6.1.6 Consents.** If under the provisions of any insurance policies required to be provided and maintained under this Lease, any consent to such Work by the insurers therein shall be required to continue and keep such policies in full force and effect, Lessee shall obtain such consents and pay any premiums or charges that may be incurred.

**6.6.1.7 Inspections.** During such construction and performance of the Work, Lessor, the County and May may inspect Work in the course of its construction and on its completion, and all elements of the Work and materials thereof and Lessee will permit Lessor, the County and May to examine the plans, especially drawings and specifications relating thereto, or in the alternative, shall furnish Lessor with copies of same. Lessor, the County and May shall have the right to object to any material deviation from such plans and specifications as so Approved (if Approval is required) and upon receipt of any such objection, Lessee shall take such steps as shall be necessary to correct such deviation. Lessor and the County may, at Lessee's expense, engage an architect, engineer or other consultant for the foregoing purposes.

**6.6.1.8 Compliance with Laws.** Lessee shall, in the performance of any Work, comply with all applicable requirements of the zoning ordinances and building codes and all other laws, ordinances, rules, orders and regulations of all governmental and quasi-governmental authorities having jurisdiction thereof, and the Skating Facilities and Parking Garage, when completed, shall comply with all applicable laws, ordinances, rules, orders and regulations of any and all governmental and quasi-governmental authorities having jurisdiction thereof and of the local Board of Fire Underwriters or any similar body, and shall comply with all matters to which this Lease is subject as then in effect.

**6.6.1.9 Permits.** Lessee shall procure all necessary permits for the Work and shall deliver to Lessor a temporary or final certificate of occupancy as a condition precedent to the use of the Leased Premises for its designated purpose. Upon completion of the Work, Lessee shall deliver to Lessor a final certificate of occupancy, if not previously delivered.

**6.6.2 Prohibited Activities.** Nothing herein contained shall be construed to authorize any work in contravention of the Encumbrances, to authorize Lessee to subject Lessor's interest in and to the Leased Premises or the County's title to the Parking Garage (or May's interest in the Garage Parcel or the Parking Garage) to any easements or to any liens of

mechanics, artisans, laborers, materialmen, contractors or subcontractors, or to any other liens or charges whatsoever arising out of any Work or arising in any other manner; and Lessee is hereby expressly prohibited from subjecting Lessor's, the County's or May's title to any such easement, lien or charges. Lessee agrees to promptly discharge (either by payment or by filing of the necessary bond, or otherwise, and in all events within thirty (30) days after Lessee becomes aware thereof) all mechanics, materialmen's and other liens against the Leased Premises or the Parking Garage which may arise out of any payment due for, or purported to be due for, any Work or any other labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or for Lessee, any Subtenant, or any Entity claiming through Lessee or any Subtenant in, upon or about the Leased Premises.

#### **6.7 Environmental Matters**

(a) Lessee represents and covenants that (i) Lessee will not hereafter knowingly cause or suffer to occur, a discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous waste, or hazardous substance as those terms are used in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as the same may be amended from time to time (the "Act"), at, upon, under or within the Leased Premises (a "spill"), (ii) neither Lessee nor any other party controlled by Lessee will be involved in operations at or near the Leased Premises which could lead to the imposition on Lessee of liability or the creation of a lien on the Leased Premises, under the Act or under similar applicable laws or regulations; and (iii) Lessee will not permit any Subtenant, invitee or occupant of the Leased Premises to engage in any activity that could lead to the imposition of liability on such Subtenant or occupant or Lessee, or the creation of a lien on the Leased Premises, under the Act or any similar applicable laws or regulations.

(b) Lessee shall comply strictly and in all respects with the requirements of the Act and related regulations and with all other applicable environmental laws and regulations and shall notify Lessor, the County and May promptly in the event of any spill of which Lessee becomes aware, and shall promptly forward to Lessor, the County and May copies of all orders, notices, permits, applications or other communications and reports received by Lessee in connection with any such spill or any other matters relating to the Act or related regulations or any similar applicable laws or regulations, as they may affect the Parking Garage or the Leased Premises.

(c) In the event of any spill affecting the Leased Premises or the Parking Garage, whether or not the same originates or emanates from the Leased Premises or any contiguous real property (other than spills caused by Lessor, or by the County in connection with its operation of the Parking Garage), and/or if Lessee shall fail to comply with any of the requirements of the Act or related regulations or any other environmental law or regulation, Lessor, the County and/or May may, at their election but without the obligation so to do, give such notices and/or cause such work to be performed at the Leased Premises and/or take any and all other actions as Lessor, the County or May, as applicable, shall deem necessary or advisable to remedy said spill or hazardous substance or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the rate of interest set forth in Section 11.8, shall be immediately due and payable by Lessee to Lessor, the County or May, as applicable.

6.8 Parking. Lessee has the right to lease from the County, on a monthly basis, up to 125 parking spaces (or such lesser amount as is necessary so that the tax-exempt status of interest on the County's Variable Rate Demand Revenue Bonds, Ballston Public Parking Project, Series 1984 is not adversely affected) in the Parking Facilities, on the same terms and conditions, including rates, as parking spaces on such level are offered to the general public on a monthly basis.

6.9 Compliance with Ground Lease. Lessee shall not use or operate or permit the use or operation of the Skating Facilities in a manner that would cause a default under the Ground Lease and shall comply with all applicable provisions of the IDA Sublease, the Ground Lease and the Operative Documents, as defined in the Skating Facility Agreement.

7. Insurance; Indemnity.

7.1 Coverage. During the Term, Lessee, at no cost and expense to Lessor, will keep and maintain or cause to be kept and maintained, the following types of insurance described in Subsections 7.1.1 through 7.1.4.

7.1.1 All Risk Insurance. Lessee shall reimburse Lessor (pursuant to Section 3.1 above) for the cost of Lessor's insurance or Lessee shall maintain and pay for insurance on the Skating Facilities and any replacements and substitutions therefor against loss or damage caused by fire and other risks insured against by "all risk" policies, including floods and earthquakes, in amounts sufficient to provide coverage in an amount not less than one hundred percent (100%) of the estimated replacement cost of the Skating Facilities and any replacements and substitutions therefor, the policy for which insurance shall have a replacement cost endorsement or similar provision. Such estimated replacement cost shall be determined every three (3) years, by an appraiser, engineer, architect or contractor Approved by Lessor and paid by Lessee. No omission on the part of Lessor to request any such determination shall relieve Lessee of any of Lessee's obligations under this Subsection 7.1.1. Lessee shall maintain insurance on Lessee's personal property, inventory, equipment and other such items kept or stored on the Leased Premises against loss or damage by fire and against loss or damage by other risks now insured against by "all risk" provisions of policies, in amounts sufficient to provide coverage in an amount not less than one hundred percent (100%) of the estimate replacement cost of such property or any replacements or substitutions thereof.

7.1.2 Liability Insurance. Commercial general liability insurance written on an occurrence basis protecting and indemnifying Lessee, Lessor, the County and May against any and all claims for injury and damages to person and property and for loss of life and of property occurring upon, in or about the Leased Premises, such insurance to afford immediate protection to the limit of not less than Two Million Dollars (\$2,000,000) for bodily injury or property damage for any single occurrence, with Five Million Dollars (\$5,000,000) annual aggregate and with not more than Ten Thousand Dollars (\$10,000) deductible. Lessor and Lessee agree that any claim shall be made first on insurance provided under this Section 7.12 and then under insurance provided under Section 7.12 of the Prime Lease.

**7.1.3 Use and Occupancy Insurance.** Use and occupancy insurance covering business interruption, with coverage in an amount not less than eighteen (18) months' anticipated gross revenues from the Skating Facilities from all perils covered in Section 7.1.1.

**7.1.4 Other Insurance.** Workers' compensation insurance with not less than minimum statutory amounts, dram shop or liquor liability insurance with limits of not less than \$2,000,000 and such other insurance on the Leased Premises, Skating Facilities and any replacements and substitutions therefor (including, without limitation, such insurance as may be required pursuant to Subsection 6.6.1.5) and in such amounts as may from time to time be reasonably required by Lessor against other insurable hazards which at the time are customarily insured against in the case of premises similarly situated, due regard being given to the height and type of the Skating Facilities, the construction, location, use and occupancy thereof or any replacements or substitutions therefor.

## **7.2 Policies.**

**7.2.1 General Requirements.** All of the policies of insurance required to be kept by Lessee in this Lease shall be in form and substance and with companies and licensed to do business in Virginia, with a claims paying ability rating of "A" or better by Standard & Poor's Ratings or Moody's and a rating of "A:VIII" or better in the current Best's Insurance Reports, or otherwise Approved by Lessor and May. Such insurance may be carried under blanket policies that provide separate coverage for the Leased Premises and aggregates that apply on a per location basis. Lessee shall deliver to May and Lessor certified copies of the originals of such policies, together with certified copies of all other insurance policies, if any, in excess of the amounts required hereunder which Lessee may obtain, together with certificates showing such insurance to be in full force and effect. Such policies shall bear endorsements showing the receipt by the respective companies of the premiums thereon or shall be accompanied by other evidence of payment of such premiums to the insurance companies, including evidence of current annual payment, if on an installment payment basis. Such policies must contain express waivers by the insurer thereon of any rights of subrogation against Lessor, May and each Leasehold Mortgagee.

**7.2.2 Insureds.** All insurance provided by Lessee shall name Lessee, Lessor, the County, May and Leasehold Mortgagee as insureds and, at the option of Lessor, any other Entities permitted by Lessor as insureds, all as their respective interests may appear; except that the commercial general liability insurance and workers' compensation insurance shall name Lessee only as insured, and Lessor, the County, May and other Entities permitted by Lessor as additional insureds, and Lessee shall provide copies of endorsements to each such person evidencing the fact that they are insured or additional insureds.

**7.2.3 Renewal and Cancellation.** All insurance policies required to be kept by Lessee hereunder shall be renewed by Lessee and proof of such renewals delivered to Lessor, May and Leasehold Mortgagee at least thirty (30) days prior to their respective expiration dates. Prior to or on such expiration dates, Lessee shall deliver such renewal policies to Lessor, May and Leasehold Mortgagee bearing endorsement or accompanied by other evidence of the receipt by the respective insurance companies of the premiums thereon. All such policies shall provide that they may not be canceled by the insurer for nonpayment of premiums

or otherwise or materially modified or not renewed until at least thirty (30) days after service of registered mail notice of the proposed cancellation, material modification or non-renewal upon Lessor, May and any Leasehold Mortgagee named in such policy, and in any event that such policies shall not be invalidated, as to the interests of Lessor, May and any Leasehold Mortgagee therein, by any act, omission or neglect of Lessee, or any occupant of the Leased Premises (including, without limitation, any Subtenant), which might otherwise result in a forfeiture or suspension of such insurance. Each policy shall contain a waiver of subrogation rights by the insurer. In any case where the original policy of any such insurance shall be delivered to any Leasehold Mortgagee, a duplicate original or certificate of such policy shall thereupon be delivered to Lessor, May and any Leasehold Mortgagee.

**7.3 Indemnification.** Lessee at its sole cost and expense, shall indemnify, defend and hold harmless Lessor, the County, May and all Benefitted Parties (as defined in the Skating Facility Agreement), from and against all claims, suits, liabilities, demands, causes of action, damages, losses, costs, penalties, judgments, awards and amounts paid in settlement of whatever kind or nature, including attorney's fees and fees of in-house counsel and costs of defense, (hereinafter referred to as "Claims" imposed upon, incurred by or asserted against them or any one or more of them by reason of (i) ownership of any right or interest in the Leased Premises, (ii) any injury to or death of persons or loss or damage to property occurring in, on or in the vicinity of the Leased Premises or on property, streets or sidewalks adjacent to or connected to the Parking Garage, resulting from or in any way related to the operation of the Leased Premises or the construction and development activity on the Garage Parcel, and (iii) any failure on the part of Lessee to perform its obligations under this Lease. The previous sentence shall not apply to Claims resulting from the negligence or willful misconduct of the Lessor. Lessor shall not settle any Claims without providing Lessee with (i) prior written notification and (ii) opportunity to participate in such proceedings.

## **8. Damage or Destruction**

**8.1 Damage or Destruction.** If, at any time during the Term, the Skating Facilities or any part thereof shall be damaged or destroyed by fire or other casualty (including any casualty for which insurance coverage was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Lessor at the direction of the County and, in the County's sole discretion, shall within two months after such event either (i) elect to terminate this Lease as of the date of such damage or destruction or (ii) elect to continue this Lease. In the event Lessor, at the direction of the County, elects to terminate this Lease, Lessor shall give written notice of such termination within such two month period to Lessee and Lessor shall cause any damaged portion of the Skating Facilities to be razed and the Leased Premises put in a safe and clean condition in compliance with applicable laws. If Lessor elects to continue this Lease, Lessor shall give written notice to Lessee within such two month period, shall repair and restore the Skating Facilities at Lessor's expense (subject to Section 8.2) and, if the Parking Garage has been damaged or destroyed, Lessor shall repair and restore, or shall cause the repair and restoration of, the Parking Garage to its former condition and use if the County is required to do so pursuant to the Ground Lease. Lessee shall not take any action which would be inconsistent with, or otherwise impair, the obligation or ability of Lessor or the County, as appropriate, to repair and restore the Parking Garage or the Skating Facilities. Should Lessor fail to (i) commence the repair and restoration of the Skating Facilities and/or the Parking Garage

within twelve (12) months after such damage or destruction, or (ii) complete the same within twenty-four (24) months after the date of such damage or destruction, through no fault of Lessee, Lessee may give notice of such breach to Lessor. If Lessor has not completed the repair and restoration within sixty (60) days after the date such notice is given, Lessee may terminate this Lease. Notwithstanding the foregoing, after the tenth (10<sup>th</sup>) year of this Lease, in the event Lessor has elected to continue the Lease as set forth above, but all or substantially all of the Leased Premises has been damaged or destroyed by fire or other casualty, such that the entire Leased Premises is rendered unusable for more than ninety (90) days, Lessee shall have the right, upon written notice to Lessor, given within fifteen (15) days of delivery of notice of Lessor's election to rebuild, to terminate this Lease upon the expiration of such ninety (90) day period.

**8.2 Insurance Proceed Deficits.** If the insurance proceeds received by Lessor, together with the Skating Facility Available Sources, shall be insufficient to pay the entire cost of the Work as reasonably estimated by Lessor's architect or contractor, Lessor shall either (i) pay the amount of any such deficiency or (ii) elect to terminate this Lease pursuant to Section 8.1 above. If Lessor elects to terminate this Lease, it shall give Lessee notice of such election and the amount of any such deficiency, and Lessee shall have a period of twenty (20) days to void such election by paying to Lessor in immediately available funds the amount of any such deficiency.

**8.3 Non-Abatement of Rent.** In no event shall Lessee be entitled to any abatement, allowance, reduction or suspension of Rent, or any other charges payable under this Lease, for any reason, including, but not limited to, the partial or total destruction of the Leased Premises or any part thereof. Notwithstanding the foregoing, in the event Lessor terminates this Lease, Lessor shall, after expending any amounts necessary to raze the Skating Facilities and put the Leased Premises in a clean and safe condition, use the remaining insurance or condemnation proceeds for payment of the Bonds and Lessee's obligation to pay Rent hereunder shall abate by and to the extent of such payment of the Bonds.

## **9. Condemnation.**

**9.1 General.** If, at any time during the Term, the Leased Premises or any part thereof shall be condemned and taken by the United States of America, the Commonwealth of Virginia or any other authority or Entity having the power of eminent domain, the provisions of this Article 9 shall apply to such condemnation proceedings and the distribution of any awards pertaining thereto.

**9.2 Complete or Partial Taking.** If any portion of the Lease Premises, shall be permanently taken or condemned, this Lease, at the option of Lessee or Lessor, but with respect to Lessor, only at the direction of the County, upon the giving of written notice to the other party within sixty (60) days from the date of such condemnation or taking, shall forthwith cease and terminate. If this Lease is terminated as provided above, this Lease shall cease and expire as if the date of transfer of possession of the taken or condemned property, or any portion thereof, was the expiration date of this Lease. If this Lease is not terminated by either Lessor or Lessee as aforesaid, Lessee shall pay the Rent and all other charges payable under this Lease and this Lease shall cease and terminate only with respect to any portion of the Leased Premises so taken or condemned as if the date of transfer of possession of the Leased Premises was the

expiration date of the term of this Lease relating to such portion of Leased Premises. In the event of any such condemnation or taking and this Lease is not so terminated, Lessor shall promptly repair the Leased Premises to a condition equal to or better than the condition thereof immediately prior to the condemnation or taking. The provisions of Section 8.3 above shall apply in the event of a partial or total taking under this Section 9.2.

**9.3 Temporary Taking.** If the whole or any part of the property shall be taken in condemnation proceedings or by any right of eminent domain for a temporary use or occupancy, the Term shall not be reduced or affected in any way and Lessee shall continue to pay in full the Rent without reduction or abatement in the manner and at the times herein specified. Except only to the extent that Lessee is prevented from so doing pursuant to the terms of the order of the condemning authority, Lessee shall continue to perform and observe all of the other covenants, agreements, terms and provisions of this Lease as though such taking had not occurred. In the event of any such taking Lessor shall be entitled to receive the entire amount of any award made for such taking whether such award is paid by way of damages, rent or otherwise; provided, however, that if the period of temporary use or occupancy shall extend beyond the date scheduled for the Expiration of the Term, such award, after payment to Lessor therefrom of the estimated cost of restoration of the Leased Premises to the extent that any such award is intended to compensate for damage to the Leased Premises, shall be apportioned by Lessor and Lessee as of such date of Expiration in the same ratio that the part of the entire period for which such compensation is made falling before the date of Expiration and that part falling after, bear to such entire period.

**9.4 Condemnation Proceedings.** Lessee, Lessor, May, any fee mortgagee and any Leasehold Mortgagee shall each have the right, at its own expense, to appear in any condemnation proceeding and to participate in any and all hearings, trials and appeals therein.

**9.5 Notice of Condemnation.** If Lessor or Lessee shall receive notification of any proposed or pending condemnation proceeding affecting the Leased Premises described in Section 9.1, the Party receiving such notification shall promptly notify, by Notice, the other Party, the County and May and all Leasehold Mortgagees.

**10. Assignments, Subleases, and Mortgages; Single Purpose Entity.**

**10.1 Assignments.** Lessee shall not Transfer all or any portion of its interest in this Lease or the Leased Premises without the prior Approval of Lessor, the County and May, which Approval shall not be unreasonably withheld.

**10.2 Subleases.** Lessee shall have the right to sublet portions of the Leased Premises at any time and from time to time. Each Sublease shall be subject and subordinate to this Lease and to any Leasehold Mortgage not expressly subordinated by its terms to such Sublease. If the Leased Premises or any part thereof shall be occupied by anyone, other than Lessee, pursuant to a Sublease, Lessor may after any default by Lessee in the terms, covenants or conditions of this Lease, collect Subrents from any Subtenants and apply the net amount of Subrents collected to the Rent and other sums payable by Lessee. No Sublease shall be deemed a waiver of this covenant or acceptance of the Subtenant thereunder as a tenant or a release of Lessee from the further payment and performance by Lessee of the terms, covenants and

conditions of this Lease on the part of Lessee to be performed. Lessee hereby transfers unto Lessor all the right, title and interest of Lessee in and to each and every Sublease hereafter executed and affecting the Leased Premises or any part thereof, as well as all Subrents now or hereafter due and payable thereunder and all security hereafter paid to Lessee to secure such Subrents; provided, however, Lessor shall not exercise any rights as "sublandlord" thereunder or be entitled to the benefits of such rights until an Event of Default shall have occurred or been declared.

**10.3 Leasehold Mortgages on Lessee's Interest.** Lessee shall have no right to Transfer the leasehold estate created by this Lease as security for debt, or to create any mortgage, deed of trust or other lien upon its leasehold estate or upon any portion of the Leased Premises or Lessee's rights therein.

**10.4 Single Purpose Entity.** Lessee represents and covenants as follows:

**10.4.1 Single Asset.** Lessee does not own and will not own any asset or property other than the leasehold estate created by this lease and the furniture, furnishings, equipment and supplies located thereon and used in connection therewith.

**10.4.2 No Other Business.** Lessee will not engage in any business other than the ownership, management and operation of the Skating Facilities.

**10.4.3 Agreements with Affiliates.** Lessee will not enter into any contract or agreement with any Affiliate, including without limitation Lincoln Holdings, LLC, except upon terms and conditions which are intrinsically fair and substantially similar to those that would be available on an arms-length basis with unaffiliated third parties.

**10.4.4 No Indebtedness.** Lessee has not incurred and will not incur any debt other than the obligations set forth in this Lease, other than unsecured trade and operational debt incurred in the ordinary course of business with trade creditors.

**10.4.5 Organizational Formalities.** Lessee has done and will do all things necessary to observe organizational formalities and preserve its existence, good standing and right to do business in Virginia, and will not permit any member or managing member to amend, modify or otherwise change its articles of organization, operating agreement or other organizational documents of Lessee without the prior written consent of Lessor, the County and May.

**10.4.6 Books and Records.** Lessee will maintain its books, records, financial statements and bank accounts separate from those of its affiliates, and will file its own tax returns all in accordance with generally accepted accounting principles.

**10.4.7 Entity Separateness.** Lessee will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity, including any affiliate of Lessee, shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its affiliates as a division or a part of any other, and shall maintain and utilize separate stationery, invoices and checks.

**10.4.8 Adequate Capital; Solvency.** Lessee has and will maintain adequate capital for its business operations, and is and will remain solvent and has paid and will pay its debts from its assets as they become due.

**10.4.9 Dissolution.** Neither Lessee nor any member or managing member of Lessee will seek the dissolution, winding up, liquidation, consolidation or merger, in whole or in part, of Lessee.

**10.4.10 Independent Manager.** Neither Lessee nor any member or managing member shall cause or permit the members of Lessee to take any action which, under Virginia law or the terms of Lessee's organization or operating agreement requires the vote of all of the members or managing member(s) unless at the time of such action there shall be at least one manager who is an Independent Manager. "Independent Manager" means an individual who is a resident of the County and has no financial or ownership interest in Lessee, Lincoln Holdings, LLC or any affiliate of any of them, and before becoming a member of Lessee is approved by the Authority.

## **11. Defaults**

**11.1 Events of Default.** The occurrence of any event, act or circumstance described in Subsections 11.1.1 through 11.1.5 shall be and constitute an Event of Default under this Lease.

**11.1.1 Failure in Payment.** Failure by Lessee to pay in full any Rent, Impositions, insurance premium or other charge payable under this Lease on the date upon which such ought to be paid, and the continuance of such failure for ten (10) days after Lessor or the County has given Lessee Notice of such failure; provided, however, that no Notice shall be required and the cure period shall not apply to any such failure after the fifth such failure.

**11.1.2 Failure in Performance.** Failure by Lessee to observe, perform or comply with any of the terms, covenants, agreements or conditions contained in this Lease (other than as specified in Subsection 11.1.1), and the continuance of such failure for thirty (30) days (fifteen (15) days for a failure to provide the required insurance coverage) after Lessor or the County has given Lessee Notice of such failure, unless (except with respect to a failure to provide the required insurance coverage) Lessee has commenced to cure such failure within such period of thirty (30) days and has been prevented from completing such cure by circumstances contemplated by Section 11.2, and then only if Lessee diligently and continuously prosecutes to completion such cure at the earliest possible date allowed by circumstances contemplated by Section 11.2; provided, however, no such Notice is required in the event of circumstances posing an immediate threat to property or persons. Under such circumstances, Lessor, the County and/or May shall have the right, but not the obligation, to enter the Leased Premises to remedy such circumstances at Lessee's sole cost and expense and without liability to Lessor, the County and/or May for such action (unless Lessor, the County and/or May acts with gross negligence or willful misconduct). Notwithstanding the foregoing, no Notice shall be required and the cure period shall not apply to any such failure after the fifth such failure.

