

WESTFIELD HORTON PLAZA

TENANCY AGREEMENT

THIS TENANCY AGREEMENT (hereinafter the "Agreement") is made and entered into this 1st day of MAY, 2008, by and between **HORTON PLAZA LP**, a Delaware limited partnership, whose address is: 11601 Wilshire Boulevard, 12th Floor, Los Angeles, California 90025 ("Landlord"), and the **CITY OF SAN DIEGO POLICE DEPARTMENT**, whose address is: 1401 Broadway, San Diego, California 92101 ("Tenant").

WITNESSETH: That Landlord does hereby lease to Tenant and Tenant does hereby lease from Landlord, upon the terms and subject to the conditions hereinafter set forth, the premises located in **Westfield Horton Plaza**, in the City of San Diego, County of San Diego, State of California, a general site plan of which development is shown on Exhibit A-1 attached hereto and made a part hereof (the "Shopping Center"), designated as Space No. P22 consisting of approximately 748 square feet of space shown hatched on Exhibit A-2 attached hereto and by this reference made a part hereof (the "Premises").

1. TERM.

The "Term" of this Agreement and Tenant's obligation for payment of "Rental" (as defined below) shall commence upon May 15, 2008 (the "Commencement Date" and the "Rental Commencement Date", respectively). The Term of this Agreement shall expire on April 30, 2009. For the purposes of this Agreement, the first lease year shall be the period commencing on the Rental Commencement Date and ending on January 31 next following; after the first lease year, the term "lease year" as used herein shall mean a fiscal year of twelve (12) consecutive calendar months ending on January 31 of each calendar year.

2. MINIMUM ANNUAL RENTAL.

(a) **MINIMUM ANNUAL RENTAL.** From and after the Rental Commencement Date Tenant shall pay to Landlord as "Minimum Annual Rental" the following sum(s) for each lease year during the Term in equal consecutive monthly installments:

Rental Commencement Date through the end of the Term: \$1.00 per annum.

Minimum Annual Rental is payable annually, in advance, on or before the tenth (10th) day of January of each lease year during the Term without prior demand or notice.

(b) **PERCENTAGE RENTAL.** INTENTIONALLY OMITTED.

(c) **GROSS SALES.** INTENTIONALLY OMITTED.

(d) **TENANT'S RECORDS; AUDIT.** INTENTIONALLY OMITTED.

(e) **REPORTS BY TENANT.** INTENTIONALLY OMITTED.

(f) **RADIUS.** INTENTIONALLY OMITTED.

3. ADDITIONAL RENT.

In addition to Minimum Annual Rental hereunder, Tenant shall pay, as "Additional Rent" (whether or not so designated herein), in a manner and at the place provided in this Agreement, all sums of money required to be paid by Tenant under this Agreement. If such amounts or charges are not paid at the time and in the manner as provided in this Agreement, they shall nevertheless be collectible as Additional Rent with the next installment of Minimum Annual Rental thereafter falling due, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder or to limit any other remedy of Landlord. All amounts of Minimum Annual Rental and Additional Rent (also collectively referred to in this Agreement as "Rental") payable in a given month shall be deemed to comprise a single rental obligation of Tenant to Landlord. All Rental shall be paid to Landlord in currency of the United States or other customary commercial manner at the address set forth in this Agreement or such other place as Landlord may designate, without any deductions or offsets whatsoever.

Tenant's obligation to pay Common Area Operating Costs and Expenses (including Landlord's insurance on the Shopping Center), Taxes, Common Area HVAC charges, Promotional Charges, and Parking Validation Charges are hereby waived under this Agreement.

Landlord may, at its option and in its sole discretion, apply any payments received from Tenant to any Rental, or other charges which are then due and payable. If Landlord shall not make any specific application of a payment received from Tenant, then any payment received from Tenant shall be applied first to the other charge, then to Rental which has been overdue for the longest period of time. No designation of any payment by Tenant for application to a specific portion of Tenant's financial obligations hereunder shall be binding upon Landlord. Any sums received by Landlord after termination of this Agreement shall not constitute rent but shall be received only as reimbursement for use and occupancy of the Premises.

Tenant covenants to pay all Rental due under this Agreement independent of any obligation of Landlord. No breach of this Agreement by Landlord shall relieve Tenant of its obligation and duty to pay all Rental when due under the terms of this Agreement.