**11.1.3 Insolvency.** The insolvency of Lessee, or general assignment for the benefit of creditors by Lessee, or the filing by Lessee of a petition in bankruptcy, or a filing against Lessee of a petition in bankruptcy which is not dismissed within sixty (60) days thereafter.

**11.1.4 Levy.** The Leased Premises or Lessee's interest therein are levied upon or attached under process against Lessee and not satisfied or dissolved within ten (10) days after Notice from Lessor to Lessee to obtain satisfaction thereof.

**11.1.5 Termination of Related Agreements.** A termination of the Skating Facility Agreement or the Development Agreement as a result of a default thereunder by Lessee.

**11.1.6 Failure to Complete.** Failure to complete the Skating Facilities in accordance with Section 5.2 of this Lease, including a default by Lincoln under the Development Agreement.

**11.2 Force Majeure.** For the purposes of any of the provisions of this Lease, except such provisions as require or concern the payment of monies, rent or other amounts due from Lessee to Lessor, neither Lessor nor Lessee, as the case may be, shall be considered in breach of, or default in, the obligations thereof with respect to this Lease in the event of forced delay in the performance of such obligations due to unforeseeable causes beyond the control and without the fault or negligence thereof, including, but not restricted to, acts of God, acts of the public enemy, acts of the Federal Government, unpermitted acts of the other Party, fires, floods, epidemics, quarantine restrictions, strikes (but not strikes, lockouts or labor disputes involving hockey players or the National Hockey League), freight embargoes and unusually severe weather or delays due to such causes; it being the purpose and intent of this Section 11.2 that in the event of the occurrence of any such forced delay, the time or times for performance of the obligations of Lessor or Lessee, as the case may be, with respect to this Lease shall be extended for the period of the forced delay; provided, that the Party seeking the benefit of the provisions of this Section 11.2 shall, within ten (10) days after the beginning of any such forced delay, have first advised the other Party thereof by Notice, and of the cause of causes thereof.

**11.3 Remedies.** During the continuance of any Event of Default, Lessor or the County may, to the extent not prohibited by law, take any one or more of the remedial steps described in Subsections 11.3.1 through 11.3.5.

**11.3.1 Acceleration of Rent.** Lessor may require payment in full of all Rent due or to become due hereunder.

**11.3.2 Taking of Possession.** Lessor may reenter and take possession of the Leased Premises without Terminating this Lease, but subject to the rights of any and all Subtenants, and may (without obligation to do so) sublease in their entirety the same for the account of Lessee.

**11.3.3 Operation.** Without terminating this Lease, the Lessor may exclude the Lessee from possession of the Leased Premises and, at the direction of the County, permit the County to enter upon and operate the Skating Facilities (itself or through agents or

contractors), and in this connection, Lessee authorizes the County, its agents and contractors, upon such entry, to take over and assume the management, operation and maintenance of the Leased Premises and in general to perform all actions necessary in connection therewith in the same manner and to the same extent as Lessee might so act, holding Lessee liable for all Rent and other charges payable by Lessee hereunder.

**11.3.4 Termination.** Lessor may Terminate the Term and this Lease, exclude Lessee from possession of the Leased Premises and lease the same to another Entity for the account of Lessee, holding Lessee liable for all Rent and other charges payable by Lessee hereunder.

**11.3.5 Enforcement.** Lessor may take whatever action at law or in equity may appear necessary or desirable to collect the Rent and other charges then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of Lessee under this Lease, and in connection with either to recover any or all damages to Lessor for Lessee's violation or breach of this Lease.

**11.4 Application of Funds.** If Lessor elects to proceed under the authority of Subsections 11.3.2 or 11.3.3, Lessor shall make reasonable effort to collect rentals from Subtenants, reserving, however, within Lessor's own discretion, the right to determine the method of collection and the extent to which enforcement of collection of delinquent Subrents shall be prosecuted, and Lessor shall not be accountable for money other than that actually received by Lessor from the Leased Premises and Lessor shall not be liable for failure to collect Subrents. All Subrents and all other income derived from operation of the Leased Premises by Lessor, to the extent such are not paid and applied by any Subtenant and to the extent permitted by law, shall be applied, first, to the payment and accrual of Impositions; second, to the cost of operating the Skating Facilities; third, to the cost of administration and collection of Subrents by Lessor; and fourth, to the payment of Rent and other charges (except Impositions, which shall be paid first as aforesaid). Lessee shall be liable to Lessor for the deficiency, if any, between (i) Rent and other charges payable under this Lease and (ii) funds applied as provided above in this Section 11.4 (that is, "Net Rents"). No action taken pursuant to Section 11.3 (including repossession of the Leased Premises or Termination of the Term and this Lease) shall relieve Lessee from Lessee's obligations pursuant to Article 3, all of which shall survive any such action, and Lessor may take whatever action at law or in equity as may appear necessary and desirable to collect the Rent and other charges payable under this Lease then due and thereafter to become due and/or to enforce the performance and observance of any obligation, agreement or covenant of Lessee under this Lease.

**11.5 No Remedy Exclusive.** No remedy herein conferred upon or reserved to Lessor is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to Lessor in this Article 11, it shall not be necessary to give any notice, other than such Notice as is herein expressly required by this Lease.

11.6 Agreement to Pay Attorney's Fees and Expenses. If Lessee should default under any of the provisions of this Lease, or should Lessee hold over or continue possession after the Termination or Expiration of the Term, and Lessor should employ attorneys or incur other expenses for the collection of Rent or other charges, payable under this Lease or the enforcement of performance or observance of any obligation or agreement on the part of Lessee herein contained, Lessee agrees that Lessee will on demand therefor pay to Lessor the reasonable fees of such attorneys and such other expenses so incurred by Lessor.

11.7 Holding Over. Lessee hereby agrees to surrender possession of the Leased Premises to Lessor upon the Termination or Expiration of the Term and upon any reentry by Lessor as permitted by this Lease, and Lessor may thereupon enter upon, reenter, possess and repossess the Leased Premises, by force, summary proceedings, ejectment or otherwise, and may dispossess and remove Lessee and all other Entities from the Leased Premises and may have, hold and enjoy the Leased Premises and the right to receive all rental and other income therefrom, free of any right or claim of Lessee; but should Lessee, in breach of such covenant, refuse to surrender possession and instead hold over, Lessee shall be only a tenant at sufferance and not a tenant at will. To the fullest extent permitted by law, Lessee hereby waives all right to notice, summons and service of process now or hereafter provided by law in connection with dispossession proceedings against tenants holding over.

11.8 Interest from Maturity. All amounts of money payable by Lessee to Lessor hereunder (including, without limitation, Rent) shall, if not paid when due, bear interest from the date due until paid at the annual rate of interest equal to the Prime Rate as defined in Section 3.2 plus 2% but not to exceed the lesser of (i) the maximum interest rate allowed by applicable law or (ii) the annual rate of 12%.

12. Miscellaneous Provisions.

12.1 Recording and Filing. A memorandum of this Lease meeting the statutory requirements shall be filed for recordation in the Clerk's Office of the Circuit Court of the County of Arlington, Virginia. The costs of recording shall be borne by the Lessee.

12.2 Lessor's Rights of Access. Lessee agrees that Lessor, the County and May and Lessor's, the County's and May's duly authorized agents shall have the right at all reasonable times during normal business hours and following reasonable prior Notice (except that no Notice shall be required in the event of an emergency) to enter upon the Leased Premises and to examine and inspect the same, as may be reasonably necessary for the proper maintenance of the Leased Premises in the event of failure beyond any applicable notice and grace period by Lessee to perform Lessee's obligations under this Lease.

12.3 Surrender of Leased Premises. At the Expiration or sooner Termination of the Term, Lessee agrees to surrender possession of the Leased Premises peaceably and promptly to Lessor in good condition and repair.

12.4 Notices. Each Notice shall be deemed to have been properly given or served by (i) the deposit of such with the United States Postal Service, or any official successor thereto, designated as registered or certified mail, return receipt requested, bearing adequate

postage and addressed as hereinafter provided or (ii) receipt from a nationally recognized commercial courier or delivery service having a verifiable means of receipt. The time period in which a response to any such Notice must be given or any action taken with respect thereto shall commence to run from the date of receipt on the return receipt of the Notice given to the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no Notice was given shall be deemed to be receipt of the Notice sent. In the event that registered or certified mail is not being accepted for prompt delivery, each Notice may then be served by personal service addressed as hereinafter provided. By giving to the other party at least ten (10) days Notice thereof, any party shall have the right from time to time during the Term to change the addresses thereof and to specify as the address thereof any other address within the United States of America.

**12.4.1 Notice to Lessor.** Each Notice to Lessor shall be addressed as follows:

Industrial Development Authority of Arlington County  
#1 Courthouse Plaza  
2100 Clarendon Boulevard, Suite 501  
Arlington, Virginia 22201  
Attention: Secretary/Treasurer

**12.4.2 Notice to Lessee.** Each Notice to Lessee shall be addressed as follows:

Lincoln Ballston LLC  
401 9<sup>th</sup> Street, N W , Suite 750  
Washington, D.C. 20004

**12.4.3 Notice to May.** Each Notice to May shall be addressed as follows:

The May Department Stores Company  
611 Olive Street  
St. Louis, Missouri 63101  
Attention: General Counsel

**12.4.4 Notice to the County.** Each Notice to the County shall be addressed as follows:

Arlington County, Virginia  
#1 Courthouse Plaza  
2100 Clarendon Boulevard, Suite 501  
Arlington, Virginia 22201  
Attention: Director, Department of Management and Finance

**12.5 Fees and Commissions.** Lessor and Lessee each represents to the other that there are no claims for brokerage or other commissions or finder's or other similar fees in connection with the transactions contemplated by this Lease insofar as such claims shall be based on arrangements or agreements made by or on behalf of the Party so representing.

**12.6 No Waiver.** No consent or waiver by Lessor or Lessee to or of any breach or default by the other Party in the performance by such other Party of the obligations thereof under this Lease shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such other Party under this Lease. Failure on the part of either Lessor or Lessee to complain of any act or failure to act of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver of such Party of the rights thereof under this Lease. Whenever in this Lease Lessor is required to join in, consent, give its approval, or otherwise act under this Lease, it is understood that such obligations are meant to apply to the Lessor acting in its capacity as a lessor and not in its capacity as a political subdivision of the Commonwealth of Virginia. Nothing in this Lease shall be construed as a waiver of (i) Lessor's powers, rights or obligations as a political subdivision of the Commonwealth of Virginia, whether or not affecting the Leased Premises, or (ii) Lessee's rights as corporate "citizen" of Arlington County, Virginia. Nothing in this Lease or any action taken by Lessor pursuant to this Lease shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of the Lessor, or of its appointed officials, officers or employees. The provisions of the preceding two sentences of this Section shall not be applicable at any time that Lessor is not the Industrial Development Authority of Arlington County, Virginia or any body politic or other governmental agency. All waivers hereunder shall be in writing.

**12.7 Performance of Lessee's Obligations.** If Lessee fails to perform any one or more of the obligations thereof under this Lease, in addition to the other rights of Lessor hereunder, Lessor, the County and shall each have the right, but not the obligation, to perform such obligations. Upon receipt of a demand therefor Lessee shall reimburse Lessor, the County or May, as applicable for the cost of performing such obligations plus interest thereon. Lessor, the County and May shall not have any liability for such performance except in the case of Lessor's, the County's or May's gross negligence or willful misconduct in such performance.

**12.8 Severability.** If any provision of this Lease or the application thereof to any Entity or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to any other Entity or circumstance shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**12.9 Status Reports.** Recognizing that Lessor and Lessee may find it necessary from time to time to establish to other Entities such as accountants, banks, mortgagees or the like, the then current status of performance hereunder, Lessor and Lessee each agree, upon the written request of the other Party, made from time to time by Notice, to furnish promptly a written statement (in recordable form, if requested) on the status of any matter pertaining to this Lease to the best of the knowledge and belief of the Party making such statement.

12.10 Amendment. Neither this Lease nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the Parties and approved by May.

12.11 Terminology. All personal pronouns used in this Lease, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural; and the plural shall include the singular. Unless otherwise expressly stated, titles of Articles, Sections, Subsections and Paragraphs of this Lease are for convenience only, and neither limit nor amplify the provisions of this Lease, and all references in this Lease to Articles, Sections, Subsections or Paragraphs shall refer to the corresponding Article, Section, Subsection or Paragraph of this Lease unless specific reference is made to the articles, sections or subdivisions of another document or instrument.

12.12 Counterparts. This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

12.13 Binding Agreement. Subject to the restrictions on Transfers set forth herein, this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their respective heirs, executors, legal representatives, successors and assigns. Whenever in this Lease a reference to Lessor, Lessee or any Entity is made, such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of Lessor, Lessee or such Entity.

12.14 Interpretation. No provision of this Lease shall be construed against or interpreted to the disadvantage of either Lessor or Lessee by any court or other governmental or judicial authority by reason of such Party having or being deemed to have structured or dictated such provision.

12.15 Governing Law. This Lease and the obligations of Lessor and Lessee hereunder shall be interpreted, construed and enforced in accordance with the laws of the Commonwealth of Virginia.

12.16 Relationship of Parties. No express or implied term, provision or condition of this Lease shall or shall be deemed to constitute Lessor and Lessee as partners or joint venturers.

12.17 Limitation to Appropriated Funds. Any obligations of Lessor hereunder shall be subject to the appropriation of funds to Lessor from Arlington County, Virginia pursuant to the terms of the Cooperation Agreement and to Skating Facility Available Sources.

12.18 Assignment by Lessor. The Lessor hereby assigns its rights under this Lease, including its rights to receive payments of Rent (but not including its rights to indemnification and payment of expenses) and its rights to exercise remedies under Section 11.3, to the County and Lessee acknowledges and agrees to such assignment. Lessee agrees to make all Rent payments directly to the County, as Lessor's assignee.

**12.19 Time of Essence.** Time is of the essence of this Lease and each provision hereof; provided, however, if the final date of any period set forth herein falls on a Saturday, Sunday or legal holiday under the laws of the United States of America, the final date of such period shall be extended to the next business day.

**12.20 Lessee's Obligations Survive.** The obligations of Lessee hereunder shall Survive Expiration or Termination of this Lease.

[EXECUTION IMMEDIATELY FOLLOWS ON NEXT PAGE]

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease under seal, the day and year first above written.

**LESSOR:**

Industrial Development Authority of  
Arlington County, Virginia

By: [Signature]  
Name: JAMES MAHER  
Title: CHAIRMAN

Attest: [Signature]  
Name: [Signature]  
Title: Treasurer/Secretary IDA

**LESSEE:**

LINCOLN BALLSTON LLC

By: [Signature]  
Name: Richard M Patrick  
Title: Member

WITNESS:  
Attest: [Signature]  
Name: G.W. PARR  
Title: \_\_\_\_\_

The following party hereby joins in to consent and agree to the terms and conditions of Section 3.6 hereof.

Lincoln Hockey, LLC, a Delaware limited liability company

By: [Signature]  
Name: Richard M Patrick  
Title: Member

WITNESS:  
Attest: [Signature]  
Name: G.W. PARR  
Title: \_\_\_\_\_

STATE OF VIRGINIA

COUNTY OF Arlington to-wit

The foregoing instrument was acknowledged before me this 27 day of April, 2005, by James Mayer, Chairman of the Industrial Development Authority of Arlington County, Virginia, a political subdivision of the Commonwealth of Virginia on behalf of the Authority.

Christen Williams  
Notary Public

My Commission expires: 5/31/08

Commonwealth OF Virginia  
CITY/COUNTY OF Arlington to-wit

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of April, 2005, by Richard M Patrick, member of Lincoln Ballston LLC.

Bernice L. Brooks  
Notary Public

My Commission expires: May 31, 2008

~~Commonwealth~~ OF Virginia  
CITY/COUNTY OF Arlington to-wit

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of  
April, 2005, by Richard M. Petrick, member of Lincoln  
Hockey LLC.

Bernice L. Prooko

Notary Public

My Commission expires May 31, 2008

**EXHIBIT A**

**ENCUMBRANCES**

1. Ground Lease dated as of August 1, 1984, between The May Department Stores Company and Arlington County, Virginia recorded in the Clerk's Office of the Circuit Court of Arlington County, Virginia in Deed Book 2153 at Page 736.
2. First Amendment to Ground Lease dated as of March 24, 2005, between The May Department Stores Company and Arlington County, Virginia recorded in the Clerk's Office of the Circuit Court of Arlington County, Virginia (the Clerk's Office) in Deed Book ~~3835~~ at Page ~~1096~~.
3. Declaration of Covenants, Easements and Restrictions dated as of August 1, 1984, made by The May Department Stores Company, and recorded in the Clerk's Office in Deed Book 2153 at page 629.
4. First Amendment to Declaration of Covenants, Easements and Restrictions dated as of August 1, 1991, made by The May Department Stores Company, and recorded in the Clerk's Office, in Deed Book 2494 at Page 1319.
5. Second Amendment to Declaration of Covenants, Easements and Restrictions dated as of February 5, 2001, made by The May Department Stores Company, and recorded in the Clerk's Office in Deed Book 3114 at Page 1599.
6. Third Amendment to Declaration of Covenants, Easements and Restrictions dated as of March 24, 2005, made by The May Department Stores Company, and recorded in the Clerk's Office in Deed Book ~~3835~~ at Page ~~1100~~.
7. Basic Agreement dated as of August 1, 1984, among Arlington County, Virginia, May Centers, Inc., The May Department Stores Company and Ballston Common Associates, L.P., and recorded in the Clerk's Office in Deed Book 2153 at Page 708.
8. First Amendment to Basic Agreement dated as of February 5, 2001, among Arlington County, Virginia, May Centers, Inc., The May Department Stores Company and Ballston Common Associates, L.P., and recorded in the Clerk's Office Deed Book 3114 at Page 1637.
9. Second Amendment to Basic Agreement dated as of March 24, 2005 among Arlington County, Virginia, The May Department Stores Company and FC Ballston Common LLC and recorded in the Clerk's Office in Deed Book ~~3835~~ at Page ~~1134~~.
10. Parking Garage Agreement dated as of August 1, 1984, between Arlington County, Virginia and May Centers, Inc., and recorded in the Clerk's Office on September 26, 1984, in Deed Book 2153 at Page 840.

11. First Amendment to Parking Garage Agreement dated as of February 5, 2001, between Arlington County, Virginia and May Centers, Inc., and recorded in the Clerk's Office in Deed Book \_\_\_\_ at Page \_\_\_\_.
12. Second Amendment to Parking Garage Agreement dated as of March 24, 2005, between Arlington County, Virginia and The May Department Stores Company and recorded in the Clerk's Office in Deed Book ~~3135~~ at Page ~~1147~~.
13. May-County Separate Agreement dated as of February 5, 2001, between The May Department Stores Company and Arlington County, Virginia, and recorded in the Clerk's Office in Deed Book 3114 at Page 1645.
14. First Amendment to May-County Separate Agreement dated as of March 24, 2005, between The May Department Stores Company and Arlington County, Virginia and recorded in the Clerk's Office in Deed Book ~~3135~~ at Page ~~1150~~.
15. Second Declaration of Covenants, Easement and Restrictions dated as of April 15, 1985, made by The May Department Stores Company, and recorded in the Clerk's Office in Deed Book 2178 at Page 1653.
16. First Amendment to Second Declaration of Covenants and Restrictions dated as of February 5, 2001, made by The May Department Stores Company, and recorded in the Clerk's Office in Deed Book 3114 at Page 1614.
17. Second Amendment to Second Declaration of Covenants and Restrictions dated as of March 24, 2005 made by The May Department Stores Company and recorded in the Clerk's Office in Deed Book ~~3135~~ at Page ~~1117~~.
18. Deed of Trust and Security Agreement from County of Arlington, Virginia to Bank of Virginia Trust Company, a Virginia corporation, Trustee for Citibank, N.A. dated August 1, 1984 recorded in Deed Book 2153 at Page 1068 to secure the sum of \$23,000,000 (sole remaining beneficiary is SunTrust Bank as bond trustee).
19. Partial Release of Deed of Trust (regarding Deed of Trust recorded in Deed Book 2153 at Page 1068) effective as of April 9, 2001 made by Citibank, N.A. and SunTrust Bank, and recorded in the Clerk's Office on March 26, 2001, in Deed Book 3127 at Page 1495.
20. Agreement of Sale dated as of August 1, 1984 between The May Department Stores Company and Arlington County, recorded in Deed Book 2153 at Page 816.
21. Parking Lease dated as of August 1, 1984, between Arlington County, Virginia and May Centers, Inc. recorded in Deed Book 2153 at Page 961.
22. Time Sharing Agreement dated as of August 1, 1984 between Arlington County and May Centers, Inc., recorded in Deed Book 2153 at Page 920.

23. Second Deed of Trust and Security Agreement dated September 29, 1986 by and between the County of Arlington, Virginia and Alexander Title Agency, Inc. and recorded in the Clerk's Office in Deed Book 2237 at Page 103 (beneficiary is The May Department Stores Company).
24. Skating Facility Agreement, dated as of March 24, 2005, among The May Department Stores Company, Arlington County, Virginia, the Industrial Development Authority of Arlington County, Virginia, Consortium Ballston LLC, FC Ballston Common LLC, Ballston Office Center, LLC, NDH II Point LLC, Lincoln Holdings LLC, Lincoln Hockey LLC, and Lincoln Ballston LLC and recorded in the Clerk's Office in Deed Book 3835 at Page 1157.
25. May-Capitals Direct Agreement dated as of March 24, 2005 among Arlington County, Virginia, the Industrial Development Authority of Arlington County, Virginia, The May Department Stores Company, Lincoln Ballston, LLC, Lincoln Hockey LLC and Lincoln Holdings LLC and recorded in the Clerk's Office in Deed Book 3835 at Page 1215.
26. Deed of Lease and Grant of Air Rights dated as of March 24, 2005 between Arlington County, Virginia, as lessor and the Industrial Development Authority of Arlington County, Virginia, as lessee recorded in the Clerk's Office in Deed Book 3834 at Page 1250.
27. Deed of Lease dated as of March 24, 2005 between the Industrial Development Authority of Arlington County, Virginia, as lessor and Lincoln Ballston LLC, as lessee recorded in the Clerk's Office in Deed Book 3835 at Page 1292.
28. Parking Facilities Lease dated as of March 24, 2005 between the Industrial Development Authority of Arlington County, Virginia, as lessor and Arlington County, Virginia, as lessee recorded in the Clerk's Office in Deed Book 3834 at Page 1285.
29. All other easements, restrictions and covenants of record.

**EXHIBIT B**

**DESCRIPTION OF SKATING FACILITIES**

"Skating Facilities" means a two-story addition to be constructed on the Eighth Level Slab consisting of a total of not more than 140,000 square feet of floor area, and may include only the following components (all to be built in accordance with the Plans and Specifications):

- A. Two National Hockey League ("NHL") sized ice sheets measuring 200 feet by 85 feet and associated ancillary facilities consisting of eight to ten changing rooms for youth and adult hockey teams and figure skaters; a pro shop that will offer a wide selection of hockey and figure skating equipment, related merchandise, equipment and skate repairs and skate sharpening; spectator seating not to exceed 2,100 spectators on one ice sheet and 250 on the other ice sheet; skate rental area, incidental arcade and game area; vending machine areas; public party rooms for birthday parties, team parties or other community use; food and beverage service and kitchen areas capable of catering and serving the Capitals and the public while in the Skating Facilities; a designated area for the sale and consumption of beer and wine while in the Skating Facilities; management offices for the operation of the ice rink facility; mechanical and ice refrigeration equipment rooms, two exterior elevators from the ground level, one serving the eighth level and one serving the training center and office facilities; storage for an ice resurfacer and ice melt pit rooms;
- B. Corporate office space for the Capitals consisting of not more than 20,000 square feet of floor area for the operation of the Capitals' corporate offices including Hockey Operations, Coaching Staff, Public and Media Relations, Marketing and Sales, Business Operations and other operations conducted by the Capitals ice hockey team (hereinafter referred to as "Corporate Offices");
- C. Capitals locker rooms and other player and team associated rooms, weight training facility and storage areas all consisting of not more than 20,000 square feet in the aggregate (the "Training Center");
- D. Other building amenities incidental and ancillary to and consistent with other first class skating facilities but only for uses set forth in Section III F of the Skating Facility Agreement; and
- E. One or both ice sheets may be constructed in such a manner as to allow its use as a non-ice surface for in-line skating, indoor soccer or other generally recognized sports and community events as determined by the Capitals but only for uses set forth in Section III F of the Skating Facility Agreement.