4. LATE CHARGE.

Unless specifically stated otherwise in this Agreement, all Rental required to be paid by Tenant pursuant to this Agreement shall be due and payable ten (10) days after demand, without any notice from Landlord and without any deductions or offsets whatsoever. The parties hereby agree that late payment by Tenant of any Rental owing under this Agreement will cause Landlord to incur certain costs and expenses not contemplated under this Agreement, the exact amount of which costs are extremely difficult and impracticable to fix. Therefore, in the event Tenant fails to pay any monthly installment of Rental on the date said payment is due, then Tenant shall pay a late charge of Ten Percent (10%) of such amount as Additional Rent. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs and expenses Landlord will incur by reason of late payment by Tenant. Landlord's acceptance of this late charge payment shall not prevent Landlord from exercising all other rights and remedies available to Landlord under this Agreement, at law or in equity.

5. CONDITION AND CONSTRUCTION OF PREMISES.

Landlord's Work. Notwithstanding anything to the contrary in this Agreement or Exhibit B, Landlord, as part of Landlord's Work at Landlord's expense, shall construct the Premises and deliver possession thereof to Tenant on or about February 19, 2008 with Landlord's construction obligations substantially complete for Tenant's fixturing of the Premises. Upon Landlord's delivery of the Premises, Tenant agrees to accept the Premises in an "as is" condition.

Tenant's Work. Tenant shall connect to all utilities and/or services required for Tenant's operation of business at the Premises on or before the date Landlord delivers possession of the Premises to Tenant. Tenant's obligations for Tenant's Work at Tenant's expense shall be limited to Tenant's storefront signage and security systems, connection fees for utilities and/or services, and the installation of Tenant's Property (as hereinafter defined).

Wherever the term "Lease" is used in Exhibit B, it shall mean and refer to this Agreement. It is understood between the parties that any portion of this Agreement or Exhibit B which are inconsistent with the foregoing are included for illustration only in the event Tenant elects to do any additional work at the commencement of or during the Term or in the event reconstruction of the Premises becomes necessary following damage or destruction.

6. PERMITTED USE; TRADE NAME.

(a) **PERMITTED USE.** During the Term Tenant shall use the Premises only for the purpose of conducting the following type of business: For the operation of and occupancy by a City of San Diego Police Department satellite office and bike patrol unit. The Premises shall be used solely for the use stated above and for no other use or purpose.

If any governmental license or permit shall be required for the proper and lawful conduct of Tenant's business or other activity conducted in the Premises, or if a failure to procure such a license or permit might or would in any way adversely affect Landlord and/or the Shopping Center, then Tenant, at Tenant's expense, shall duly procure and thereafter maintain such license or permit and submit the same for

inspection by Landlord. Tenant, at Tenant's expense, shall at all times comply with the requirements of each such license or permit.

(b) **TRADE NAME.** Tenant shall operate its facility in the Premises under the trade name "CITY OF SAN DIEGO POLICE DEPARTMENT" and shall not change the advertised name of the business without the prior written consent of Landlord.

7. **OPERATION OF BUSINESS.**

(a) Tenant agrees to conduct business and to operate in all of the Premises during the entire Term following the Rental Commencement Date, and to actively and diligently perform its business at all times in a first class and reputable manner. Tenant shall keep the display windows, if any, of the Premises well lighted. Tenant shall house a bike patrol team which will operate seven (7) days a week.

(b) If Tenant fails to continuously operate its business in accordance with the terms of this Agreement or vacates the Premises prior to the expiration of the Term hereof, Landlord shall have the right to treat any of such events as an event of default under this Agreement.

8. **SERVICES AND EQUIPMENT.**

(a) Tenant shall furnish, at its expense, all trade fixtures, furniture, equipment and personal property (collectively, "Property") to be used at the Premises. Landlord shall not be responsible for the Property of Tenant, and any insurance coverage thereon shall be provided by Tenant as set forth in this Agreement. Tenant agrees to pay all charges for utilities, including heating and air conditioning, services for electrical, water, and sewer, telephone and other communication services, fire detection services (if applicable), and trash removal services for the Premises. Tenant shall indemnify Landlord and save it harmless against any liability or damages on such account.

(b) Landlord, at its option, may elect to provide electric service to the Premises, at a cost to be determined by Landlord, which amount shall be paid monthly by Tenant as Additional Rent pursuant to this Agreement. Thereafter, Landlord may elect to discontinue furnishing electric service to the Premises upon thirty (30) days' prior written notice to Tenant without affecting this Agreement or otherwise incurring any liability to Tenant. If Landlord shall give Tenant such notice, Tenant may contract for and receive such electric service directly from the public utility company serving the Shopping Center, and if Tenant does so, Landlord shall permit Tenant to use Landlord's service to the Premises, at Tenant's cost.