**EXHIBIT C**

**RULES AND REGULATIONS**

With respect to the Skating Facilities Lessee shall:

Keep the floor surfaces in a smooth condition and evenly covered with the type of surfacing material originally installed thereon, or with such substitute as shall have been approved by Lessor, the County and May.

Remove all papers, debris, filth and refuse and wash or thoroughly sweep the surfaces.

Provide a sufficient number of trash containers, and keep such locked except for scheduled emptying; empty trash containers daily and wash such containers at such intervals as required to maintain them in a first class, sanitary condition.

Perform maintenance with respect to lighting systems, standards, wiring, conduits, and fixtures to ensure compliance with first class standards and relamp and reballast as needed.

Keep all landscaping in a first class and thriving condition.

Keep all signs in a clean and orderly condition, including relamping and reballasting as needed

Provide courteous uniformed personnel to patrol the Skating Facilities, in such numbers and hours, as shall be prudent for the safe and orderly operation of the Skating Facilities as required hereby and to ensure that patrons of the Skating Facilities do not use the Parking Garage for any purpose other than parking and access.

Require that a parent or guardian accompany all minors under the age of 10 at all times.

Keep restrooms and other common use facilities clean, neat and sanitary.

Maintain all utility lines and systems within the Skating Facilities in good condition and repair and not cause or permit any of same to be used in any way for which such were not designed or to cause or permit plumbing lines to be clogged.

Furnish necessary pest abatement controls.

Keep all buildings and other Skating Facilities in first class condition and repair, freshly painted and free of graffiti.

Maintain all markers, directional signs and Skating Facilities in a first class condition.

Prohibit the sale or consumption of alcoholic beverages, except for the sale and consumption of beer and wine in designated areas within the Skating Facilities.

Part of AAC #14-059-032

Prepared by:  
McGuireWoods LLP  
One James Center  
Richmond, Virginia 23219

**THIS LEASE IS EXEMPT FROM RECORDING TAXES UNDER  
SECTION 58.1-811E OF THE CODE OF VIRGINIA OF 1950,  
AS AMENDED**

**DEED OF LEASE AND GRANT OF AIR RIGHTS**

**Between**

**ARLINGTON COUNTY, VIRGINIA**

**As Lessor**

**and**

**INDUSTRIAL DEVELOPMENT AUTHORITY OF  
ARLINGTON COUNTY, VIRGINIA**

**As Lessee**

**As of March 24, 2005**

WREAN 59308.24

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
1. Definitions.....	1
2. Lease of Leased Premises; Term of Lease; Quiet Enjoyment.....	5
2.1 Lease.....	5
2.2 Term.....	6
2.3 Quiet Enjoyment.....	6
3. Rent.....	6
3.1 Rent.....	6
3.2 Payment of Rent.....	6
4. Impositions.....	6
4.1 Payment.....	6
4.2 Contests.....	7
4.3 Assessed Valuation.....	7
4.4 Joinder by Lessor.....	7
5. Improvements.....	7
5.1 Approval of Plans and Specifications.....	8
5.2 Construction of Improvements.....	8
5.3 Title to Skating Facilities.....	8
6. Maintenance, Use and Alteration.....	8
6.1 Acceptance.....	8
6.2 Maintenance of the Skating Facilities.....	9
6.3 Maintenance of the Parking Garage.....	9
6.4 Use.....	9
6.5 Waste.....	10
6.6 Compliance with Laws.....	10
6.7 Alterations.....	11
6.8 Environmental Matters.....	13
6.9 Compliance with Ground Lease.....	13
7. Insurance.....	13
7.1 Coverage.....	14
7.2 Policies.....	14

8.	Damage or Destruction .....	16
8.1	Damage or Destruction .....	16
8.2	Insurance Proceeds.....	16
8.3	Non-Abatement of Rent.....	17
9.	Condemnation .....	17
9.1	General.....	18
9.2	Complete or Partial Taking.....	18
9.3	Temporary Taking .....	18
9.4	Condemnation Proceedings .....	18
9.5	Notice of Condemnation .....	18
10.	Assignments and Subleases .....	19
10.1	Assignments.....	19
10.2	Subleases.....	19
10.3	Leasehold Mortgage.....	19
10.4	Subordination to Leasehold Mortgage.....	20
10.5	Registration of Leasehold Mortgage.....	20
10.6	Performance by Leasehold Mortgagee of Lessee's Obligations .....	20
10.7	Leasehold Mortgagee Remedies.....	20
10.8	No Surrender or Modification without Notice.....	21
11.	Defaults .....	21
11.1	Events of Default .....	21
11.2	Force Majeure .....	22
11.3	Remedies.....	22
11.4	Application of Funds.....	23
11.5	No Remedy Exclusive.....	23
11.6	Agreement to Pay Attorney's Fees and Expenses.....	23
11.7	Holding Over .....	24
11.8	Interest from Maturity.....	24
12.	Miscellaneous Provisions.....	24
12.1	Recording and Filing.....	24
12.2	Lessor's Rights of Access .....	24
12.3	Surrender of Leased Premises.....	24
12.4	Notices .....	24

12.5	Fees and Commissions.....	25
12.6	Waiver.....	25
12.7	Performance of Lessee's Obligations.....	25
12.8	Severability.....	26
12.9	Status Reports.....	26
12.10	Amendment.....	26
12.11	Terminology.....	26
12.12	Counterparts.....	26
12.13	Binding Agreement.....	26
12.14	Interpretation.....	26
12.15	Governing Law.....	26
12.16	Relationship of Parties.....	26
12.17	Payments by Lessee.....	27
12.18	Time of Essence.....	27
12.19	Lessee's Obligations Survive.....	27

**List of Exhibits:**

- Exhibit A – Description of Skating Facilities
- Exhibit B - Encumbrances
- Exhibit C – Survey of Air Space

**DEED OF LEASE AND GRANT OF AIR RIGHTS**

THIS DEED OF LEASE AND GRANT OF AIR RIGHTS (this "Lease"), is made and entered into as of the 24<sup>th</sup> day of March, 2005, by and between ARLINGTON COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia, as Lessor, and the INDUSTRIAL DEVELOPMENT AUTHORITY OF ARLINGTON COUNTY, VIRGINIA, as Lessee;

**WITNESSETH That:**

WHEREAS, Lessor is the owner of the Parking Garage and leases the Garage Parcel pursuant to the terms of that certain Ground Lease dated as of August 1, 1984, as amended by that certain First Amendment to Ground Lease dated as of the date hereof, and as thereafter amended, between Lessor, as tenant, and The May Department Stores Company, as landlord (the "Ground Lease").

WHEREAS, Lessor proposes to construct the Eighth Level Slab and desires to lease the Leased Premises to Lessee, and Lessee desires to lease the Leased Premises from Lessor, such leasing to be in accordance with the terms, conditions and provisions of this Lease.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration in hand paid by each Party hereto to the other at and before the sealing and delivery of these presents, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee, intending to be legally bound, do hereby covenant and agree as follows:

1. **Definitions.** For purposes of this Lease, and in addition to terms defined elsewhere in this Lease, the following defined terms shall have the meanings ascribed thereto in this Article 1.

"Affiliate" means, with respect to any Entity, (a) any Entity five percent (5%) or more of the beneficial ownership of which is owned by the Entity in question, (b) any Entity which owns more than five percent (5%) of the beneficial interest of the Entity in question, or (c) any Entity which managerially controls, or is managerially controlled by, or is under common managerial control with, the Entity in question.

"Air Space" means a "volume" or "volumes" of air space bounded as set forth in (a) and (b) below. Although it is contemplated that eventually the Improvements will be constructed within the Air Space, it is the intent hereof that the Air Space shall constitute a portion of the Leased Premises regardless of when or if the Improvements are constructed within the Air Space.

(a) The lower (horizontal) boundary line of the air space is the horizontal plane located at an elevation of 338.0 feet above Mean Sea Level, which is the top of the seventh level of the Parking Garage, reserving, however, to the Lessor the elevator tower which protrudes into the Air Space.

(b) The vertical (perimetric) boundaries of the volume of air space are shown as Exhibit C and begin at the lower (horizontal) boundary line set forth in (a) above and extend upward.

"Approve," "Approved" or "Approval" mean, as to the subject matter thereof, an express approval contained in a written statement signed by the approving Entity.

"Ballston" means Lincoln Ballston LLC, a Delaware limited liability company.

"Capitals" means Lincoln Holdings LLC, a Delaware limited liability company, trading and operating as the Washington Capitals Hockey Club.

"Capitals' Sublease" means that certain Deed of Lease of even date herewith between Lessee, as lessor and Lincoln Ballston, LLC, as lessee, of the Skating Facilities.

"Development Agreement" means that certain Development Agreement dated of even date herewith among the Lessor, the Lessee and Lincoln Holdings, LLC, as amended, modified, supplemented or restated from time to time.

"Direct Agreement" means the May-Capitals Direct Agreement, dated as of the date hereof among May, the Lessee, the Capitals and Ballston.

"Eighth Level Slab" means the concrete slab constructed by the County upon the Parking Garage consisting of approximately 95,000 square feet consistent with the Site Plan.

"Encumbrances" means those matters, other than Impositions neither delinquent nor in default, affecting title to the Leased Premises as of the date of this Lease and more particularly described in Exhibit "B" attached hereto and by reference made a part hereof.

"Entity" means any person, corporation, limited liability company, partnership (general or limited), joint venture, association, joint stock company, trust or other business entity or organization.

"Event of Default" means any of those events, occurrences and circumstances so designated in Section 11.1.

"Expire", "Expired" or "Expiration" means the expiration of the Term of this Lease by reason of lapse of time, and not by reason of any Event of Default.

"Garage Parcel" means that certain parcel of land situated in Arlington County, Virginia containing 4.41394 acres and more particularly described as Parcel B-1 on a plat entitled "A Resubdivision of Parcels 'A' through 'T', the Hecht Company Property, and

GlebeWood Terrace Lot 'A", dated May 4, 1984, revised July 6, 1984, prepared by Dewberry & Davis, Fairfax, Virginia, recorded in the Clerk's Office of the Circuit Court of Arlington, County, Virginia in Deed Book 2194, page 100.

"Ground Lease" has the meaning set forth in the Recitals hereto.

"IDA Bonds" means the revenue bonds in the maximum principal amount of \$35,700,000 to be issued by the Lessee to finance a portion of the cost of the Skating Facilities.

"Impositions" means all taxes, assessments, use and occupancy taxes, transit taxes and other charges, general and special, ordinary and extraordinary, payable to any governmental body, which shall or may during the Term be assessed, levied, charged or imposed upon or accrue or become due or payable out of or on account of or become a lien on the Leased Premises, or any part thereof. Impositions shall include, without limitation, charges for gas, water, sewer, electricity and other utilities serving the Leased Premises. Impositions shall not include any income taxes, capital levy, estate, succession, inheritance or transfer taxes or similar tax of Lessor, any taxes imposed on Lessor with respect to the Parking Garage, or any franchise taxes imposed upon the owner of the fee of the Parking Garage Parcel or any income, profits or revenue tax, assessment or charge imposed upon the Rent or other benefit received by Lessor under this Lease unless such taxes are in lieu of Impositions.

"Improvements" means the Eighth Level Slab, the Parking Facilities and the Skating Facilities.

"Lease" means this Deed of Lease and Grant of Air Rights, together with any amendments, modifications, supplements, restatements or replacements hereof.

"Leased Premises" means, collectively, (i) the Eighth Level Slab and the Air Space; (ii) an exclusive right and easement on the Randolph Street side of the Parking Garage sufficient for construction and operation of an exterior elevator as shown in the Plans and Specifications to serve the Skating Facilities and an exclusive right and easement sufficient for the construction and operation of certain portions of the Skating Facilities that extend below the Eighth Level Slab as shown in the Plans and Specifications, (iii) non-exclusive rights of access to the Eighth Level Slab and Air Space over and through the Parking Garage, including any and all elevators, stairways, walkways and driveways, (iv) non-exclusive rights of access and easements to the utilities, utility lines, ducts and shafts existing in the Parking Garage and rights to connect to existing, or install additional, water and sewer, electrical, and other lines to provide utilities to the Eighth Level Slab and the Improvements, all as shown on the Plans and Specifications and in such a manner as will not interfere with or overload existing service to others being served, and (v) non-exclusive rights of lateral support of the Improvements through the existing Parking Garage structure (including the Eighth Level Slab); provided that the non-exclusive rights of access described in (iii), (iv) and (v) above are subject to reasonable interruption for maintenance, repairs and replacements and as a result of damage or condemnation and provided further that Lessor retains and reserves a non-exclusive easement in the Leased Premises for operation of the Parking Garage and for use, maintenance, repair and replacements to the Parking

Garage, including access to the elevators described in (iii) above and all other portions of the Parking Garage which project into the Leased Premises.

"Leasehold Mortgage" means any deed of trust, mortgage, security agreement or other instrument in the nature thereof at any time and from time to time constituting a lien upon the leasehold estate of Lessee created hereby, but not upon the estate of Lessor, and only to the extent required to secure the IDA Bonds and any refunding of the IDA Bonds.

"Leasehold Mortgagee" means the holder or, collectively, the holders of the note(s) or other obligations secured by a Leasehold Mortgage.

"Lessee" means the Industrial Development Authority of Arlington County, Virginia, and the successors and permitted assigns thereof.

"Lessor" means Arlington County, a political subdivision of the Commonwealth of Virginia, and the successors and assigns thereof.

"Mall" means that certain shopping center containing, as of the date hereof, a Hecht's department store, a Hecht's furniture store, an enclosed passageway and adjacent tenant space and other components, commonly known as the Ballston Commons Mall.

"May" means The May Department Stores Company, its successors and assigns.

"Notice" means a written advice or notification required or permitted by this Lease, given as more particularly provided in Section 12.4.

"Parking Facilities" means the parking areas located on the Eighth Level Slab as shown on the Site Plan and leased by the IDA to the County pursuant to the Parking Lease.

"Parking Garage" means the parking structure (excluding the Eighth Level Slab) located on the Garage Parcel consisting of seven levels of parking and approximately 2,805 parking spaces, as such may exist from time to time.

"Parking Lease" means that certain Parking Lease dated of even date herewith by and between Lessee, as lessor and Lessor, as lessee by which the Lessee subleases the Parking Facilities to Lessor for the operation of public parking.

"Parties" means all parties to this Lease.

"Party" means any party to this Lease.

"Plans and Specifications" means the Plans and Specifications approved by May as set forth in the Direct Agreement and all permitted amendments thereto.

"Rent" means the sums to be paid by Lessee to Lessor pursuant to the provisions of Article 3.

"Site Plan" means the site plan for the Arlington Ice Skating Facility project approved by the County Board of Arlington County as an amendment to Site Plan #193 on February 9, 2002 and as amended on June 14, 2003 and December 14, 2004, as the same may be amended from time to time and approved by May.

"Skating Facilities" means the improvements described on Exhibit A hereto.

"Skating Facility Agreement" means that certain Skating Facility Agreement dated of even date herewith, among The May Department Stores Company, Lessor, Lessee, Consortium Ballston LLC, FC Ballston Common, LLC, Ballston Office Center, LLC, NDH II Point LLC, the Capitals, Lincoln Hockey, LLC, and Ballston.

"Skating Facility Available Sources" means all revenues received by Lessee under the Capitals' Sublease and all other revenues received by Lessee with respect to the Skating Facilities.

"Sublease" means any one of the Subleases.

"Subleases" means all written leases, rental agreements, licenses, concessions, easements, occupancies or other agreements or arrangements for use or hire of, or in respect to, any portion of the Leased Premises permitted by this Lease, including, without limitation, the Capital's Sublease and the Parking Lease.

"Subrents" means the aggregate of all rent and other charges or sums from time to time and at any time due or payable by Subtenants under Subleases.

"Subtenant" means any Entity which is or may hereafter be the sublessee or subtenant under any Sublease.

"Term" means the term of this Lease described in Section 2.2.

"Terminate", "Terminated" and "Termination" mean the termination of the Term of this Lease by reason of an Event of Default, condemnation or casualty as provided in this Lease, or by reason of Section 2.2(b), or by mutual consent, and not by reason of lapse of time.

"Transfer" means any transfer, sale, conveyance, grant, assignment, encumbrance, pledge, hypothecation or other disposition.

## **2. Lease of Leased Premises; Term of Lease; Quiet Enjoyment.**

2.1 **Lease.** Lessor, in consideration of the rents, covenants, agreements and conditions herein set forth, which Lessee hereby agrees shall be paid, kept and performed by Lessee, does hereby grant and lease to Lessee, and Lessee does hereby accept rent and lease from Lessor, all right, title and interest of Lessor in and to the Leased Premises. The interest in the

Leased Premises created hereby shall be deemed to be an estate for years under the laws of the Commonwealth of Virginia.

TO HAVE AND TO HOLD the Leased Premises and all rights, privileges and appurtenances thereunto appertaining unto Lessee, for and during the Term, unless sooner Terminated in accordance with any of the provisions of the Lease, subject to the Encumbrances and Impositions neither delinquent nor in default.

**2.2 Term.** (a) This Lease is and shall remain in full force and effect from and after the date hereof and shall end at midnight (e.s.t.) on December 30, 2031 or such earlier termination date as may result from any of the provisions of this Lease or as a result of the termination of the Ground Lease.

(b) Notwithstanding the foregoing, this Lease shall terminate if the Lessor is required to remove the Improvements or the Eighth Level Slab pursuant to the Ground Lease or the Declaration (as defined in the Skating Facility Agreement).

**2.3 Quiet Enjoyment.** Lessor represents and warrants that subject to the Encumbrances it has full right and authority to execute and deliver this Lease and to perform its obligations hereunder, and that Lessee, while paying the Rent and other sums payable under this Lease and performing its other covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Leased Premises for the full Term without hindrance or molestation from Lessor or any other Entity, subject to the terms, conditions and provisions of this Lease and to the Encumbrances. Lessor further warrants that the execution, delivery and performance of this Lease by Lessor do not conflict with, or cause a violation of, any agreement or instrument binding upon Lessor.

### **3. Rent.**

**3.1 Rent.** Lessee, in consideration of the leasing of the Leased Premises to Lessee by Lessor, hereby covenants and agrees to pay Rent to Lessor as, and in the manner herein provided and subject to the terms, provisions and conditions herein set forth, without Notice or other notice or demand and, except as herein specifically provided in Section 9.2 hereof, without any offset or deduction whatever. The Rent ("Rent") for each Lease Year shall be the amount of all rents and other revenues collected by Lessee from and under the Capitals' Sublease. Payment of rent shall commence on the date of payment of rent under the Capitals' Sublease.

**3.2 Payment of Rent.** Lessee shall pay to Lessor the Rent immediately upon receipt from any Subtenant and shall direct any Subtenant to pay all Subrents directly to the Lessor. Lessor shall have the right to collect all Subrents directly from all Subtenants and Lessor agrees to enforce such right.

**3.2.1 "Net" Lease.** This Lease shall be deemed and construed to be a completely and absolutely net lease and Lessee shall pay or cause to be paid to Lessor, net throughout the Term, the Rent hereunder free of any and all offsets,

abatements and other deductions whatsoever and without notice (including any Notice) or demand.

4. Impositions.

4.1 Payment. Lessee will pay or cause to be paid all Impositions, as and when the same shall become due, except that all Impositions for the fiscal year or tax year in which this Lease Expires shall be apportioned so that Lessee shall pay the portions of the Impositions that are applicable to the period prior to Expiration of this Lease and Lessor shall pay the portion thereof applicable thereafter. Lessee shall, if possible, pay all such Impositions directly to the taxing authority, and as soon as possible thereafter deliver to Lessor satisfactory evidence of such payment; provided, however, that Lessor may require Lessee to pay the Impositions directly to Lessor, and Lessor shall deliver to Lessee satisfactory evidence of payment of Impositions to the appropriate governmental authority. The certificate, advice, bill or statement issued or given by the appropriate officials authorized or designated by law to issue or give the same or receive payment of any of the Impositions, of the existence, non-payment or amount of such Impositions shall be prima facie evidence of the existence, payment, non-payment and amount of such Impositions.

4.2 Contests. Lessee, if Lessee shall so desire, may contest the validity or amount of any Impositions, in which event Lessee may defer payment thereof during the pendency of such contest provided that, prior to the date on which the same shall have become due, Lessee shall have deposited with the applicable governmental authority the amount required thereby, or if no such sum is required by such authority, Lessee shall have deposited with Lessor an amount sufficient to pay such contested item, together with the interest and penalties thereon, which amount shall be applied to the payment of such item when the amount thereof shall be finally fixed and determined. In lieu of such deposit with Lessor, Lessee may deliver to Lessor a surety company bond in an amount, with a company and in substance Approved by Lessor (which Approval shall not be unreasonably withheld, conditioned or delayed). Nothing herein contained, however, shall be construed to allow such items to remain unpaid for such length of time as shall permit the Leased Premises or any part thereof, to be sold by any governmental or quasi-governmental authority or a lien with respect thereto foreclosed for the non-payment of the same. If at any time, in the reasonable judgment of Lessor, it shall become necessary to protect Lessor's interest, Lessor after Notice to Lessee may use the funds deposited with Lessor to pay or apply to the contested Impositions. If the amount of deposited funds shall exceed the amount of such payment, the excess shall be paid to Lessee. In case there shall be any deficiency, the Lessee shall cause the amount of such deficiency to be promptly paid to Lessor. If such deficiency is not paid by Lessee to Lessor and if Lessor pays the amount of such deficiency on the contested Impositions, Lessee shall pay or cause to be paid on demand to Lessor the amount of such deficiency as additional rent with interest thereon (the "Cure Rate") at an annual rate equal to the Prime Rate plus 2%. "Prime Rate" shall mean the prime rate of interest as published in the Wall Street Journal from time to time.

4.3 Assessed Valuation. Lessee may, if Lessee shall so desire, endeavor at any time or times to obtain a lowering of the assessed valuation upon the Improvements or any part thereof, for any year for the purpose of reducing Impositions thereon. Lessee shall be authorized to collect any tax refund payable as a result of any proceeding which Lessee may

institute for that purpose and any such refund shall be the property of Lessee to the extent to which it may be based on a payment made by Lessee, subject, however, to apportionment between Lessor and Lessee with respect to taxes paid or contributed by Lessor in the year in which this Lease Expires, after deducting from such refund the reasonable costs and expenses, including reasonable legal fees, incurred in connection with obtaining such refund.

**4.4 Joinder by Lessor.** Lessor shall not be required to join in any action or proceeding referred to in Sections 4.2 or 4.3 unless required by law or any rule or regulation in order to make such action or proceeding effective, in which event Lessor shall take such action or proceeding, if acceptable to Lessor in the exercise of its reasonable discretion, but without expense to Lessor. Lessee shall pay or reimburse or cause to be paid or reimbursed all costs incurred by Lessor by reason of, in connection with, on account of, growing out of or resulting from any such action or proceeding. This subparagraph 4.4 shall expressly survive the Expiration or earlier Termination of this Lease.

**5. Improvements.**

**5.1 Approval of Plans and Specifications.** Lessor and Lessee hereby acknowledge and agree that Lessor has reviewed and Approved the Plans and Specifications. Such approval does not constitute a warranty of suitability, safety or compliance with any law, and that Lessor assumes no responsibility or liability in connection with the plans and specifications or the construction contemplated thereby.