9. **SIGNS.**

All signs installed at the Premises shall comply with and be subject to Landlord's sign criteria for the Shopping Center and the prior written approval of Landlord.

10. **MAINTENANCE OF PREMISES.**

(a) Tenant, at Tenant's expense, shall keep and maintain the Premises and every part thereof in a first-class, clean, sanitary and safe condition throughout the Term, in accordance with applicable law and all directions, rules and regulations of the health officer, fire marshal, building inspector or other proper officials of the governmental agencies having jurisdiction. Tenant shall keep the Premises and all other parts of the Shopping Center free from any and all liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Tenant. Within ten (10) days after written request therefor by Landlord, Tenant shall (i) bond against or discharge any mechanics' or materialmen's lien, or (ii) furnish Landlord with a copy of the recorded waiver of lien, recorded release of lien, or of the recorded bond discharging such lien. Tenant shall reimburse Landlord as Additional Rent for any and all costs and expenses including, without limitation, attorneys' fees, which may be incurred by Landlord by reason of the filing of any such liens and/or removal of same, such reimbursement to be made within ten (10) days after receipt by Tenant from Landlord of a statement setting forth the amount of such costs and expenses such reimbursement to be paid to Landlord in the manner and at the place provided in this Agreement. Tenant shall give Landlord at least fifteen (15) days' written notice prior to commencing or causing to be commenced any work on the Premises (whether prior or subsequent to the Commencement Date), so that Landlord shall have reasonable opportunity to file and post a notice of non-responsibility for Tenant's work.

(b) In the event Tenant fails, refuses or neglects to maintain the Premises as required hereunder or to commence and complete repairs promptly and adequately, to remove or bond against any lien, to pay

any cost or expense, to reimburse Landlord, or otherwise to perform any act or fulfill any obligation required of Tenant pursuant to this Section, Landlord may, but shall not be required to, perform such maintenance or to make or complete any such repairs, remove or bond against such lien, pay such cost or perform such act or the like without prior notice to, but at the sole cost and expense of Tenant. Tenant shall reimburse Landlord, as Additional Rent, for all costs and expenses of Landlord thereby incurred within ten (10) days of Tenant's receipt of Landlord's statement setting forth the amount of such cost and expense.

11. INSURANCE.

(a) For as long as the City of San Diego, California is the Tenant under this Agreement, Tenant may self-insure its obligations under this Agreement. If the Tenant determines to purchase commercial insurance, Tenant's insurance shall be required to meet the following criteria.

Tenant shall maintain in full force and effect at all times during the Term (i) Commercial General Liability Insurance covering the Premises and Tenant's use thereof against claims for personal injury, death and property damage occurring upon, in or about the Premises with limits of not less than Two Million Dollars (\$2,000,000.00) for personal injury to or death to any number of persons arising out of any one occurrence and Two Million Dollars (\$2,000,000.00) for property damage arising out of any one occurrence; (ii) insurance against fire, extended coverage and such other additional perils as now are or hereafter may be included in a standard extended coverage endorsement from time to time in general use in the county in which the Shopping Center is located, insuring Tenant's merchandise, trade fixtures, furnishings, equipment and all other items of personal property of Tenant located on or in the Premises; and (iii) workers' compensation coverage as required by law and including Employer's Liability Insurance in the amount of Two Million Dollars (\$2,000,000.00) each accident, Two Million Dollars (\$2,000,000.00) each employee, by disease, Two Million Dollars (\$2,000,000.00) policy aggregate by disease.

The insurance coverage required herein shall, in addition, extend to any liability of Tenant arising out of the indemnities provided in Section 12 hereof. Such insurance shall be in standard form generally in use in the state in which the Shopping Center is located, shall be carried with responsible insurance companies, and shall name the parties attached as Exhibit C to the Agreement as additional insured entities for the full amount of the insurance herein required with respect to the operations and activities of Tenant in the Shopping Center. Tenant, at the Commencement Date, and thereafter not less than thirty (30) days prior to the expiration of any such policy, shall furnish Landlord with a certificate of insurance executed by the insurer which shall contain, in addition to the matters customarily set forth in such certificate under standard insurance industry practices, an undertaking by the insurer to give Landlord ten (10) days prior written notice of any cancellation or reduction in amount of coverage of such policy.

(b) WAIVER OF RIGHT OF RECOVERY. Except as otherwise provided in this Agreement, neither Landlord nor Tenant shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure or other tangible property, or any resulting loss of income, or losses under worker's compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees. The provisions of this subsection shall not limit the indemnification for liability to third parties as provided below.