**5.2 Construction of Improvements.** Lessor shall construct, or cause to be constructed, the Eighth Level Slab and the Parking Facilities and the Lessee shall construct, or cause to be constructed, the Skating Facilities in accordance with the Skating Facility Agreement, the Site Plan, the Plans and Specifications, the Operative Documents (as defined in the Skating Facility Agreement) and the Development Agreement.

**5.2.1 Inspections.** During construction and development work on or about the Leased Premises, Lessor and May may inspect the Improvements in the course of construction and on their completion, and all elements of the work and materials thereof and Lessee will permit Lessor and May to examine the plans, especially drawings and specifications relating thereto, or in the alternative, shall furnish Lessor with copies of same. Lessor shall have the right to object to any material deviation from such plans and specifications as so approved and upon receipt of any such objection, Lessee shall take such steps as shall be necessary to correct such deviation.

**5.2.2 Compliance with Laws.** Lessee shall, in the performance of all construction work, comply, or cause compliance, with all applicable zoning ordinances and building codes and all other laws, ordinances, rules, orders and regulations of all governmental and quasi-governmental authorities having jurisdiction thereof, and the Improvements, upon completion of any construction, shall comply with all applicable laws, ordinances, rules, orders and regulations of any and all governmental and quasi-governmental authorities having jurisdiction

thereof and of the local Board of Fire Underwriters or any similar body, and shall comply with all matters to which this Lease is subject as then in effect.

5.3 Title to Skating Facilities. Title to the Skating Facilities shall be and remain in Lessee during the Term. Upon Termination or Expiration, the Lessee shall have no further interest in the Leased Premises and the Improvements shall be the sole and absolute property of Lessor as of such Termination or Expiration and shall be surrendered to Lessor at that time; provided, however, that if this Lease is terminated as a result of a default on the part of Lessor, Lessee shall, in addition to all other rights or remedies afforded at law or in equity, have the right to recover from Lessor the fair market value of its leasehold interest in the Leased Premises so surrendered by Lessee.

6. Maintenance, Use and Alteration.

6.1 Acceptance. Lessee has leased the Leased Premises after a full and complete physical examination of the Parking Garage and the Eighth Level Slab upon which the other Improvements will be constructed and by taking possession of the Improvements when completed shall accept the same in the physical condition or state in which the Leased Premises and the Parking Garage are then held without any representation or warranty, express or implied in fact or by law, by Lessor or May and without recourse against Lessor or May, as to the physical nature, condition or usability thereof.

6.2 Maintenance of the Skating Facilities. Lessee shall maintain and operate (or cause to be operated) the Skating Facilities in a good, tenantable, first-class and safe condition and in good repair throughout the Term and in compliance with all applicable laws and the Rules and Regulations attached as Exhibit C to the Capitals' Sublease, whether or not the Capitals' Sublease is in effect, and shall promptly make or cause to be made any and all repairs and replacements (interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen) required to maintain such condition and state of repair.

6.3 Maintenance of the Parking Garage. Lessor shall maintain the Parking Garage pursuant to Article 5 of the Ground Lease, including, without limitation, the structural elements of the Parking Garage which provide support for the Improvements. Lessor shall maintain the Eighth Level Slab and shall maintain and operate the Parking Facilities pursuant to the terms of the Parking Lease whether or not the Parking Lease is in effect.

6.4 Use.

6.4.1 Required Use. Lessee shall operate, or cause to be operated, the Leased Premises for the uses set forth in the Skating Facility Agreement and pursuant to the terms and conditions of the Skating Facility Agreement, the Capitals' Sublease and the Parking Lease (notwithstanding any termination of the Capitals' Sublease or the Parking Lease). Any change in use shall require the prior Approval of Lessor and May, which may be withheld in their sole discretion.

6.4.2 Use Restrictions. In addition to those restrictions set forth in the Skating Facility Agreement, Lessee shall not use or occupy, or permit the use or occupancy of, the Leased Premises and not do or permit anything to be done in or to

the Leased Premises, in whole or in part, in a manner which (i) would in any way make void or voidable any insurance then in force with respect to the Leased Premises or the Parking Garage, the former Penney's Building or the Mall, or (ii) may make it impossible to obtain (at standard rates therefor and from responsible companies) fire or other insurance thereon required to be furnished by Lessee hereunder or required with respect to the Parking Garage, or (iii) would cause structural injury to the Improvements or the Parking Garage or any part thereof, or (iv) would constitute a public or private nuisance or a noxious use, or (v) would permit the sale or consumption of any alcoholic beverage, other than beer and wine to be sold and consumed in certain designated areas, or (vi) would cause injury or damage to person or property. Lessee shall not use or occupy, or permit the use or occupancy of, the Leased Premises, in whole or in part, in a manner which violates any present or future, ordinary or extraordinary, foreseen or unforeseen laws, regulations, orders, rules, ordinances or requirements of any governmental or quasi-governmental authority now existing or hereafter created, having jurisdiction over the Leased Premises. Lessee shall, at no cost or expense to Lessor, diligently comply with all of the foregoing; provided, however, that Lessee may, in good faith (and only with the cooperation and consent of the Lessor), contest the validity of any such laws, regulations, orders, rules, ordinances or requirements, and, pending the determination of such contest, may postpone compliance therewith, except that Lessee shall not so postpone compliance therewith as to subject Lessor to any fine or penalty or to prosecution for any misdemeanor, felony or other crime, or as to cause the Leased Premises or any part thereof, to be condemned or to be vacated. Lessee shall pay or reimburse to Lessor any recovery or loss to which Lessor may be subject or which Lessor may sustain, including, without limitation, reasonable attorney's fees and expenses, arising in connection with any breach of this Subsection 6.4.2 or by reason of any action or proceedings which may be brought against Lessor or against the Leased Premises or any part thereof, by virtue of violation of any such laws, regulations, ordinances or requirements relating to the use and occupancy of the Leased Premises or by virtue of any such present or future law of the United States of America, or of the Commonwealth of Virginia, the County of Arlington or other municipal, public or quasi-public authority now existing or hereafter created, having jurisdiction. This subsection 6.4.2 shall expressly survive the Expiration or earlier Termination of this Lease.

6.5 Waste. Lessee will not do or permit or suffer any waste, damage, disfigurement or injury to or upon the Leased Premises or any part thereof. Lessee shall have the right at any time and from time to time to sell or dispose of any equipment or personal property subject to this Lease which may have become obsolete or unfit for use or which is no longer useful, necessary or profitable in the conduct of Lessee's business, provided that if such equipment or property be necessary or desirable for the operation of the Leased Premises, Lessee shall substitute or cause to be substituted for the same, other building equipment or personal property not necessarily of the same character, but capable of performing the same function as that performed or which was to have been performed by the property so disposed of, and suitable for its intended purpose.

6.6 Compliance with Laws. Lessee shall diligently comply during the Term, with any and all present and future laws, acts, rules, requirements, orders, directions, ordinances and regulations, ordinary and extraordinary, foreseen or unforeseen, concerning the condition or use of the Leased Premises, or any part thereof, or the street adjacent thereto, of all Federal, State, municipal and other public departments, bureaus, offices and authorities and the National Board of Fire Underwriters, or other body having similar functions, and of all liability, fire and other insurance company having policies outstanding with respect to the Leased Premises whether or not such laws, acts, rules, requirements, orders, directions, ordinances and regulations require the making of structural alterations or the use or application of portions of the Leased Premises for compliance therewith or interfere with the use and enjoyment of the Leased Premises, and shall pay or reimburse Lessor for any and all fines, penalties, claim or claims, and costs and expenses, for damages of every kind and nature arising out of any failure by Lessee to comply with any such laws, acts, rules, requirements, orders, direction, ordinances and regulations. Lessee may, however, in good faith (and only with the cooperation and consent of Lessor) contest the validity of any law, act, rule, requirement, order, direction, ordinance or regulation and, pending the determination of such contest, postpone compliance therewith, except that Lessee shall not so postpone compliance therewith as to subject Lessor to any fine or penalty or to prosecution for any misdemeanor, felony or other crime, or to cause the Leased Premises or any part thereof to be condemned or to be vacated, or to endanger or adversely affect use or occupancy of the Leased Premises or the Parking Garage.

6.7 Alterations. Except as provided in Subsection 6.7.1 Lessee shall not demolish nor undertake any alterations which are structural or visible from adjoining properties to any of the Improvements or any part thereof, now or hereafter erected within the Leased Premises or situate and being on, at or above the Leased Premises. Under no circumstances shall Lessee make any alterations which would affect the structural integrity of the Parking Garage or lessen the value of the Leased Premises without the written consent of Lessor.

6.7.1 Permitted Activities. Lessee may, at any time during the Term make or permit to be made any alteration, change or addition of, in or to the interior of the Improvements which may hereafter be erected thereon (that is, the "Work"), subject, however, to the conditions and covenants set forth in the Skating Facility Agreement and Sections 6.7.1.1 through 6.7.1.9.

6.7.1.1 No Defaults. There is no existing and unremedied default on the part of Lessee, and of which Lessee has received Notice, under any of the terms, covenants or conditions herein on the part of Lessee to be observed and performed.

6.7.1.2 No Adverse Effect. The proposed Work shall not adversely affect the use or operation of the Parking Garage.

6.7.1.3 Due Diligence. The Work shall be performed with diligence and in a first-class workmanlike manner, and all costs thereof shall be paid in a timely manner.

**6.7.1.4 Compatibility.** All alterations shall be architecturally compatible with the existing Improvements and the Parking Garage. No demolition of any Improvements shall be commenced without the prior Approval of Lessor. Prior to commencement of Work, Lessee shall have delivered to Lessor detailed plans and specifications and a construction schedule for same. Lessor shall have the right to Approve any such plans and specifications and schedule by delivering Notice of Approval or disapproval to Lessee within thirty (30) days after receipt by Lessor of Notice of such plans and specifications. Any such alterations contemplated by such plans and specifications (i) shall be architecturally compatible with the existing Improvements and the Parking Garage, (ii) shall not adversely affect the structural integrity of the Improvements or the Parking Garage, (iii) shall not affect the existing mechanical, electrical and other systems within the Improvements and the Parking Garage, and (iv) during and after construction, shall not adversely affect the operation of the Improvements or the Parking Garage, as same are then operated.

**6.7.1.5 Insurance.** Lessee, Lessee's contractor and the contractor performing the Work shall provide and maintain, at its own cost and expense, full workers' compensation insurance with waivers of subrogation in respect to such Work and all risk builder's risk insurance in an amount not less than the replacement cost of such Work as well as any other insurance in respect to such Work as may then be required by law. Certificates of all such policies shall be delivered to Lessor and May prior to commencement of such Work.

**6.7.1.6 Consents.** If under the provisions of any insurance policies required to be provided and maintained under this Lease, any consent to such Work by the insurers therein shall be required to continue and keep such policies in full force and effect, Lessee shall obtain such consents and pay or cause to be paid any premiums or charges that may be incurred.

**6.7.1.7 Inspections.** During construction and performance of the Work, Lessor and May may inspect Work in the course of its construction and on its completion, and all elements of the Work and materials thereof and Lessee will permit Lessor and May to examine the plans, especially drawings and specifications relating thereto, or in the alternative, shall furnish Lessor with copies of same. Lessor and May shall have the right to object to any deviation from such plans and specifications as so Approved (if Lessor and May's Approval is required) and upon receipt of any such objection, Lessee shall take such steps as shall be necessary to correct such deviation. Lessor may, at Lessee's expense, engage an architect, engineer or other consultant for the foregoing purposes.

**6.7.1.8 Compliance with Laws.** Lessee shall, in the performance of any Work, comply with all applicable requirements of the zoning ordinances and building codes and all other laws, ordinances, rules, orders and regulations of all governmental and quasi-governmental authorities having jurisdiction thereof, and the Improvements and Parking Garage, when completed, shall comply with all applicable laws, ordinances, rules, orders and regulations of any and all

governmental and quasi-governmental authorities having jurisdiction thereof and of the local Board of Fire Underwriters or any similar body, and shall comply with all matters to which this Lease is subject as then in effect.

**6.7.1.9 Permits.** Lessee shall procure or cause to be procured all necessary permits for the Work and shall deliver or cause to be delivered to Lessor a temporary or final certificate of occupancy as a condition precedent to the use of the Leased Premises for its designated purpose. Upon completion of the Work, Lessee shall deliver or cause to be delivered to Lessor a final certificate of occupancy, if not previously delivered.

**6.7.2 Prohibited Activities.** Nothing herein contained shall be construed to authorize any work in contravention of the Encumbrances or to authorize Lessee to subject Lessor's interest in and to the Leased Premises or the Parking Garage (or May's interest in the Garage Parcel or the Parking Garage) to any easements or to any liens of mechanics, artisans, laborers, materialmen, contractors or subcontractors, or to any other liens or charges whatsoever arising out of any Work or arising in any other manner; and Lessee is hereby expressly prohibited from subjecting Lessor's or May's title to any such easement, lien or charges. Lessee agrees to promptly discharge or cause to be discharged (either by payment or by filing of the necessary bond, or otherwise, and in all events within thirty (30) days after Lessee becomes aware thereof) all mechanics', materialmen's and other liens against the Leased Premises or the Parking Garage which may arise out of any payment due for, or purported to be due for, any Work or any other labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or for Lessee, any Subtenant, or any Entity claiming through Lessee or any Subtenant in, upon or about the Leased Premises.

#### **6.8 Environmental Matters.**

(a) Lessee represents and covenants that (i) Lessee will not hereafter knowingly cause or suffer to occur, a discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous waste or hazardous substance, as those terms are used in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as the same may be amended from time to time (the "Act"), at, upon, under or within the Leased Premises (a "spill"); (ii) neither Lessee nor any other party controlled by Lessee will be involved in operations at or near the Leased Premises which could lead to the imposition on Lessee of liability or the creation of a lien on the Leased Premises under the Act or under similar applicable laws or regulations; and (iii) Lessee will not permit any Subtenant, invitee or occupant of the Leased Premises to engage in any activity that could lead to the imposition of liability on such Subtenant or occupant or Lessee, or the creation of a lien on the Leased Premises, under the Act or any similar applicable laws or regulations.

(b) Lessee shall comply strictly and in all respects with the requirements of the Act and related regulations and with all other applicable environmental laws and regulations and shall notify Lessor and May promptly in the event of any spill of which Lessee becomes aware, and shall promptly forward to Lessor and May copies of all orders, notices, permits,

applications or other communications and reports received by Lessee in connection with any such spill or any other matters relating to the Act or related regulations or any similar applicable laws or regulations, as they may affect the Parking Garage or Leased Premises.

(c) In the event of any spill affecting the Leased Premises, whether or not the same originates or emanates from the Leased Premises or any contiguous real property, and/or if Lessee shall fail to comply with any of the requirements of the Act or related regulations or any other environmental law or regulation, Lessor may at its election, but without the obligation so to do, give such notices and/or cause such work to be performed at the Leased Premises and/or take any and all other actions as Lessor shall deem necessary or advisable to remedy said spill or hazardous substance or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the rate of interest set forth in Section 4.2 as the Cure Rate, shall be immediately due and payable by Lessee to Lessor.

**6.9 Compliance with Ground Lease.** Lessee shall not use or operate or permit the use or operation of the Improvements in a manner that would cause a default under the Ground Lease and shall comply with all applicable provisions of the Ground Lease and the Operative Documents, as defined in the Skating Facility Agreement.

## **7. Insurance.**

**7.1 Coverage.** During the Term, Lessee will keep and maintain or cause to be kept and maintained, the following types of insurance described in Subsections 7.1.1 through 7.1.4.

**7.1.1 All Risk Insurance.** Insurance on the Skating Facilities and any replacements and substitutions therefor against loss or damage caused by fire and other risks insured against by "all risk" policies, including floods and earthquakes, in amounts sufficient to provide coverage in an amount not less than one hundred percent (100%) of the estimated replacement cost of the Skating Facilities and any replacements and substitutions therefor, the policy for which insurance shall have a replacement cost endorsement or similar provision. Such estimated replacement cost shall be determined from time to time by the Lessor (but not more frequently than every three (3) years), by an appraiser, engineer, architect or contractor Approved by Lessor and paid by Lessor or by any Subtenant.

**7.1.2 Liability Insurance.** Commercial general liability insurance written on an occurrence basis protecting and indemnifying Lessee, Lessor and May against any and all claims for injury and damages to person and property and for loss of life and of property occurring upon, in or about the Leased Premises, such insurance to afford immediate protection to the limit of not less than Two Million Dollars (\$2,000,000) for bodily injury or property damage for any single occurrence, and Five Million Dollars (\$5,000,000) annual aggregate, with not more than Ten Thousand Dollars (\$10,000) deductible.

**7.1.3 Use and Occupancy Insurance.** Use and occupancy insurance covering either rental income or business interruption, with coverage in

an amount not less than eighteen (18) months' anticipated gross revenues from the Skating Facilities from all perils covered in Section 7.1.1.

**7.1.4 Other Insurance.** Dram shop or liquor liability insurance with limits of not less than \$2,000,000, and such other insurance on the Leased Premises and any replacements and substitutions therefor (including, without limitation, such insurance as may be required pursuant to Subsection 6.7.1.5) and in such amounts as may from time to time be reasonably required by Lessor against other insurable hazards which at the time are customarily insured against in the case of premises similarly situated, due regard being given to the height and type of the Skating Facilities, the construction, location, use and occupancy thereof or any replacements or substitutions therefor.

## **7.2 Policies.**

**7.2.1 General Requirements.** All of the policies of insurance provided for in this Lease shall be in form and substance and with companies Approved by Lessor and May. Such insurance may be carried under blanket policies that provide separate coverage for the Leased Premises and aggregates that apply on a per location basis. Lessee shall deliver to May and Lessor certified copies of the originals of such policies, together with certified copies of all other insurance policies, if any, in excess of the amounts required hereunder which Lessee may obtain, together with certificates showing such insurance to be in full force and effect. Such policies shall bear endorsements showing the receipt by the respective companies of the premiums thereon or shall be accompanied by other evidence of payment of such premiums to the insurance companies, including evidence of current annual payment, if on an installment payment basis. Such policies must contain express waivers by the insurer thereon of any rights of subrogation against Lessor, May and each Leasehold Mortgagee.

**7.2.2 Insureds.** All insurance provided by or on behalf of Lessee shall name Lessee, Lessor, May and Leasehold Mortgagee as insureds and, at the option of Lessor, any other Entities permitted by Lessor as insureds, all as their respective interests may appear; except that the commercial general liability insurance shall name Lessee only as insured, and Lessor, May and other Entities permitted by Lessor as additional insureds, and Lessee shall provide copies of endorsements to each such person evidencing the fact that they are insured or additional insureds.

**7.2.3 Payment of Loss.** All policies of physical damage insurance required hereunder, except for the commercial general liability insurance and workers' compensation insurance, shall provide for payment of proceeds to be disbursed as set forth in Section 8 of this Lease.

**7.2.4 Renewal and Cancellation.** All insurance policies required hereunder shall be renewed by or on behalf of Lessee and proof of such renewals delivered to Lessor, May and Leasehold Mortgagee at least thirty (30) days prior to

their respective expiration dates. Prior to or on such expiration dates, Lessee shall deliver such renewal policies to Lessor, May and Leasehold Mortgagee bearing endorsement or accompanied by other evidence of the receipt by the respective insurance companies of the premiums thereon. All such policies shall provide that they may not be canceled by the insurer for nonpayment of premiums or otherwise or materially modified or not renewed until at least thirty (30) days after service of registered mail notice of the proposed cancellation, material modification or non-renewal upon Lessor, May and any Leasehold Mortgagee named in such policy, and in any event that such policies shall not be invalidated, as to the interests of Lessor, May and any Leasehold Mortgagee therein, by any act, omission or neglect of Lessee, or any occupant of the Leased Premises (including, without limitation, any Subtenant), which might otherwise result in a forfeiture or suspension of such insurance. Each policy shall contain a waiver of subrogation rights by the insurer. In any case where the original policy of any such insurance shall be delivered to any Leasehold Mortgagee, a duplicate original or certificate of such policy shall thereupon be delivered to Lessor, May and any Leasehold Mortgagee.

**7.3 Lessor Insurance.** Lessor shall maintain insurance coverage on the Parking Garage pursuant to Article 6 of the Ground Lease.

**8. Damage or Destruction.**

**8.1 Damage or Destruction.** If, at any time during the Term, the Improvements or any part thereof shall be damaged or destroyed by fire or other casualty (including any casualty for which insurance coverage was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Lessor, in Lessor's sole discretion, shall either (i) elect to terminate this Lease as of the date of such damage or destruction or (ii) elect to continue this Lease. In the event Lessor elects to terminate this Lease, Lessor shall give written notice of such termination to Lessee within two months after the date of such damage or destruction and Lessor shall cause any damaged Improvements to be razed and the Leased Premises put in a safe and clean condition in compliance with applicable laws. If Lessor elects to continue this Lease, Lessor shall repair and restore the Improvements and, if the Parking Garage has been damaged or destroyed, Lessor shall repair and restore the Parking Garage to its former condition and use if Lessor is required to do so pursuant to the Ground Lease. To that end, Lessor shall timely elect to repair and restore under the Ground Lease. Lessor and Lessee agree that neither Lessor nor Lessee shall take any action in connection with the repair, alteration, restoration, replacement or rebuilding of the Parking Garage or the Improvements, respectively, which would be inconsistent with, or otherwise impair, the obligation or ability of the other to repair and restore the Parking Garage or the Improvements, respectively. Lessor and Lessee shall cooperate in the restoration or repair of the Parking Garage and the Improvements. Except as otherwise provided in this Article 8, the conditions under which any Work is to be performed and the method of proceeding with and performing the same shall be governed by all of the provisions of Subsection 6.7, except Section 6.7.1.1.

**8.2 Insurance Proceeds.**

**8.2.1 Receipt and Disbursement.** If the estimated cost of the damage or destruction is \$250,000 or less, all insurance proceeds on account of such damage or destruction under policies of insurance required by Section 7.1 shall be paid to Lessee and used by Lessee, at the direction of Lessor, to either raze the Improvements or, in the event Lessee elects to continue this Lease, used for the payment of the cost of the Work to restore and rebuild. In all other events, all proceeds recovered under insurance, if any, as a result of a casualty shall be paid to a federally insured bank or other financial institution as trustee (the "Trustee"). If the Leased Premises shall be covered by a Leasehold Mortgage, Leasehold Mortgagee, if it so desires, shall be the Trustee. Each insurer is hereby authorized and directed to make payment under said policies directly to such Trustee instead of to Lessee. Upon the payment to Trustee of any insurance proceeds the Trustee shall, to the extent received, make the Insurance Proceeds available to Lessee for payment of the cost of razing the Improvements or, in the event Lessor elects to continue this Lease, for the cost of the Work to restore and rebuild and the balance remaining shall be the property of Lessor.

**8.2.2 Payment of Proceeds.** Any insurance proceeds (the aggregate of which and any interest earned thereon being herein defined as the "Restoration Fund") paid to the Trustee shall be disbursed by the Trustee in accordance with the following conditions:

(a) At the time of any disbursement, no Event of Default shall exist and no mechanics' or materialmen's liens shall have been filed against the Leased Premises and remain undischarged and unbonded.

(b) Each request for disbursement from the Restoration Fund shall be accompanied by a certificate of Lessee describing the completed Work for which payment is requested and stating the cost incurred in connection therewith. The certificate to be delivered by Lessee upon completion of the Work shall, in addition, include a statement from the architect or other appropriate professional that the Work has been completed and complies with the applicable requirements of this Lease and all applicable laws and insurance requirements.

(c) Disbursements from the Restoration Fund shall be made from time to time in an amount not exceeding the cost of the Work completed since the last disbursement upon receipt of (1) satisfactory evidence, including architects' certificates, of the stage of completion, of the estimated cost of completion and of performance of the Work to date in a good and workmanlike manner in accordance with the contracts, plans and specifications approved by Lessor (2) waivers of the general contractor's lien, and (3) other evidence of cost and payment so that Lessor can verify that the amounts disbursed from time to time are represented by the Work that is completed in place and free and clear of mechanics' lien enforcement actions.

(d) The Trustee shall retain ten percent (10%) from each disbursement of the Restoration Fund until the Work is fully completed and the Leased

Premises are available for their intended use, in the reasonable judgment of the Lessor, including the issuance of any necessary certificate of occupancy.

The Restoration Fund shall be kept in a separate account by the Trustee or by Leasehold Mortgagee and invested only in investments permitted for the investment of public funds.

**8.2.3 Deficits.** If the insurance proceeds received by Lessee together with the Skating Facility Available Sources, shall be insufficient to pay the entire cost of the Work as reasonably estimated by Lessee's architect or contractor, Lessor shall either (i) pay the amount of any such deficiency or (ii) elect to terminate this Lease pursuant to Section 8.1 above.

**8.3 Non-Abatement of Rent.** In no event shall Lessee be entitled to any abatement, allowance, reduction or suspension of Rent, or any other charges payable under this Lease, for any reason, including but not limited to the partial or total destruction of the Leased Premises or any part thereof. Notwithstanding anything herein to the contrary, no such damage or destruction shall affect in any way the obligation of Lessee to pay the Rent or any other charges herein reserved or required to be paid, nor release Lessee of or from any obligation imposed upon Lessee under this Lease.

## 9. Condemnation.

**9.1 General.** If, at any time during the Term, the Leased Premises or any part thereof shall be condemned and taken by the United States of America, the Commonwealth of Virginia or any other authority or Entity having the power of eminent domain, the provisions of this Article 9 shall apply to such condemnation proceedings and the distribution of any awards pertaining thereto.

**9.2 Complete or Partial Taking.** If any of the Leased Premises shall be permanently taken or condemned, this Lease, at the option of Lessor upon the giving of written notice to Lessee within sixty (60) days from the date of such condemnation or taking, shall forthwith cease and terminate. If this Lease is terminated as provided above, this Lease shall cease and expire on the date of transfer of possession of the taken or condemned property, or any portion thereof. If this Lease is not terminated by either Lessor or Lessee as aforesaid, Lessee shall pay the Rent and all other charges payable under this Lease up to the date of transfer of possession of such portion of the property so taken or condemned and this Lease shall thereupon cease and terminate with respect to any portion of the Leased Premises so taken or condemned as if the date of transfer of possession of the Leased Premises was the expiration date of the term of this Lease relating to such portion of Leased Premises. In the event of any such condemnation or taking and this Lease is not so terminated, Lessor shall promptly repair the Leased Premises to a condition equal to or better than the condition thereof immediately prior to the condemnation or taking; provided, however, that Lessor's obligation to repair or restore the Leased Premises shall be subject to completion of any repair or restoration of the Parking Garage by Lessor to the extent that such repair or restoration by Lessor is necessary for the repair or restoration of the Leased Premises.

9.3 Temporary Taking. If the whole or any part of the property shall be taken in condemnation proceedings or by any right of eminent domain for a temporary use or occupancy, the Term shall not be reduced or affected in any way and Lessee shall continue to pay in full the Rent without reduction or abatement in the manner and at the times herein specified. Except only to the extent that Lessee is prevented from so doing pursuant to the terms of the order of the condemning authority, Lessee shall continue to perform and observe all of the other covenants, agreements, terms and provisions of this Lease as though such taking had not occurred. In the event of any such taking Lessor shall be entitled to receive the entire amount of any award made for such taking whether such award is paid by way of damages, rent or otherwise.

9.4 Condemnation Proceedings. Lessee, Lessor, May and any Leasehold Mortgagee shall each have the right, at its own expense, to appear in any condemnation proceeding and to participate in any and all hearings, trials and appeals therein.

9.5 Notice of Condemnation. If Lessor or Lessee shall receive notification of any proposed or pending condemnation proceeding affecting the Leased Premises described in Section 9.1, the Party receiving such notification shall promptly notify, by Notice, the other Party, May and all Leasehold Mortgagees.

#### 10. Assignments and Subleases.

10.1 Assignments. Lessee shall not Transfer all or any portion of its interest in this Lease or the Leased Premises without the prior Approval of Lessor and May. For purposes of this Section 10.1, Lessor's and May's Approval shall be deemed given if any proposed Transfer (either through foreclosure or a Transfer in lieu of foreclosure) is to a Leasehold Mortgagee whose Leasehold Mortgage has been Approved pursuant to the provisions of Section 10.3. Any change in ownership of the Improvements that occurs by operation of law shall be considered an assignment under this Section 10.1.

10.2 Subleases. Lessee shall have the right to sublet portions of the Leased Premises to Ballston. Ballston and Lessee shall have the right to sublet portions of the Leased Premises to a dance studio, to a physical therapist, to the operator of a skating pro shop and to concessionaires. Any and all other Subleases of Lessee's rights or any portion thereof in the Leased Premises shall be subject to the approval of Lessor and May. Each Sublease shall be subject and subordinate to this Lease and to any Leasehold Mortgage not expressly subordinated by its terms to such Sublease. If the Leased Premises or any part thereof shall be occupied by anyone, other than Lessee, pursuant to a Sublease, Lessor may after any default by Lessee in the terms, covenants or conditions of this Lease, collect Subrents from any Subtenants and apply the net amount of Subrents collected to the Rent and other sums payable by Lessee. No Sublease shall be deemed a waiver of this covenant or acceptance of the Subtenant thereunder as a tenant or a release of Lessee from the further payment and performance by Lessee of the terms, covenants and conditions of this Lease on the part of Lessee to be performed. Lessee hereby transfers unto Lessor all the right, title and interest of Lessee in and to each and every Sublease hereafter executed and affecting the Leased Premises or any part thereof, as well as all Subrents now or hereafter due and payable thereunder and all security hereafter paid to Lessee to secure such Subrents; provided, however, Lessor shall not exercise any rights as "sublandlord"

thereunder or be entitled to the benefits of such rights until an Event of Default shall have occurred or been declared. Notwithstanding the foregoing, Lessor hereby consents to the Capitals' Sublease and the Parking Lease. Lessor and Lessee each agrees to enforce the provisions of the Capitals' Sublease and failure to enforce such provisions will constitute an event of default under this Lease.

**10.3 Leasehold Mortgage.** Subject to the provisions of Section 10.1, Lessee shall have the right to Transfer the leasehold estate created by this Lease as security for a Leasehold Mortgage without the prior Approval of Lessor, subject to the following:

**10.3.1 Proceeds and Awards.** The net proceeds of all insurance policies, condemnation and similar awards shall be held in trust and used for the purposes and distributed, all in accordance with the provisions of this Lease.

**10.3.2 Foreclosure.** If action is brought to foreclose such Leasehold Mortgage, the Subrents, income and profits issuing from the Leased Premises may be collected either through a receiver appointed by a court after notice of application for such appointment has been given to Lessee and Lessor by the Leasehold Mortgagee. All such money collected shall be first applied for the payment of the Rent due and owing hereunder or to become due and owing to Lessor, then for any Impositions, insurance premiums or other charges due and payable under this Lease and for all other maintenance and operating charges and disbursements incurred in connection with the operation and maintenance of the Leased Premises. The balance of such money shall be applied pursuant to the terms of the Leasehold Mortgage.

**10.3.3 Non-Disturbance.** In the event of foreclosure of such Leasehold Mortgage, the Leasehold Mortgagee will not disturb the possession or right to possession of any Subtenant, except for default by such Subtenant under any Sublease which Lessor has previously Approved and to which the non-Disturbance privileges under Section 10.2 are applicable.

**10.3.4 Reassignment of Subleases.** Upon satisfaction and discharge of the Leasehold Mortgage, the Leasehold Mortgagee shall, by operation of law or as otherwise may be directed by Lessor, retransfer each and every Sublease.

**10.4 Subordination to Leasehold Mortgage.** If the Leasehold Mortgagee satisfies all of the conditions set forth in this Article 10, Lessee's prior assignment in favor of Lessor of all Subleases and Subrents as set forth in Section 10.2 shall be and remain automatically subordinate and inferior in priority to the assignment in accordance with Section 10.3 in favor of the Leasehold Mortgagee.

**10.5 Registration of Leasehold Mortgage.** If any Leasehold Mortgagee shall have delivered to Lessor a written notice stating the existence of a Leasehold Mortgage and setting forth the name and address of such Leasehold Mortgagee, Lessor thereafter shall give to such Leasehold Mortgagee a copy of each Notice of default for which provision is made under

Article 11 and which Lessor shall have given to Lessee, each such copy to be addressed to such Leasehold Mortgagee at the address last furnished to Lessor as provided hereinabove. All such notices to Leasehold Mortgagee shall be provided at the same time at which they are given to Lessee, except that failure to make timely delivery to any Leasehold Mortgagee shall not adversely effect delivery of notice to Lessee but shall afford Leasehold Mortgagee a cure period equal to that available to Lessee from the date of delivery of notice to Leasehold Mortgagee.

**10.6 Performance by Leasehold Mortgagee of Lessee's Obligations.** Lessor will accept performance by any Leasehold Mortgagee of any term, covenant or condition of Lessee's part to be performed hereunder, with the same force and effect as though timely performed by Lessee if performed within the periods, if any, given to Lessee.

**10.7 Leasehold Mortgagee Remedies.** Lessor shall not exercise Lessor's right to Terminate this Lease, as provided in Article 11, except for an Event of Default as described in Subsections 11.1.3, 11.1.4 or 11.1.5, during the time that any Leasehold Mortgagee shall reasonably require to exercise its rights under such Leasehold Mortgage, provided that (i) such Leasehold Mortgagee proceeds promptly and with due diligence with its remedies under such Leasehold Mortgage and thereafter prosecutes the same with all due diligence and likewise completes the same with all due diligence, and (ii) such Leasehold Mortgagee shall pay to Lessor all payments required to be paid by Lessee hereunder which have accrued and which shall become due and payable during such period of time and performs all the other obligations of Lessee hereunder during such period of time.

**10.8 No Surrender or Modification without Notice.** Anything elsewhere herein contained to the contrary notwithstanding, Lessor and Lessee mutually covenant and agree that as long as there exists any unpaid Leasehold Mortgage, this Lease shall not be modified, amended or altered and Lessor shall not accept a surrender of the Leased Premises or a cancellation or release of this Lease from Lessee (except pursuant to the exercise of Lessor's remedies should an Event of Default occur or except pursuant to Lessee's rights to cancel in the event of condemnation or casualty) prior to the Expiration or sooner Termination thereof as hereinbefore provided, without the prior Approval of the Leasehold Mortgagee.

## **11. Defaults.**

**11.1 Events of Default.** The occurrence of any event, act or circumstance described in Subsections 11.1.1 through 11.1.5 shall be and constitute an Event of Default under this Lease.

**11.1.1 Failure in Payment.** Failure by Lessee to pay in full any Rent, Imposition, insurance premium or other charge payable under this Lease on the date upon which such ought to be paid, and the continuance of such failure for ten (10) days after Lessor has given Lessee Notice of such failure; provided, however, that no Notice shall be required and the cure period shall not apply to any such failure after the fifth such failure.

**11.1.2 Failure in Performance.** Failure by Lessee to observe, perform or comply with any of the terms, covenants, agreements or conditions

contained in this Lease (other than as specified in Subsection 11.1.1), and the continuance of such failure for thirty (30) days after Lessor has given Lessee Notice of such failure, unless Lessee has commenced to cure such failure within such period of thirty (30) days and has been prevented from completing such cure by circumstances contemplated by Section 11.2, and then only if Lessee diligently and continuously prosecutes to completion such cure at the earliest possible date allowed by circumstances contemplated by Section 11.2 provided, however, that no such Notice is required in the event of circumstances posing an immediate threat to property or persons. Under such circumstances, Lessor and/or May shall have the right, but not the obligation, to enter the Leased Premises to remedy such circumstances at Lessee's sole cost and expense and without liability to Lessor and/or May for such action (unless Lessor and/or May, as applicable acts with gross negligence or willful misconduct). Notwithstanding the foregoing, no Notice shall be required and the cure period shall not apply to any such failure after the fifth such failure.

**11.1.3 Insolvency.** The insolvency of Lessee.

**11.1.4 Levy.** The Leased Premises or Lessee's interest therein are levied upon or attached under process against Lessee and not satisfied or dissolved within ten (10) days after Notice from Lessor to Lessee to obtain satisfaction thereof, except as permitted pursuant to Article 10 above.

**11.2 Force Majeure.** For the purposes of any of the provisions of this Lease, except such provisions as require or concern the payment of monies, neither Lessor nor Lessee, as the case may be, shall be considered in breach of, or default in, the obligations thereof with respect to this Lease in the event of forced delay in the performance of such obligations due to unforeseeable causes beyond the control and without the fault or negligence thereof, including, but not restricted to, acts of God, acts of the public enemy, acts of the Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather or delays due to such causes; it being the purpose and intent of this Section 11.2 that in the event of the occurrence of any such forced delay, the time or times for performance of the obligations of Lessor or Lessee, as the case may be, with respect to this Lease shall be extended for the period of the forced delay; provided, that the Party seeking the benefit of the provisions of this Section 11.2 shall, within ten (10) days after the beginning of any such forced delay, have first advised the other Party thereof by Notice, and of the cause or causes thereof.

**11.3 Remedies.** During the continuance of any Event of Default, Lessor may, to the extent not prohibited by law, take any one or more of the remedial steps described in Subsections 11.3.1 through 11.3.5.

**11.3.1 Taking of Possession.** Lessor may reenter and take possession of the Leased Premises without Terminating this Lease, but subject to the rights of any and all Subtenants, and may (without obligation to do so) sublease all or any portion of the Leased Premises for the account of Lessee.

**11.3.2 Operation.** Lessor, as Lessee's agent, without Terminating this Lease, may at Lessor's option, but subject to the rights of any and all Subtenants, enter upon and operate the Leased Premises (itself or through agents or contractors), and in this connection, Lessee authorizes Lessor, its agents and contractors, upon such entry, to take over and assume the management, operation and maintenance of the Leased Premises and in general to perform all actions necessary in connection therewith in the same manner and to the same extent as Lessee might so act, using Lessor's reasonable efforts to operate the Leased Premises for the account of Lessee, holding Lessee liable for all Rent and other charges payable by Lessee hereunder.

**11.3.3 Termination.** Lessor may Terminate the Term and this Lease, exclude Lessee from possession of the Leased Premises and lease the same to another Entity, such Entity to be approved by May, for the account of Lessee, holding Lessee liable for all Rent and other charges payable by Lessee hereunder.

**11.3.4 Termination of Capitals' Sublease.** Lessor may terminate the Capitals' Sublease upon 30 days written notice to Ballston.

**11.3.5 Enforcement.** Lessor may take whatever action at law or in equity may appear necessary or desirable to collect the Rent and other charges then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of Lessee under this Lease, and in connection therewith to recover any or all damages to Lessor for Lessee's violation or breach of this Lease.

**11.4 Application of Funds.** If Lessor elects to proceed under the authority of Subsections 11.3.2 or 11.3.3, Lessor shall make reasonable effort to collect rentals from Subtenants, reserving, however, within Lessor's own discretion, the right to determine the method of collection and the extent to which enforcement of collection of delinquent Subrents shall be prosecuted, and Lessor shall not be accountable for money other than that actually received by Lessor from the Leased Premises and Lessor shall not be liable for failure to collect Subrents. All Subrents and all other income derived from operation of the Leased Premises by Lessor, to the extent such are not paid and applied by any Subtenant and to the extent permitted by law, shall be applied, first, to the payment and accrual of Impositions; second, to the cost of operating the Leased Premises; third, to the cost of administration and collection of Subrents by Lessor; and fourth, to the payment of Rent and other charges (except Impositions, which shall be paid first as aforesaid). Lessee shall be liable to Lessor for the deficiency, if any, between (i) Rent and other charges payable under this Lease and (ii) funds applied as provided above in this Section 11.4 (that is, "Net Rents"). No action taken pursuant to Section 11.3 (including repossession of the Leased Premises or Termination of the Term and this Lease) shall relieve Lessee from Lessee's obligations pursuant to Article 3, all of which shall survive any such action, and Lessor may take whatever action at law or in equity as may appear necessary and desirable to collect the Rent and other charges payable under this Lease then due and thereafter to become due and/or to enforce the performance and observance of any obligation, agreement or covenant of Lessee under this Lease.

**11.5 No Remedy Exclusive.** No remedy herein conferred upon or reserved to Lessor is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to Lessor in this Article 11, it shall not be necessary to give any notice, other than such Notice as is herein expressly required by this Lease or by law.

**11.6 Agreement to Pay Attorney's Fees and Expenses.** If Lessee should default under any of the provisions of this Lease, or should Lessee hold over or continue possession after the Termination or Expiration of the Term, and Lessor should employ attorneys or incur other expenses for the collection of Rent or other charges, payable under this Lease or the enforcement of performance or observance of any obligation or agreement on the part of Lessee herein contained, Lessee agrees that Lessee will on demand therefor pay to Lessor the reasonable fees of such attorneys and such other expenses so incurred by Lessor.

**11.7 Holding Over.** Lessee hereby agrees to surrender possession of the Leased Premises to Lessor upon the Termination or Expiration of the Term and upon any reentry by Lessor as permitted by this Lease, and Lessor may thereupon enter upon, reenter, possess and repossess the Leased Premises, by force, summary proceedings, ejectment or otherwise, and may dispossess and remove Lessee and all other Entities from the Leased Premises and may have, hold and enjoy the Leased Premises and the right to receive all rental and other income therefrom, free of any right or claim of Lessee; but should Lessee, in breach of such covenant, refuse to surrender possession and instead hold over, Lessee shall be only a tenant at sufferance and not a tenant at will. To the fullest extent permitted by law, Lessee hereby waives all right to notice, summons and service of process now or hereafter provided by law in connection with dispossessory proceedings against tenants holding over.

**11.8 Interest from Maturity.** All amounts of money payable by Lessee to Lessor hereunder (including, without limitation, Rent) shall, if not paid when due, bear interest from the date due until paid at the annual rate of interest equal to the Prime Rate as defined in Section 4.2 plus 2% but not to exceed the lesser of (i) the maximum interest rate allowed by applicable law or (ii) the annual rate of 12%.

**12. Miscellaneous Provisions.**

**12.1 Recording and Filing.** A memorandum of this Lease meeting the statutory requirements shall be filed for recordation in the Clerk's Office of the Circuit Court of the County of Arlington, Virginia. The costs of recording shall be borne by the Lessor.

**12.2 Lessor's Rights of Access.** Lessee agrees that Lessor and May and Lessor's and May's duly authorized agents shall have the right at all reasonable times during normal business hours and following reasonable prior Notice (except that no Notice shall be required in the event of an emergency) to enter upon the Leased Premises and to examine and

inspect the same, and/or as may be reasonably necessary for the proper maintenance of the Leased Premises in the event of failure beyond any applicable notice and grace period by Lessee to perform Lessee's obligations under this Lease.

**12.3 Surrender of Leased Premises.** At the Expiration or sooner Termination of the Term, Lessee agrees to surrender possession of the Leased Premises peaceably and promptly to Lessor in good condition and repair.

**12.4 Notices.** Each Notice shall be deemed to have been properly given or served by (i) the deposit of such with the United States Postal Service, or any official successor thereto, designated as registered or certified mail, return receipt requested, bearing adequate postage and addressed as hereinafter provided or (ii) receipt from a nationally recognized commercial courier or delivery service having a verifiable means of receipt. The time period in which a response to any such Notice must be given or any action taken with respect thereto shall commence to run from the date of receipt on the return receipt of the Notice given to the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no Notice was given shall be deemed to be receipt of the Notice sent. If registered or certified mail is not being accepted for prompt delivery, each Notice may then be served by personal service addressed as hereinafter provided. By giving to the other party at least ten (10) days Notice thereof, any party shall have the right from time to time during the Term to change the addresses thereof and to specify as the address thereof any other address within the United States of America.

**12.4.1 Notice to Lessor.** Each Notice to Lessor shall be addressed as follows:

County of Arlington, Virginia  
#1 Courthouse Plaza  
2100 Clarendon Boulevard, Suite 501  
Arlington, Virginia 22201  
Attention: Director, Department of Management & Finance

**12.4.2 Notice to Lessee.** Each Notice to Lessee shall be addressed as follows:

Industrial Development Authority  
of the County of Arlington, Virginia  
#1 Courthouse Plaza  
2100 Clarendon Boulevard, Suite 501  
Arlington, Virginia 22201  
Attention: Secretary/Treasurer

**12.4.3 Notice to May.** Each Notice to May shall be addressed as follows:

The May Department Stores Company  
611 Olive Street

St. Louis, Missouri 63101  
Attention: General Counsel

**12.5 Fees and Commissions.** Lessor and Lessee each represents to the other that there are no claims for brokerage or other commissions or finder's or other similar fees in connection with the transactions contemplated by this Lease insofar as such claims shall be based on arrangements or agreements made by or on behalf of the Party so representing.

**12.6 Waiver.** No consent or waiver by Lessor or Lessee to or of any breach or default by the other Party in the performance by such other Party of the obligations thereof under this Lease shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such other Party under this Lease. Failure on the part of either Lessor or Lessee to complain of any act or failure to act of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver of such Party of the rights thereof under this Lease. All waivers hereunder shall be in writing.

**12.7 Performance of Lessee's Obligations.** If Lessee fails to perform any one or more of the obligations thereof under this Lease, in addition to the other rights of Lessor hereunder, Lessor and May shall each have the right, but not the obligation, to perform such obligations. Upon receipt of a demand therefor Lessee shall reimburse Lessor or May, as applicable for the cost of performing such obligations plus interest thereon. Lessor and May shall not have any liability for such performance except in the case of Lessor's or May's gross negligence or willful misconduct in such performance.

**12.8 Severability.** If any provision of this Lease or the application thereof to any Entity or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to any other Entity or circumstance shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**12.9 Status Reports.** Recognizing that Lessor and Lessee may find it necessary from time to time to establish to other Entities such as accountants, banks, mortgagees or the like, the then current status of performance hereunder, Lessor and Lessee each agree, upon the written request of the other Party, made from time to time by Notice, to furnish promptly a written statement (in recordable form, if requested) on the status of any matter pertaining to this Lease to the best of the knowledge and belief of the Party making such statement.

**12.10 Amendment.** Neither this Lease nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the Parties and Approved by May.

**12.11 Terminology.** All personal pronouns used in this Lease, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural; and the plural shall include the singular. Unless otherwise expressly stated, titles of Articles, Sections, Subsections and Paragraphs of this Lease are for convenience only, and neither limit nor amplify the provisions of this Lease, and all references in this Lease to Articles, Sections, Subsections or Paragraphs shall refer to the corresponding Article, Section,

Subsection or Paragraph of this Lease unless specific reference is made to the articles, sections or subdivisions of another document or instrument.

**12.12 Counterparts.** This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

**12.13 Binding Agreement.** Subject to the restrictions on Transfers set forth herein, this Lease shall inure to the benefit of and be binding upon Lessor, Lessee any May and their respective heirs, executors, legal representatives, successors and assigns. Whenever in this Lease a reference to Lessor, Lessee or any Entity is made, such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of Lessor, Lessee or such Entity.

**12.14 Interpretation.** No provision of this Lease shall be construed against or interpreted to the disadvantage of either Lessor or Lessee by any court or other governmental or judicial authority by reason of such Party having or being deemed to have structured or dictated such provision.

**12.15 Governing Law.** This Lease and the obligations of Lessor and Lessee hereunder shall be interpreted, construed and enforced in accordance with the laws of the Commonwealth of Virginia.

**12.16 Relationship of Parties.** No express or implied term, provision or condition of this Lease shall or shall be deemed to constitute Lessor and Lessee as partners or joint venturers.

**12.17 Payments by Lessee.** Notwithstanding anything herein to the contrary, all obligations of the Lessee for payment of money under this Lease are subject to and dependent on the receipt by the Lessee of Subrent or other Skating Facility Available Sources for such purpose; provided, however, that any nonpayment by Lessee resulting from insufficient Subrents or other Skating Facility Available Sources shall constitute an event of default as set forth in Sections 11.1.1 and 11.1.2.

**12.18 Time of Essence.** Time is of the essence of this Lease and each provision hereof; provided, however, if the final date of any period set forth herein falls on a Saturday, Sunday or legal holiday under the laws of the United States of America, the final date of such period shall be extended to the next business day.

**12.19 Lessee's Obligations Survive.** The obligations of Lessee hereunder shall survive the Expiration or Termination of this Lease.

[EXECUTION IMMEDIATELY FOLLOWS ON NEXT PAGE]

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease under seal, the day and year first above written.

**LESSOR:**

Arlington County, Virginia

[SEAL]

By: *R. Colson*  
Name: Ron Colson  
Title: County Manager

Attest: *Christine Williams*  
Name: Christine Williams  
Title: Executive Asst. to County Manager

**LESSEE:**

Industrial Development Authority of  
Arlington County Virginia

[SEAL]

By: *James Mayer*  
Name: JAMES MAYER  
Title: Chairman

Attest: *John Vese*  
Name: John Vese  
Title: Treasurer/Secretary IIA

STATE OF VIRGINIA :

COUNTY OF Arlington to-wit

The foregoing instrument was acknowledged before me this 28 day of April, 2005, by James Hays, Chairman of the Industrial Development Authority of Arlington County, Virginia, a political subdivision of the Commonwealth of Virginia on behalf of the Authority.

Christina Williams  
Notary Public

My Commission expires: 5/31/08

STATE OF VIRGINIA :

COUNTY OF Arlington to-wit

The foregoing instrument was acknowledged before me this 28 day of April, 2005, by Ron Caslee, of Arlington County, Virginia, a political subdivision of the Commonwealth of Virginia on behalf of the County.

Christina Williams  
Notary Public

My Commission expires: 5/31/08

**EXHIBIT A**

**Description of Skating Facilities**

"Skating Facilities" means a two-story addition to be constructed on the Eighth Level Slab consisting of a total of not more than 140,000 square feet of floor area, and may include only the following components (all to be built in accordance with the Plans and Specifications):

- A. Two National Hockey League ("NHL") sized ice sheets measuring 200 feet by 85 feet and associated ancillary facilities consisting of eight to ten changing rooms for youth and adult hockey teams and figure skaters; a pro shop that will offer a wide selection of hockey and figure skating equipment, related merchandise, equipment and skate repairs and skate sharpening; spectator seating not to exceed 2,100 spectators on one ice sheet and 250 on the other ice sheet; skate rental area, incidental arcade and game area; vending machine areas; public party rooms for birthday parties, team parties or other community use; food and beverage service and kitchen areas capable of catering and serving the Capitals and the public while in the Skating Facilities; a designated area for the sale and consumption of beer and wine while in the Skating Facilities; management offices for the operation of the ice rink facility; mechanical and ice refrigeration equipment rooms; two exterior elevators from the ground level, one serving the eighth level and one serving the training center and office facilities; storage for an ice resurfacers and ice melt pit rooms;
- B. Corporate office space for the Capitals consisting of not more than 20,000 square feet of floor area for the operation of the Capitals' corporate offices including Hockey Operations, Coaching Staff, Public and Media Relations, Marketing and Sales, Business Operations and other operations conducted by the Capitals ice hockey team (hereinafter referred to as "Corporate Offices");
- C. Capitals locker rooms and other player and team associated rooms, weight training facility and storage areas all consisting of not more than 20,000 square feet in the aggregate (the "Training Center");
- D. Other building amenities incidental and ancillary to and consistent with other first class skating facilities but only for uses set forth in Section III F of the Skating Facility Agreement; and
- E. One or both ice sheets may be constructed in such a manner as to allow its use as a non-ice surface for in-line skating, indoor soccer or other generally recognized sports and community events as determined by the Capitals but only for uses set forth in Section III F of the Skating Facility Agreement.

**EXHIBIT B**

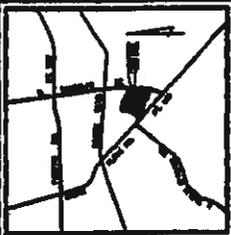
**Encumbrances**

1. Ground Lease dated as of August 1, 1984, between The May Department Stores Company and Arlington County, Virginia recorded in the Clerk's Office of the Circuit Court of Arlington County, Virginia in Deed Book 2153 at Page 736.
2. First Amendment to Ground Lease dated as of March 24, 2005, between The May Department Stores Company and Arlington County, Virginia recorded in the Clerk's Office of the Circuit Court of Arlington County, Virginia (the Clerk's Office) in Deed Book 3935 at Page 1096.
3. Declaration of Covenants, Easements and Restrictions dated as of August 1, 1984, made by The May Department Stores Company, and recorded in the Clerk's Office in Deed Book 2153 at page 629.
4. First Amendment to Declaration of Covenants, Easements and Restrictions dated as of August 1, 1991, made by The May Department Stores Company, and recorded in the Clerk's Office, in Deed Book 2494 at Page 1319.
5. Second Amendment to Declaration of Covenants, Easements and Restrictions dated as of February 5, 2001, made by The May Department Stores Company, and recorded in the Clerk's Office in Deed Book 3114 at Page 1599.
6. Third Amendment to Declaration of Covenants, Easements and Restrictions dated as of March 24, 2005, made by The May Department Stores Company, and recorded in the Clerk's Office in Deed Book 3935 at Page 1102.
7. Basic Agreement dated as of August 1, 1984, among Arlington County, Virginia, May Centers, Inc., The May Department Stores Company and Ballston Common Associates, L.P., and recorded in the Clerk's Office in Deed Book 2153 at Page 708.
8. First Amendment to Basic Agreement dated as of February 5, 2001, among Arlington County, Virginia, May Centers, Inc., The May Department Stores Company and Ballston Common Associates, L.P., and recorded in the Clerk's Office Deed Book 3114 at Page 1637.
9. Second Amendment to Basic Agreement dated as of March 24, 2005 among Arlington County, Virginia, The May Department Stores Company and FC Ballston Common LLC and recorded in the Clerk's Office in Deed Book 3935 at Page 1134.
10. Parking Garage Agreement dated as of August 1, 1984, between Arlington County, Virginia and May Centers, Inc., and recorded in the Clerk's Office on September 26, 1984, in Deed Book 2153 at Page 840.

11. First Amendment to Parking Garage Agreement dated as of February 5, 2001, between Arlington County, Virginia and May Centers, Inc., and recorded in the Clerk's Office in Deed Book \_\_\_\_ at Page \_\_\_\_.
12. Second Amendment to Parking Garage Agreement dated as of March 24, 2005, between Arlington County, Virginia and The May Department Stores Company and recorded in the Clerk's Office in Deed Book 3635 at Page 1143.
13. May-County Separate Agreement dated as of February 5, 2001, between The May Department Stores Company and Arlington County, Virginia, and recorded in the Clerk's Office in Deed Book 3114 at Page 1645.
14. First Amendment to May-County Separate Agreement dated as of March 24, 2005, between The May Department Stores Company and Arlington County, Virginia and recorded in the Clerk's Office in Deed Book 3635 at Page 1142.
15. Second Declaration of Covenants, Easement and Restrictions dated as of April 15, 1985, made by The May Department Stores Company, and recorded in the Clerk's Office in Deed Book 2178 at Page 1653.
16. First Amendment to Second Declaration of Covenants and Restrictions dated as of February 5, 2001, made by The May Department Stores Company, and recorded in the Clerk's Office in Deed Book 3114 at Page 1614
17. Second Amendment to Second Declaration of Covenants and Restrictions dated as of March 24, 2005 made by The May Department Stores Company and recorded in the Clerk's Office in Deed Book 3635 at Page 1141.
18. Deed of Trust and Security Agreement from County of Arlington, Virginia to Bank of Virginia Trust Company, a Virginia corporation, Trustee for Citibank, N.A. dated August 1, 1984 recorded in Deed Book 2153 at Page 1068 to secure the sum of \$23,000,000 (sole remaining beneficiary is SunTrust Bank as bond trustee).
19. Partial Release of Deed of Trust (regarding Deed of Trust recorded in Deed Book 2153 at Page 1068) effective as of April 9, 2001 made by Citibank, N.A. and SunTrust Bank, and recorded in the Clerk's Office on March 26, 2001, in Deed Book 3127 at Page 1495.
20. Agreement of Sale dated as of August 1, 1984 between The May Department Stores Company and Arlington County, recorded in Deed Book 2153 at Page 816.
21. Parking Lease dated as of August 1, 1984, between Arlington County, Virginia and May Centers, Inc. recorded in Deed Book 2153 at Page 961.
22. Time Sharing Agreement dated as of August 1, 1984 between Arlington County and May Centers, Inc., recorded in Deed Book 2153 at Page 920

23. Second Deed of Trust and Security Agreement dated September 29, 1986 by and between the County of Arlington, Virginia and Alexander Title Agency, Inc. and recorded in the Clerk's Office in Deed Book 2237 at Page 103 (beneficiary is The May Department Stores Company).
24. Skating Facility Agreement, dated as of March 24, 2005, among The May Department Stores Company, Arlington County, Virginia, the Industrial Development Authority of Arlington County, Virginia, Consortium Ballston LLC, FC Ballston Common LLC, Ballston Office Center, LLC, NDH II Point LLC, Lincoln Holdings LLC, Lincoln Hockey LLC, and Lincoln Ballston LLC and recorded in the Clerk's Office in Deed Book ~~3835~~ at Page ~~1157~~.
25. May-Capitals Direct Agreement dated as of March 24, 2005 among Arlington County, Virginia, the Industrial Development Authority of Arlington County, Virginia, The May Department Stores Company, Lincoln Ballston, LLC, Lincoln Hockey LLC and Lincoln Holdings LLC and recorded in the Clerk's Office in Deed Book ~~3835~~ at Page ~~1215~~.
26. Deed of Lease and Grant of Air Rights dated as of March 24, 2005 between Arlington County, Virginia, as lessor and the Industrial Development Authority of Arlington County, Virginia, as lessee recorded in the Clerk's Office in Deed Book ~~3835~~ at Page ~~1252~~.
27. Deed of Lease dated as of March 24, 2005 between the Industrial Development Authority of Arlington County, Virginia, as lessor and Lincoln Ballston LLC, as lessee recorded in the Clerk's Office in Deed Book ~~3835~~ at Page ~~1292~~.
28. Parking Facilities Lease dated as of March 24, 2005 between the Industrial Development Authority of Arlington County, Virginia, as lessor and Arlington County, Virginia, as lessee recorded in the Clerk's Office in Deed Book ~~3835~~ at Page ~~1331~~.
29. All other easements, restrictions and covenants of record .

**EXHIBIT C**  
**Survey of Air Space**



VICINITY MAP  
SHEET 15-10-1

**AREA TABULATION**  
SHEET 15-10-1  
SHEET 15-10-2  
SHEET 15-10-3  
SHEET 15-10-4  
SHEET 15-10-5  
SHEET 15-10-6  
SHEET 15-10-7  
SHEET 15-10-8  
SHEET 15-10-9  
SHEET 15-10-10

**OWNER'S STATEMENT OF CONSENT**  
I, the undersigned, owner of the property described in the above recited plat, do hereby consent to the recording of the same and to the issuance of a certificate of title thereon.

\_\_\_\_\_  
DATE

**SURVEYOR'S CERTIFICATE**

I, the undersigned, a duly licensed and sworn surveyor of the State of California, do hereby certify that the above recited plat is a true and correct representation of the survey made by me on the premises described therein, and that the same conform to the requirements of the laws of the State of California in that behalf made.



**PARCELS 15-10-1, 15-10-2, AND 15-10-3  
BALLSTON COMMON**

**THE STATE OF CALIFORNIA**

**DEWE BERRY**

**Dewberry & Davis LLP**

**1500 BROADWAY, SUITE 2000  
SAN FRANCISCO, CALIFORNIA 94103  
TEL: 415.774.2000  
WWW.DDBERRY.COM**

15-10-1



**NOTES:**  
1. The property described in the plat is located in the County of Santa Clara, State of California.  
2. The plat is subject to the terms of the plat of the same name recorded in the County of Santa Clara, State of California, on the 15th day of March, 1994, and to the terms of the plat of the same name recorded in the County of Santa Clara, State of California, on the 15th day of March, 1994.  
3. The plat is subject to the terms of the plat of the same name recorded in the County of Santa Clara, State of California, on the 15th day of March, 1994, and to the terms of the plat of the same name recorded in the County of Santa Clara, State of California, on the 15th day of March, 1994.  
4. The plat is subject to the terms of the plat of the same name recorded in the County of Santa Clara, State of California, on the 15th day of March, 1994, and to the terms of the plat of the same name recorded in the County of Santa Clara, State of California, on the 15th day of March, 1994.  
5. The plat is subject to the terms of the plat of the same name recorded in the County of Santa Clara, State of California, on the 15th day of March, 1994, and to the terms of the plat of the same name recorded in the County of Santa Clara, State of California, on the 15th day of March, 1994.





## PARKING LEASE

THIS PARKING LEASE (the "Lease") is made as of the 1st day of August, 1984, by and between Arlington County, Virginia ("Landlord") and May Centers, Inc., a Missouri corporation ("MCI").

RECITALS

A. Landlord has entered into an agreement, dated as of August 1, 1984 (the "Ground Lease"), pursuant to which Landlord will acquire a certain leasehold interest in land located in Arlington County, Virginia, and which is more fully described in Exhibit A (the "Land"). Landlord has also entered into an agreement, dated as of August 1, 1984 (the "Sale Agreement"), pursuant to which Landlord will acquire certain parking garage improvements located on the Land. Landlord has also entered into other agreements pursuant to which Landlord will acquire expanded and renovated improvements (which improvements as expanded and renovated are called the "Parking Garage").

B. MCI desires to lease from Landlord certain portions of the Parking Garage, but only during the limited time periods hereinafter set forth.

NOW, THEREFORE, for mutual consideration, the receipt and sufficiency of which are hereby acknowledged and intending to be legally bound hereby, the parties agree as follows:

1. Grant and Premises.

(a) In consideration of the rentals to be paid by MCI to Landlord and the mutual covenants and agreements hereafter contained and reserved, Landlord demises and leases to MCI that premises identified as those certain five hundred sixty-seven (567) parking spaces to be located in the first, second and sixth levels of the Parking Garage in the areas designated on Exhibit B as the "MCI Leased Areas"; provided, however, that the leasehold interest granted to MCI pursuant to this Lease with respect to the MCI Leased Areas shall be limited to the rights to use or designate the user only with respect to monthly parking permits which will be usable only on Mondays, Tuesdays, Wednesdays, Thursdays and Fridays, except that up to seventy (70) monthly parking permits will be usable on all days, at Tenant's option.

(b) Notwithstanding the foregoing, in no event shall the number of parking spaces in the MCI Leased Areas exceed nineteen and two-tenths percent (19.2%) of the total number of parking spaces in the Parking Garage and in no event shall the MCI Leased Areas contain more than nineteen and two-tenths percent (19.2%) of the total floor area of the Parking Garage. After substantial completion of the Parking Garage and prior to MCI's use of parking spaces in the Parking Garage pursuant to this Lease, Landlord shall calculate the actual number of parking spaces in the Parking Garage and the actual total floor area of the Parking Garage, and to the extent necessary to comply with the limi-

tation set forth above, the MCI Leased Areas shall be reduced so that the number of parking spaces in the MCI Leased Areas does not exceed nineteen and two-tenths percent (19.2%) of the total number of parking spaces in the Parking Garage and so that the MCI Leased Areas shall not contain more than nineteen and two-tenths percent (19.2%) of the total floor area of the Parking Garage.

(c) MCI will cooperate with Landlord, at Landlord's written request to make changes in the terms of this Lease which may be necessary to assure that the interest paid on Landlord's \$22,300,000 Variable Rate Demand Revenue Bonds (Ballston Public Parking Project) (the "Bonds") which finance a portion of the cost of the acquisition, expansion and construction of the Parking Garage shall, for Federal income tax purposes, be and remain exempt under the provisions of Section 103(a) the Internal Revenue Code of 1954 and the regulations promulgated thereunder. However, MCI shall have no obligation to agree to any change which would have a materially adverse effect on MCI, unless such change would be made as part of an arrangement where corresponding benefits, acceptable to MCI, were provided. Without limiting the generality of the foregoing provisions, at the written direction of Landlord, MCI will relocate portions of the MCI Leased Areas to areas of the Parking Garage which were constructed with proceeds of the Bonds, and MCI will reduce the number of parking spaces in the MCI Areas up to a maximum reduction of twenty-five (25) parking spaces. MCI and its successors hereby agree to take no action for federal income tax purposes, and to permit no such action to be taken by MDS ~~in connection with the Bonds~~, which is inconsistent with the ownership of the MCI Leased Areas by the Landlord, after the Parking Garage is conveyed to the Landlord pursuant to the Sale Agreement and the Parking Garage Agreement.

\*and MCI will have the right after completion of the eighth level to relocate MCI Areas from the sixth level to the seventh level,

(d) In the event that an eighth level of parking is constructed on the Parking Garage, MCI will relocate such portions of the MCI Leased Areas, on a temporary basis, as may be necessary to compensate for any use of the seventh level of the Parking Garage, to the extent required by Bond Counsel (as defined in the Indenture) designated by Landlord as necessary so that there will not be a material and substantial likelihood that interest on the Bonds would become subject to Federal income tax. To the extent that alternate MCI Leased Areas cannot compensate for such use of the seventh level of the Parking Garage, the MCI Leased Areas shall be temporarily reduced during the construction of the eighth level, to the extent determined by Bond Counsel to be reasonably necessary.

2. Rent.

(a) MCI covenants and agrees to pay to Landlord every second month after the Trigger Date, in arrears, ninety (90) payments of rent as hereinafter set forth. The first rental payment shall be made on the last day of the second full calendar month after the earlier of December 31, 1986 and the first date on which at least seven percent (7%) of the gross leasable area (excluding any department stores) on the adjacent property which is expected to be developed as an enclosed mall shopping center has opened for business with the public, after the demolition of the improvements thereon (excluding the Hecht store) which exist on the date of this Lease (such earlier date being called the "Trigger Date").

and each subsequent rental payment shall be paid on or before the last day of each second month after the first payment date; provided, however that in no event shall the Trigger Date occur earlier than the date of substantial completion of the Parking Garage. The first payment date and each subsequent payment date is called a "Payment Date."

(b) The following are the rental payments to be made by MCI to Landlord:

(i)	First Six Payment Dates	- \$ 10,250
(ii)	Seventh through Twelfth Payment Dates	- \$ 17,416
(iii)	Thirteenth through Eighteenth Payment Dates	- \$ 21,583
(iv)	Nineteenth through Twenty-Fourth Payment Dates	- \$ 91,500
(v)	Twenty-Fifth through Thirtieth Payment Dates	- \$ 54,333
(vi)	Thirty-First through Thirty-Sixth Payment Dates	- \$101,000
(vii)	Thirty-Seventh through Forty-Second Payment Dates	- \$105,833
(viii)	Forty-Third through Forty-Eighth Payment Dates	- \$111,167
(ix)	Forty-Ninth through Fifty-Fourth Payment Dates	- \$ 99,167
(x)	Fifty-Fifth through Sixtieth Payment Dates	- \$104,000
(xi)	Sixty-First through Sixty-Sixth Payment Dates	- \$109,333
(xii)	Sixty-Seventh through Seventy-Second Payment Dates	- \$114,667
(xiii)	Seventy-Third through Seventy-Eighth Payment Dates	- \$120,500

(xiv)	Seventy-Nineth through Eighty-Second Payment Dates	- \$126,500
(xv)	Eighty-Third through Ninetieth Payment Dates	- \$132,833

No Default by MCI under this Lease shall result in the acceleration of the rental payments provided for herein.

3. Term. The term of this Lease shall commence at a time designated by MCI after both (a) construction of the Parking Garage has been substantially completed and (b) Landlord has acquired title to the Parking Garage improvements, but in no event more than thirty (30) days after the Trigger Date. The date of the commencement of the term is called the "Commencement Date." The term of this Lease shall be thirty-six (36) years beginning on the Commencement Date.

4. Quiet Enjoyment. Subject to those liens, claims, encumbrances, encroachments, reservations, rights-of-way, easements, covenants, conditions, and restrictions set forth on Exhibit C attached hereto and made a part hereof, and subject to the conditions of this Lease, so long as MCI pays the rent, the additional rent and all other sums and charges to be paid by it as herein provided and observes and keeps all covenants, warranties, agreements, and conditions of this Lease on its part to be observed and kept, Tenant shall quietly have and enjoy the MCI Leased Areas during the term of this Lease, without hindrance or molestation by anyone claiming by, under or through Landlord.

5. Condition of MCI Leased Area. The MCI Leased Areas shall be in good condition on the Commencement Date, fully usable for its intended purpose.

To insure good leasehold title of Tenant, Landlord shall execute any other instrument reasonably necessary to accomplish such objective.

6. Assignment. This Lease and MCI's rights hereunder shall be assignable from time to time to any person or entity which may own or acquire any interest in the property bounded by Wilson Boulevard, Glebe Road and North Randolph Street in Arlington County, Virginia. In addition, MCI intends to sublease, license or otherwise transfer certain of its benefits under this Lease to such other persons as MCI shall select, and all such subleases, licenses and other transfers shall be permitted hereunder without the approval of Landlord. MCI may also collaterally assign its rights under this Lease as security for an obligation of MCI. MCI shall only be released from its obligations under this Lease if (a) a transferee which acquires MCI's entire interest hereunder executes and delivers to Landlord an assumption agreement under the terms of which the transferee assumes and agrees to perform all of MCI's obligations under this Lease after the date of the transfer and (b) (i) the transferee has, at the time of the transfer, a net worth of at least Ten Million Dollars (\$10,000,000) if the transfer occurs during the five (5) year period beginning on the Trigger Date, or (ii) the transferee has, at the time of the transfer, a net worth of at least Five Million Dollars (\$5,000,000) if the transfer occurs more than five years after the Trigger Date or (iii) the transferee has, at the time of the transfer, a net worth of at least Ten Thousand Dollars (\$10,000) if the transfer occurs more than fifteen (15) years after the Trigger Date, and all rental payments under Section 2(b) have been made. This Lease and Landlord's rights hereunder shall be assignable only to a governmental entity and only if the result of such transfer will not

make the interest from the Bonds used to finance the improvement of the Parking Garage subject to Federal income tax; provided, however, that a transfer of Landlord's interest to a lender as a result of a foreclosure of the lien of the deeds of trust executed in connection with the acquisition and construction of the Parking Garage, or as the result of a deed in lieu of foreclosure, and the first transfer thereafter by the lender shall be deemed to be permitted transfers.

7. Easements. Landlord hereby reserves for the benefit of the Parking Garage, ~~XXXXXXXX~~ during the term of this Lease nonexclusive easements/for passage of persons and vehicles through the MCI Leased Areas and for ingress and egress to and from all other portions of the Parking Garage. Landlord hereby leases to MCI, for the benefit of the MCI Leased Areas, during the term, nonexclusive easements for ingress and egress by persons and vehicles to and from the MCI Leased Areas by and through all portions of the Parking Garage.

8. Operations.

(a) The MCI Leased Areas shall be operated by Landlord, or a manager designated by Landlord, in either case pursuant to the same terms and conditions as all other portions of the Parking Garage, except as hereinafter provided. The Landlord or Manager shall perform all operating and management functions with respect to the MCI Leased Areas, including, without limitation, the sale of monthly parking permits, the collection of all revenues relating to the MCI Leased Areas and the payment of all expenses relating to the MCI Leased Areas.

(b) Notwithstanding anything to the contrary, the following terms and conditions shall apply to the MCI Leased Areas:

(i) The MCI Leased Areas are intended to be used for monthly parking by users who will be issued permits which will be valid only Mondays, Tuesdays, Wednesdays, Thursdays and Fridays, except that up to seventy (70) monthly parking permits will be usable on all days, at Tenant's option. The particular users shall be designated from time to time by MCI, and after such designation, Landlord shall cause the monthly parking permits to be sold to such designated users. MCI may from time to time change the designated users. MCI may designate such a number of users of the MCI Leased Areas as the MCI Leased Areas can accommodate, based on good parking garage management practices and recognizing that more parking permits may be sold than there are parking spaces in the MCI Leased Areas. However, in no event shall any user designated by MCI be permitted to park in areas of the Parking Garage other than the MCI Leased Areas. Landlord shall institute such control mechanisms as may be necessary to insure that such users designated by MCI may use only the MCI Leased Areas.

(ii) If, as of the date occurring ten days prior to the beginning of any month, less than 567 parking spaces are used by persons or entities designated by

MCI, any excess parking spaces in the MCI Leased Areas may be rented by the Landlord to the general public during the following month on a long-term monthly or short-term daily basis, as the Landlord may determine (except that any short term use, except as provided in Section B(d), shall be subject to MCI's approval, which may be withheld in MCI's sole discretion), in order to permit full use of the MCI Leased Areas by members of the general public. Upon notice from MCI to Landlord (given at least ten days prior to the beginning of any month) that MCI intends to designate persons or entities to use parking spaces within the MCI Leased Areas up to the maximum number of 567 parking spaces, the Landlord will comply with such designation by selling monthly parking permits to those persons or entities so designated, as of the first day of the month following the giving of such notice. Any monthly parking permits issued by Landlord and any short term daily parking rights shall be granted in such a manner that they can be terminated in sufficient time to make the parking spaces available to MCI as required by this Lease.

(c) The rates for parking in the MCI Leased Areas shall always be kept the same as the rates for all other portions of the Parking Garage for the same type of long-term monthly and short-term daily use, except that the monthly parking permits which are valid on all days shall be

sold at a proportionately higher rate than the five day monthly parking permits.

(d) Landlord shall retain the sole right to use the MCI Leased Areas on all Saturdays and Sundays (except for the seventy [70] monthly parking permits which are valid on all days) and also during the evenings on Mondays, Tuesdays, Wednesdays, Thursdays and Fridays after the hours that the holders of the monthly parking permits designated by MCI have used the MCI Leased Areas. Landlord shall use good parking garage operating practices to determine when the MCI Leased Areas will be available during evenings; provided, however, that if MCI gives Landlord written notice that the practices so used by Landlord result in the MCI Leased Areas not being available for the holders of monthly parking permits designated by MCI, then the Landlord shall make such adjustments as may be necessary to provide parking spaces for the users designated by MCI. The parties recognize that the monthly parking permits shall not be specifically limited in terms of the hours during Mondays, Tuesdays, Wednesdays, Thursdays and Fridays that they may be used.

(e) Landlord shall maintain, and shall cause the Manager to maintain, a list of designated users for the MCI Leased Areas. Except that the users on such list are designated by MCI and except that such users may park only in the MCI Leased Areas and except that the Landlord shall not have the right to prohibit such users from parking in the MCI Leased Areas during all weekdays when such users desire to

use the MCI Leased Areas, such users shall have the same rights and privileges and shall be subject to the same conditions and limitations as all other holders of monthly parking permits for the Parking Garage. If, at any time, monthly parking permits have been issued for all parking spaces available within the MCI Leased Areas, Landlord shall, at MCI's request, maintain a waiting list for other persons who may purchase monthly parking permits for the MCI Leased Areas.

(f) MCI shall have no obligation for repairing, maintaining, managing, insuring, restoring, paying taxes on or otherwise operating the MCI Leased Areas, except that MCI shall be charged the fees set forth in Section 9(a). Landlord shall have the sole responsibility for all such repair, maintenance, management, insurance, restoration, taxes and other operation of the MCI Leased Areas, solely from Available Sources. Without limiting the generality of the foregoing:

(i) Landlord shall promptly pay or cause to be paid, solely from Available Sources, the following items as and when they shall become due, and before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof: all taxes, special and general assessments, water charges, sewer charges, levies, license and permit fees, and all other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary, which

may be charged, levied, assessed, or imposed with respect to the MCI Leased Areas, and all charges for water, steam, heat, gas, hot water, electricity, light, power, and other services furnished to the MCI Leased Areas (collectively the "Impositions"). Landlord shall also pay any Imposition which shall at any time after the Commencement Date be charged, levied, assessed, or imposed upon or with respect to the MCI Leased Areas or any part thereof, or the improvements thereon, under all present or future laws, ordinances, requirements, orders, rules, or regulations of the federal, state, or local governments and of all other governmental authorities whatsoever having jurisdiction. Landlord shall be deemed to have complied with the covenants of this Section 8(f) if payment of such Impositions shall have been made within any period allowed by law or by the governmental authority imposing the same during which payment is permitted without penalty or interest. The certificate, statement or bill of the appropriate official designated by law to make or issue the same, or to receive payment of any Imposition, shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, statement or bill.

(ii) Landlord shall, at its sole cost and expense, solely from Available Sources, cause the MCI Leased Areas and all other improvements thereon, to be

kept and maintained in repair and good condition (ordinary wear and tear excepted), and shall use all reasonable precautions to prevent waste, damage, or injury thereto.

(iii) Landlord shall, at its sole cost and expense, solely from Available Sources, obtain and maintain the following insurance:

(A) Landlord shall keep any improvements now or hereafter situated on the MCI Leased Areas insured against loss or damage from risks included within the "all risk" classification and earthquake and flood coverage in amounts not less than one hundred percent (100%) of the full replacement cost of such improvements (without any deduction being made for depreciation). In addition, during any construction or alteration of any improvements on the MCI Leased Areas, Landlord shall maintain or cause to be maintained "all risk" builder's risk insurance on the MCI Leased Areas covering all work done and materials furnished in connection therewith.

(B) Landlord shall maintain comprehensive general public liability insurance against claims for bodily injury, death, or property damage, occurring upon, in or about the MCI Leased Areas (including, without limitation, personal injury, death, or property damage resulting directly or

indirectly from any change, alteration, improvement, or repair thereof) with a limit of not less than Twenty-Five Million Dollars (\$25,000,000.00) in the event of personal injury to any number of persons or of damage to property arising out of any one occurrence, Twenty-Five Million Dollars (\$25,000,000.00) for injury to any one individual and Twenty-Five Million Dollars (\$25,000,000.00) for damage to property.

(iv) Landlord shall, at its sole cost and expense, solely from Available Sources, promptly observe and comply with all present and future laws, ordinances, requirements, orders, rules, and regulations of all federal, state, and municipal governments and of all other governmental authorities affecting the MCI Leased Areas or appurtenances thereto or any part thereof, and Landlord shall pay all costs, expenses, losses, damages, fines, penalties, claims, and demands (including, without limitation, reasonable attorneys' fees, and disbursements) that may in any manner arise out of or be imposed upon the MCI Leased Areas or any part thereof because of the failure of Landlord to comply with the covenants of this Section 8(f). To the extent that the Landlord is not bound by any law, ordinance, etc., otherwise applicable to the MCI Leased Areas or any part thereof, this Section 8(f) shall not apply to the Landlord, in the Landlord's discretion,

but such provision shall not limit Landlord's obligation to comply with any other specific requirement of this Lease. Landlord shall have the right to contest by appropriate legal proceedings diligently conducted in good faith, the validity or application of any law, ordinance, requirement, order, rule or regulation of the nature referred to in Section 8(f). If by the terms of any such law, ordinance, requirement, order, rule, or regulation compliance therewith legally may be delayed pending the prosecution of any such proceeding, Landlord may delay such compliance therewith until the final determination of such proceeding.

(v) In case of damage to or destruction of the MCI Leased Areas, or any part thereof, whether by fire or otherwise, Landlord shall, at Landlord's sole cost and expense, solely from Available Sources (whether or not the insurance proceeds, if any, shall be sufficient for the purpose), repair, replace, rebuild, or restore the improvements as nearly as possible to its value and condition immediately prior to such damage or destruction, with such reasonable changes or alterations as may be made at Landlord's election, except that Landlord shall not make any material addition to or material modification of the MCI Leased Areas. Notwithstanding the foregoing, if as a result of such casualty damage, Landlord does not restore the entire Parking Garage, then the MCI Leased Areas shall be reduced in

number of parking spaces in the same ratio that the number of parking spaces not rebuilt in the entire Parking Garage bears to the total number of parking spaces in the Parking Garage prior to the casualty damage. If the MCI Leased Areas are so reduced, then beginning on the date of such casualty damage the payments of the rent shall abate to equal an amount calculated by multiplying each rental payment thereafter payable by a fraction, the numerator of which is the number of usable parking spaces in the MCI Leased Areas described in this Lease on each Payment Date and the denominator of which is five hundred sixty-seven (567).

9. Revenues.

(a) Subject to the conditions and limitations hereinafter set forth in this Section 9, all MCI Leased Areas' Net Cash Flow from the sale of monthly parking permits for the MCI Leased Areas, whether or not received from users designated by MCI, shall be paid to MCI. All income from the short-term daily users of the MCI Leased Areas, which shall include all users during evenings after such parking spaces are no longer used by holders of monthly parking permits, shall be retained solely by Landlord.

MCI Leased Areas' Net Cash Flow as used herein means all revenues, income, receipts, advances or loans made by Landlord and other money received by or on behalf of Landlord from the sale of monthly parking permits for the MCI Leased Areas with deductions for:

(i) four and one-tenth percent (4.1%) of all costs and expenses incurred in operating, maintaining and restoring the Parking Garage (excluding any relating to an eighth level of parking which may be constructed in the future, and excluding any and all depreciation) and including real estate taxes if actually payable,

(ii) four and one-tenth percent (4.1%) of interest, letter of credit fees, trustees fees and other similar charges and principal payment made in connection with the Revenue Bonds and reimbursements by Landlord of any person or entity who or which makes any such payments (including, without limitation, Citibank, N.A. [the "Bank"] pursuant to a Letter of Credit and Reimbursement Agreement dated as of August 1, 1984, between Landlord and the Bank [the "Reimbursement Agreement"] as provided in the Indenture), but only to the extent, if any, that no expense or deduction is taken for the payments actually made by such person or entity, subject to the provisions of Section 9(d),

(iii) four and one-tenth percent (4.1%) of repayments to the Landlord, without interest, of funds appropriated and paid by Landlord for the account of the Parking Garage for the purpose of making payments pursuant to Sections 9(a)(i) and (ii) above,

(iv) four and one-tenth percent (4.1%) of funds (other than borrowed funds) deposited in a reasonable

reserve account, provided that in any Fiscal Year when the Landlord determines that such reasonable reserve account is greater than amounts reasonably needed, the excess shall be included in Gross Revenues,

(v) four and one-tenth percent (4.1%) of current payments of principal and interest on the note (the "Note") issued in connection with the Sale Agreement,

(vi) four and one-tenth percent (4.1%) of all current rent (under the ground lease dated as of August 1, 1984 under which Landlord has acquired rights to use the land on which the Parking Garage is located (the "Ground Lease"),

(vii) if real estate taxes are not payable, then four and one-tenth percent (4.1%) of all amounts payable in lieu of real estate taxes (excluding any related to an eighth level of parking which may be constructed in the future),

(viii) four and one-tenth percent (4.1%) of deferred payments of principal and interest on the Note issued in connection with the Sale Agreement, and

(ix) four and one-tenth percent (4.1%) of all deferred rent paid to MDS under the provisions of the Ground Lease.

Gross Revenue as used herein means all revenues, income, receipts, advances or loans by Landlord and other money received by or on behalf of the Landlord and derived from or received in

connection with the operation of the Parking Garage and the Point Lease, other than borrowed proceeds.

Point Lease as used herein means that certain lease dated as of August 1, 1984, between The May Department Stores Company ("MDS"), as landlord, and Landlord, as tenant, for property located at the intersection of Glebe Road and Wilson Boulevard in Arlington County, Virginia.

Net Cash Flow as used herein means the Gross Revenues derived from the operation of the Parking Garage with deductions for:

(i) all costs and expenses incurred in operating, maintaining and restoring the Parking Garage (excluding any relating to an eighth level of parking which may be constructed in the future, and excluding any and all depreciation) and including real estate taxes if actually payable,

(ii) interest, letter of credit fees, trustees fees and other similar charges and principal payment made in connection with the Bonds and reimbursements by Landlord of any person or entity who or which makes any such payments (including, without limitation, the Bank, pursuant to the Reimbursement Agreement as provided in the Indenture), but only to the extent, if any, that no expense or deduction is taken for the payments actually made by such person or entity, subject to the provisions of Section 9(d),

(iii) repayments to the Landlord, without interest, of funds appropriated and paid by Landlord for the account of the Parking Garage for the purpose of making payments pursuant to Sections 9(a)(i) and (ii) above,

(iv) funds (other than borrowed funds) deposited in a reasonable reserve account, provided that in any Fiscal Year when the Landlord determines that such reasonable reserve account is greater than amounts reasonably needed, the excess shall be included in Gross Revenues,

(v) current payments of principal and interest on the Note issued in connection with the Sale Agreement,

(vi) all current rent under the Ground Lease,

(vii) if real estate taxes are not payable, then all amounts payable in lieu of real estate taxes (excluding any related to an eighth level of parking which may be constructed in the future),

(viii) deferred payments of principal and interest on the Note issued in connection with the Sale Agreement, and

(ix) all deferred rent paid to MDS under the provisions of the Ground Lease.

For purposes of determining the Net Cash Flow derived from operation of the Parking Garage and MCI Leased Areas' Net Cash Flow, Landlord shall deliver to MCI, not later than one

hundred eighty (180) days after the expiration of each Fiscal Year, a written statement, signed by Landlord and certified by an independent certified public accountant showing the Gross Revenues and Net Cash Flow derived from operation of the Parking Garage, and separately from the sale of monthly parking permits for MCI Leased Areas. Landlord shall keep full and accurate books of account, records, cash receipts, and other pertinent data showing its Gross Revenues and Net Cash Flow. MCI shall be entitled to inspect and examine Landlord's relevant books of account, records, cash receipts, and other pertinent data in order to verify Landlord's Gross Revenues and Net Cash Flow. Landlord shall cooperate fully with MCI in making the inspection. Such inspection shall be conducted during usual business hours at the place where Landlord's books of account, records, cash receipts, and other pertinent data are normally kept. With each such statement, Landlord shall pay to MCI the amounts, if any, which are payable to MCI.

(b) In no event shall Landlord pay to MCI any MCI Leased Areas' Net Cash Flow which (i) is attributable to any portion of the Parking Garage other than the MCI Leased Areas or (ii) is calculated on the basis of a prorata allocable share of the overall Net Cash Flow of the Parking Garage or (iii) is more than nineteen and two-tenths percent (19.2%) of the total Net Cash Flow from the Parking Garage for the Fiscal Year for which the MCI Leased Areas' Net Cash Flow is calculated or (iv) which would have otherwise been

payable to MCI prior to August 1, 1990. Notwithstanding the foregoing, if any distribution is made to Landlord from any revenues, income or funds of the Parking Garage prior to August 1, 1990, then the limitations set forth in this Section 9(b)(iv) shall immediately terminate. If, beginning in 1990, periodic amortization of the Bonds has not commenced, then for the purpose of calculating Net Cash Flow and MCI Leased Areas' Net Cash Flow, there will be imputed a principal payment calculated on the basis of an interest rate of eleven and three-fourths percent (11 3/4%) and an amortization period of 27 years, which imputed principal payment shall apply until replaced with actual payments of the principal of the Bonds. In addition, if and to the extent actual amortization replaces imputed amortization theretofore calculated, then such actual amortization shall not be included in the definition of Net Cash Flow. MCI shall only be entitled to receive the Net Cash Flow attributable to the MCI Leased Areas, subject to the other limitations set forth in this Section 9. In no event shall Landlord pay MCI any MCI Leased Areas Net Cash Flow prior to the first Fiscal Year in which a Cumulative Positive Net Cash Flow is achieved/ (which payment shall actually be made in the next succeeding Fiscal Year.) Cumulative Positive Net Cash Flow as used herein means with respect to any Fiscal Year, the total amount of all Net Cash Flow during all Fiscal Years up to and including the Fiscal Year in question, when the Net Cash Flow was a positive number, reduced by the total amount of all Net Cash Flow during all Fiscal Years up to and includ-

ing the Fiscal Year in question, when the Net Cash Flow was a negative number.

(c) In the event that there shall be MCI Leased Areas' Net Cash Flow in any Fiscal Year, but due to the limitations set forth in Section 9(b), Landlord is not obligated to pay MCI the MCI Leased Areas' Net Cash Flow from the MCI Leased Areas for the particular Fiscal Year, there shall be no accrual or deferral until later years, such amounts being forever waived, except that such amounts shall be used in calculation of Net Cash Flow when applying the provisions of the last two sentences of Section 9(b). In addition, if in any Fiscal Year the MCI Leased Areas' Net Cash Flow is negative, MCI shall have no obligation to pay Landlord the amount of such negative MCI Leased Areas' Net Cash Flow, nor shall the amount of any negative MCI Leased Areas' Net Cash Flow in any Fiscal Year be offset against MCI Leased Areas' Net Cash Flow in any subsequent Fiscal Year.

(d) In the event of a foreclosure of the lien of the deed of trust executed in connection with the Bonds, then for the purpose of calculating the deductions of principal and interest in the determination of Net Cash Flow and MCI Leased Areas' Net Cash Flow, the limitations set forth in this Section 9(d) shall apply. During any time that the Parking Garage is owned by the Bank (or its successor lending institution), the deduction calculated in accordance with Section 9(a)(ii) shall include only the scheduled payments of principal and interest on the Bonds when due under

the Indenture dated as of August 1, 1984 between Landlord and United Virginia Bank (the "Indenture") but not when due as if an event of foreclosure had not occurred on account of the acceleration of the maturity thereof/except that interest shall be calculated at one percent (1%) in excess of the "base" rate of the Bank (as adjusted from time to time), at the time of the transfer of title pursuant to the foreclosure. During any time after the lending institution described in the preceding sentence has transferred its interest as owner of the Parking Garage, the principal and interest deduction shall be calculated on the basis of the lesser of (i) the actual principal and interest payments on debt incurred to purchase, and secured by, the Parking Garage, (ii) the amount of principal and interest calculated on all of the same terms as exist on debt incurred to purchase, and secured by, the Parking Garage, except that such principal and interest deductions shall be based on a purchase price equal to the outstanding principal amount of the Bonds at the time of the transfer of title pursuant to the foreclosure, provided that in no event shall such deductions apply after the thirty-third Fiscal Year.

(e) The calculation of Net Cash Flow and MCI Leased Areas' Net Cash Flow for each Fiscal Year shall be made on a cash basis, except that payments for the expenses listed in Sections (v), (vi), (viii) and (ix) under the definitions of MCI Leased Areas' Net Cash Flow and Net Cash Flow shall be included in the Fiscal Year prior to the Fiscal Year in

which they are actually paid (in each case to the extent that they are actually paid.)

(F) The term "Fiscal Year" shall mean each period of twelve (12) calendar months between July 1 of each year and June 30 of the following year, and the period between the Trigger Date and the following June 30. If, however, when the Landlord remains as Arlington County, Virginia, the fiscal year of Arlington County, Virginia shall change, the term "Fiscal Year" shall thereafter mean such new fiscal year of Arlington County, Virginia, and all appropriate adjustments shall be made so that Landlord and Tenant are in the same position as if such change had not occurred.

10. Priority Over Mortgages. This Lease and all of the rights of MCI under this Lease shall have priority over any lease, deed of trust, mortgage or other encumbrance which may now or hereafter encumber all or any part of the Parking Garage. If any lease, deed of trust, mortgage or other encumbrance shall be or become prior to the lien of this Lease, Landlord shall promptly cause the holder of any such encumbrance to execute and deliver to MCI, an instrument in recordable form, and in substance satisfactory to MCI, which subordinates the lease, deed of trust, mortgage or other encumbrance to this Lease and MCI's rights hereunder. The failure of Landlord to deliver any such subordination agreement upon MCI's request shall constitute a material default which shall permit MCI to terminate this Lease, in addition to any other remedies which MCI may have at law or in equity.

11. Notice. Whenever in this Lease it shall be required, permitted or desired that notice or demand be given by either party to or on the other, such notice or demand shall be in writing and may be either personally served or sent by United States mail, and shall be deemed to have been given when personally served or when deposited in the United States mail, registered or certified, with return receipt requested, postage prepaid and properly addressed. The time period in which a response to any such notice or demand must be given shall commence to run from the date of personal service or the date of receipt on the return receipt by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice or demand sent. For the purposes hereof, the address of the parties hereto (until notice of a change thereof is given in writing as provided in this Section) shall be as follows:

MCI:	May Centers, Inc. 611 Olive Street St. Louis, Missouri 63101 Attention: Chairman
Landlord:	County Board of Arlington, Virginia 1400 N. Court House Road Arlington, Virginia 22201 Attention: County Manager

12. Events of Default.

(a) The occurrence of any of the following events shall constitute an Event of Default:

(i) If either party shall fail to make any punctual payment of any amount payable under this Lease when and as the payment shall become due, and such de-

fault shall continue for a period of 300 days after the date the payment became due.

(ii) If either party shall fail to perform or comply in any material way with any of the agreements, covenants, or conditions provided in this Lease (other than those referred to in the foregoing Section 12(a)(i)) for a period of thirty (30) days after written notice from the nondefaulting party specifying the items in default and stating the nondefaulting party's intention to declare an Event of Default by reason of such default, or in the case of a default or a contingency which cannot with due diligence be cured within the thirty (30) day period, if the defaulting party fails to promptly commence the cure of such default or thereafter fails to prosecute the curing of such default with due diligence (it being intended that the time within which the nondefaulting party may cure a default which cannot be cured within thirty (30) days shall be extended for such period as may be reasonably necessary to complete the cure with all due diligence).

If an Event of Default has occurred, the nondefaulting party may exercise any and all rights and remedies at law or in equity.

(b) In the event that a party shall not make any monetary payment due to the other within thirty days after delivery of written notice (notwithstanding that no event of default shall occur until 300 days after delivery of written

notice) such payment shall constitute a loan by the nondefaulting party to the defaulting party which shall be repayable, solely from Available Sources, with interest from the date that the amount was repayable at the rate of eight percent (8%) per annum if such interest is exempt from Federal income taxes and at the "base" rate of the Bank (as adjusted from time to time) if such interest is not exempt from Federal income taxes.

(c) If Landlord has given MCI written notice of the name and address of the holder of any deed of trust which encumbers Landlord's interest in the Parking Garage then when delivering any notice of default to Landlord, MCI shall deliver a copy of such holder of the deed of trust. If the holder of the deed of trust or any beneficiary thereunder gives to MCI, on or before the date when such failure would become an Event of Default, written notice of the intention of the holder of the deed of trust or any beneficiary thereunder to cure any default of Landlord, then MCI shall not have the right to exercise any remedy, other than self-help, unless the failure is not cured by the holder of the deed of trust or any beneficiary thereunder during the thirty day period following the date of the Event of Default.

(d) In the event of any nonmonetary default or in the event that either party fails to make any payment due to any person or entity other than the nondefaulting party, then the nondefaulting party may at its option, at any time after thirty (30) days' written notice to the defaulting party (or

such shorter period of time as may be reasonable under the circumstances in the event of an emergency) cure the default by payment or performance. Such payment or performance shall constitute a loan by the nondefaulting party to the defaulting party and shall thereafter be treated in the same manner as set forth above for repayment, solely from Available Sources, after a monetary default.

Notwithstanding the other provisions of this Lease,  
13. Available Sources. All of Landlord's obligations shall be satisfied solely from Gross Revenues, the proceeds of the Bonds and amounts which Landlord or its successor may elect to make available for the purpose of performing any obligations under this Lease. However, if Landlord fails to perform its material obligations under this Lease within the time periods set forth herein, whether or not the failure to perform is due to the lack of funds from Available Sources, such failure to perform shall nevertheless constitute a default under this Lease.

14. Binding Effect. This Lease shall be binding upon and inure to the benefit of the Landlord and MCI and their respective successors and permitted assigns.

15. Entire Agreement. This Lease and the agreements specifically referred to herein constitute the entire agreement between the parties with respect to the leasing of the MCI Leased Areas to MCI and there are no other terms, obligations, covenants, representations, statements or conditions, verbal or otherwise, of any kind whatever with respect to such matter. Any agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of this Lease in whole or in

part unless that agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

16. Surrender. On the expiration of the term of this Lease, MCI shall quit and peacefully surrender the MCI Leased Areas to Landlord.

17. Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

18. Time of the Essence. Time is of the essence of this Lease.

19. Waiver. No delay or omission by either party to exercise any right or power accruing upon any noncompliance or failure of performance by the other party shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of any of the covenants, conditions or agreements to be performed by the other shall not be construed to be a waiver of any later breach thereof or of any other covenant, condition or agreement.

20. Exhibits. All references in this Lease to Exhibits shall mean the Exhibits attached to this Lease, all of which are made a part of this Lease.

21. No Other Representations. Except as expressly set forth in this Lease, Landlord has made no representations as to any matter or thing affecting or relating to the MCI Leased Area. MCI acknowledges that no other representations have been made by Landlord, or its agents or employees.

IN WITNESS WHEREOF, the parties hereto have caused this  
Lease to be executed as of the day and year first written above.

WITNESSES:

Dawn M. Steen  
Van D. Spach

WITNESSES:

Peter Edal  
Brant Baker

MAY CENTERS, INC.  
a Missouri corporation

By: William Grafstrom  
William Grafstrom Chairman

Attest: Alan Charlson  
Alan Charlson ASSISTANT SECRETARY

ARLINGTON COUNTY, VIRGINIA

By: Andrew Sauer

By: \_\_\_\_\_

STATE OF MISSOURI )  
CITY OF ST. LOUIS ) ss

On this 24<sup>th</sup> day of September, 1984, before me, the undersigned, a Notary Public in and for the said City and State, personally appeared William Graffstrom, known to me to be the Chairman and Alan Charlson known to me to be the ASSISTANT SECRETARY, of MAY CENTERS, INC., the corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument, on behalf of the corporation herein named, and acknowledged to me that such corporation executed the within Instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal the day and year in this certificate first above written.

Michelle K. Davis  
Notary Public

My Commission Expires:

MICHELLE K. DAVIS  
NOTARY PUBLIC, STATE OF MISSOURI  
~~MY COMMISSION EXPIRES 2/13/88~~  
CITY OF ST. LOUIS

(SEAL)

~~COMMONWEALTH OF VIRGINIA~~ §  
District of Columbia § as.  
~~COUNTY OF ARLINGTON~~ §

The undersigned Notary Public in and for the jurisdiction aforesaid hereby certifies that Anton Gardace, whose name as County Manager of the County of Arlington, Virginia is signed to the foregoing instrument, acknowledged the same before me in my jurisdiction aforesaid.

Given under my hand this 26<sup>th</sup> day of September, 1984.

Rhonda D. Ynes  
Notary Public

My Commission Expires:

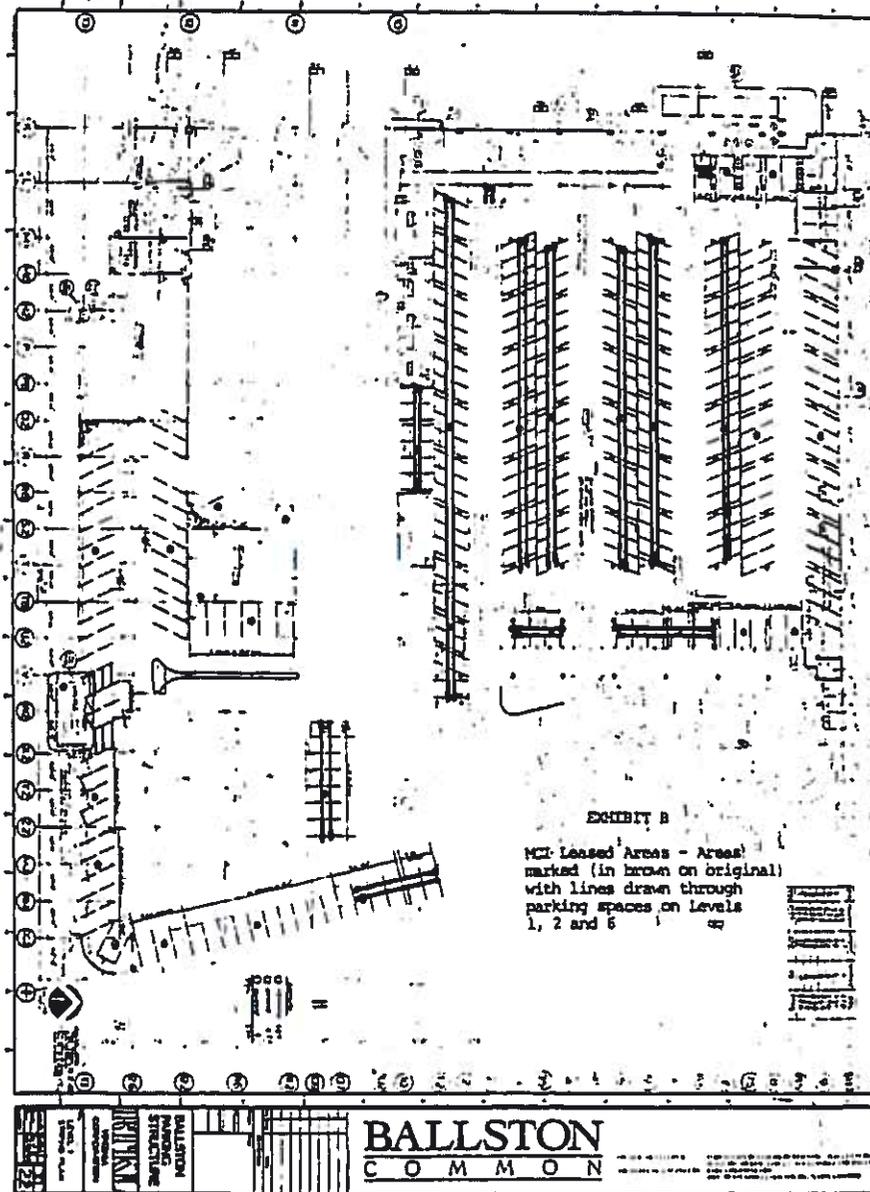
May 14, 1988

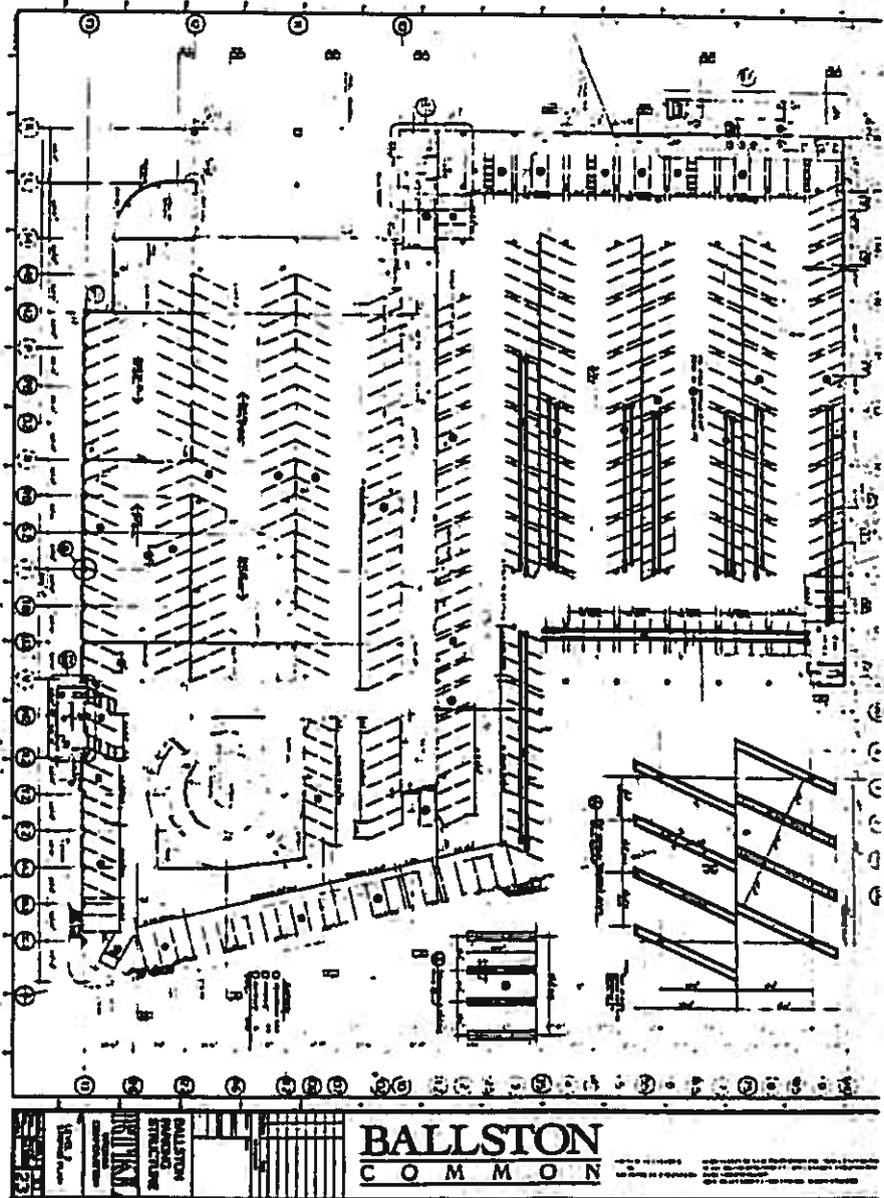
EXHIBIT A

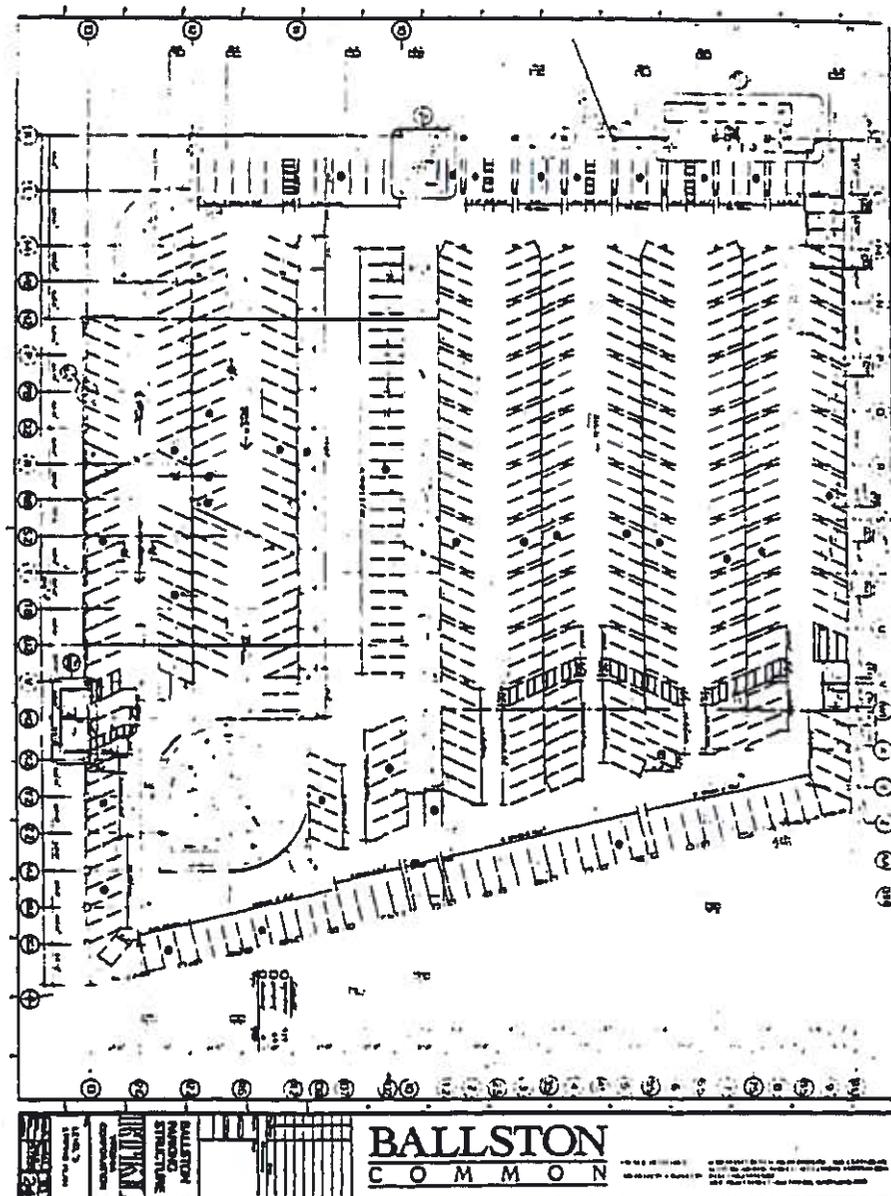
Beginning at a point on the Westerly R/W line of North Randolph Street, said point being N 15° 21' 25" E, 99.77 feet from a point marking the Northeasterly corner of Lot 1, GlebeWood Terrace Subdivision; thence departing from the road and running through the property of The May Department Stores Company the following courses: N 68° 23' 47" W, 160.04 feet; S 21° 36' 13" W, 7.00 feet; N 68° 23' 47" W, 34.67 feet; N 21° 36' 13" E, 13.00 feet; N 68° 23' 47" W, 200.75 feet and S 21° 36' 13" W, 46.10 feet; to a point on the Northeasterly R/W line of North Glebe Road; thence with the Northeasterly R/W line of North Glebe Road N 47° 31' 28" W, 181.07 feet to a point; thence departing from the road and running through the property of The May Department Stores Company the following courses: N 45° 20' 09" E, 100.01 feet; with a curve to the right whose radius is 105.50 feet (and whose chord is N 57° 01' 29" E, 42.75 feet) an arc distance of 43.05 feet; N 21° 36' 13" E, 137.76 feet; S 68° 23' 47" E, 1.00 feet; N 21° 36' 13" E, 28.44 feet; N 68° 23' 47" W, 19.46 feet; N 21° 36' 13" E, 65.00 feet; S 68° 23' 47" E, 10.38 feet; N 21° 36' 13" E, 4.00 feet; S 68° 23' 47" E, 9.08 feet; N 21° 36' 13" E, 25.50 feet and S 68° 23' 47" E, 382.21 feet to a point of the aforementioned Westerly R/W line of North Randolph Street; thence with the Westerly R/W line of North Randolph Street the following courses: S 07° 59' 41" W, 35.83 feet; with a curve to the left whose radius is 604.00 feet (and whose chord is S 04° 05' 15" W, 82.31 feet) an arc distance of 82.38 feet S 00° 10' 56" W, 127.35 feet; with a curve to the right whose radius is 485.87 feet (and whose chord is S 07° 46' 10" W, 128.30 feet) an arc distance of 128.68 feet and S 15° 21' 25" W, 55.37 feet to a point of beginning, containing 4.41394 Acres of land.

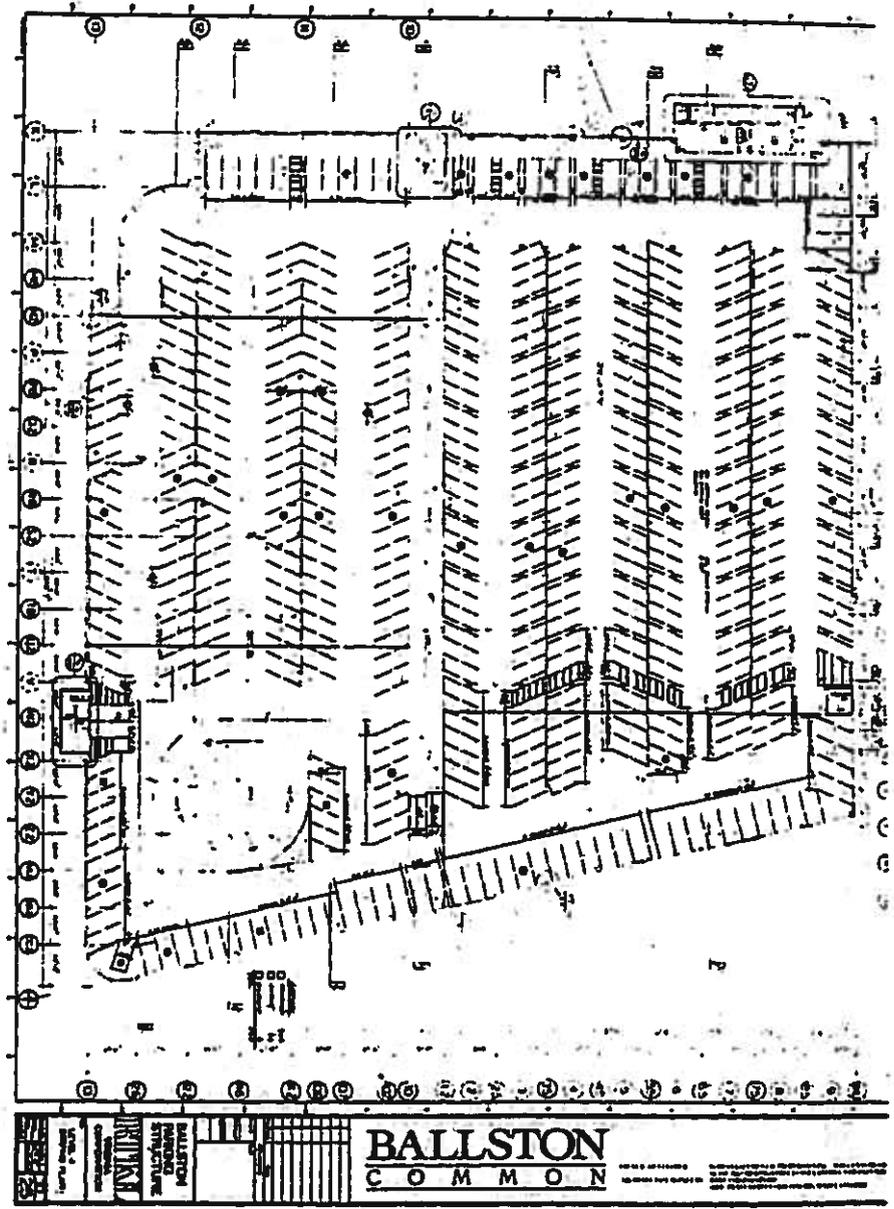
As shown on plat entitled "A Resubdivision of Parcels 'A' through 'I,' the Hecht Company Property, and GlebeWood Terrace Lot 'A'," dated May 4, 1984 (revised July 6, 1984), prepared by Dewberry & Davis, Fairfax, Virginia, certified land surveyors and recorded in Deed Book 2149, Page 100, Arlington County Records.

*Being Parcel C-1 on said Plat.*

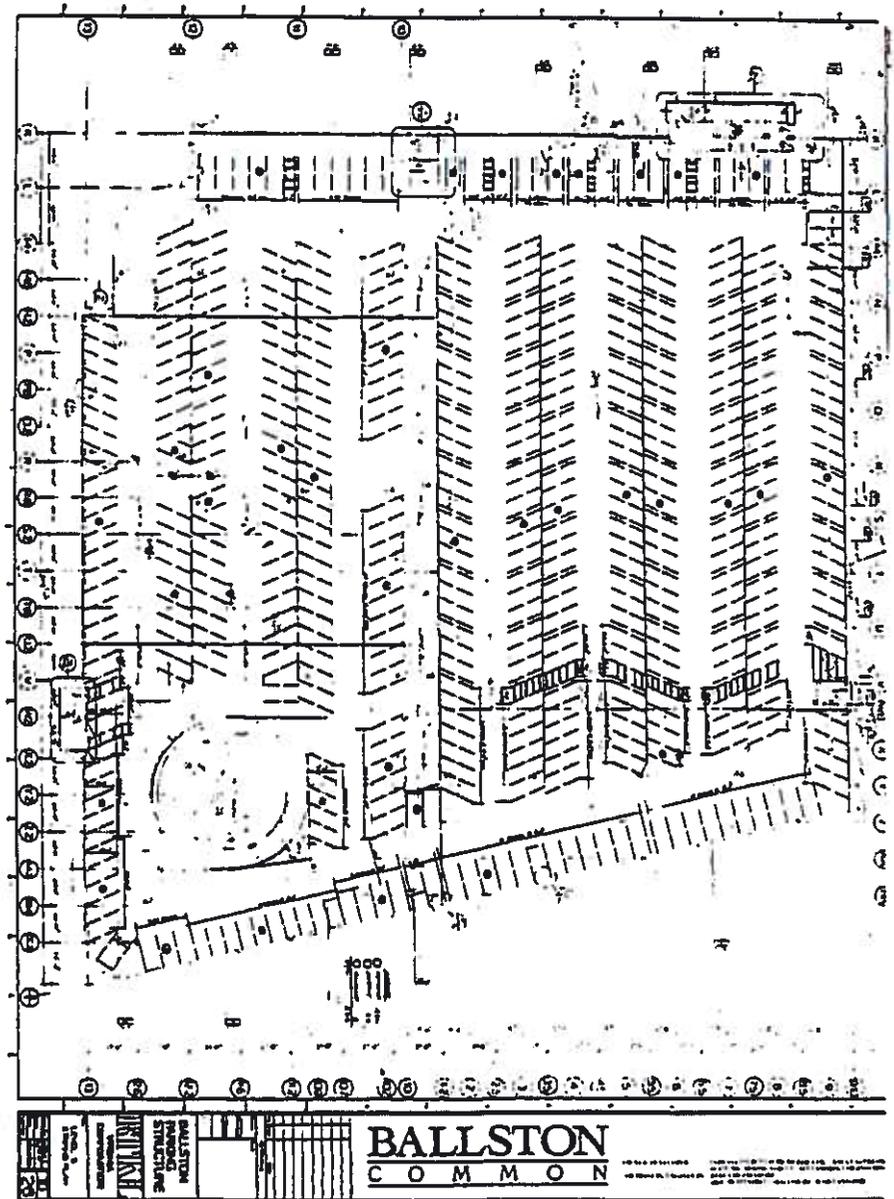








**BALLSTON**  
COMMON







## Exhibit C

TITLE EXCEPTIONS

1. Taxes, charges and assessments for the current tax year.
2. Facts disclosed by Survey dated May 4, 1984, prepared by Dewberry and Davis.
3. Any state of facts as would be disclosed by an accurate survey and inspection of the property subsequent to May 4, 1984.
4. Easements granted to American Telephone and Telegraph Company of Virginia by instruments recorded in Deed Book 159, Page 24; Deed Book 159, Page 41; and Deed Book 159, Page 43.
5. Easement granted The County Board of Arlington County, Virginia, for ten (10) foot wide water main line by instrument recorded in Deed Book 1024, Page 55.
6. Easement granted Virginia Electric and Power Company by instrument recorded in Deed Book 1022, Page 470.
7. Eight (8) inch sanitary sewer easement as shown on plat recorded in Deed Book 979, Page 103.
8. Deed of Resubdivision, dated August 16, 1984.
9. Declaration of Covenants, Easements and Restrictions, dated as of August 1, 1984.
10. Basic Agreement, dated as of August 1, 1984.
11. Agreement of Sale, dated as of August 1, 1984.
12. Parking Garage Agreement dated as of August 1, 1984.
13. Ground Lease, dated as of August 1, 1984.
14. All covenants, conditions and restrictions of records, all zoning laws; and the condition of the property.