12. INDEMNIFICATION.

Tenant covenants to defend and indemnify Landlord, its partners, shareholders, representatives, management company, agents and employees, and save them harmless (except to the extent of loss or damage resulting from the intentional or willful acts or omissions or the gross negligence of Landlord not required to be insured against by Tenant pursuant to this Agreement) from and against any and all claims, actions, demands, judgments, awards, fines, mechanics' liens or other liens, losses, damages, liability and expense, including court costs, in connection with all losses, including loss of life, personal injury and/or damage to property, arising from or out of any occurrence (or arising from or out of Tenant's failure to comply with any provision of this Agreement) wholly or in part by any act or omission of Tenant, its concessionaires, agents, contractors, suppliers, employees, servants, customers or licensees and including any product liability claim or any labor dispute involving Tenant or its contractors and agents. In case Landlord or any other party so indemnified shall be made a party to any litigation commenced by or against Tenant, then Tenant shall defend, indemnify, protect and save them harmless and shall pay, as the same becomes due and payable, all costs, expenses and court costs incurred or paid by them in connection with such litigation.

Landlord agrees to indemnify and hold Tenant, its elected officials, officers, representatives, agents and employees harmless from and against all claims, liabilities, losses, damages and expenses for injury to or death of any person or loss or damage to property in or upon the common areas which result from claims by third parties relating to the common areas, except to the extent such claim is based upon an act or omission of Tenant, any subtenant, licensee, concessionaire or assignee of Tenant, or any of their respective agents, employees or contractors, or Tenant's breach of this Agreement. In case Tenant shall, without fault, be made a party to any such litigation, then Landlord shall protect and hold Tenant harmless and shall pay all reasonable costs, expenses and attorneys' fees incurred or paid by Tenant in connection with such litigation.

13. **ESTOPPEL STATEMENT, ATTORNMENT AND SUBORDINATION.**

(a) **ESTOPPEL STATEMENT.** Within ten (10) days after request therefor by Landlord, Tenant shall execute, in recordable form, and deliver to Landlord a statement, in writing, certifying (i) that this Agreement is in full force and effect, (ii) the Commencement Date, the Rental Commencement Date and the expiration date of this Agreement, (iii) that Rental and all other charges hereunder are paid currently without any offset or defense thereto, (iv) the amount of Rental and all other charges hereunder, if any, paid in advance, (v) whether this Agreement has been modified and, if so, identifying the modifications, (vi) that there are no uncured defaults by Landlord or stating in reasonable detail those claimed by Tenant (provided that, in fact, such details are accurate and ascertainable), and (vii) such other matters as may be reasonably requested by Landlord.

(b) **ATTORNMENT.** In the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage and/or deed of trust made by Landlord covering the Premises, or in the event Landlord sells, conveys or otherwise transfers its interest in the Shopping Center or any portion thereof containing the Premises, this Agreement shall remain in full force and effect and Tenant hereby attorns to and covenants and agrees to execute an instrument in writing reasonably satisfactory to the new owner whereby Tenant attorns to such successor in interest and recognizes such successor as the landlord under this Agreement.

(c) **SUBORDINATION.** Tenant further agrees this Agreement shall be subordinate to any mortgages, deeds of trust or any ground lease that may now exist or be placed upon the Premises or the Shopping Center and to any and all advances to be made thereunder, and to the interest thereon, and all renewals, modifications, replacement and extensions thereof. It is the intention of the parties that this provision be self-operative and that no further instruments be required to effect such subordination of this Agreement. Tenant agrees that upon the demand of Landlord, or any mortgagee, beneficiary or ground lessor, Tenant shall, within ten (10) days of the receipt of said demand, execute whatever instruments may be required to carry out the intent of this subsection in the form requested by Landlord or such mortgagee, beneficiary or ground lessor, including, without limitation, an appropriate recordable subordination agreement.

(d) **REMEDIES.** Failure of Tenant to execute any statements or instruments necessary or desirable to effectuate the foregoing provisions of this Section within ten (10) days after written demand to do so by Landlord shall constitute a material default of this Agreement.

14. **ASSIGNMENT AND SUBLETTING.**

Tenant shall not assign or sublet the whole or any part of the Premises.

15. **DAMAGE AND DESTRUCTION; CONDEMNATION.**

(a) **DAMAGE AND DESTRUCTION.** If all or any part of the Premises is damaged or destroyed by fire or other casualty at any time during the Term, then Landlord may terminate this Agreement by giving written notice to Tenant, and in such event this Agreement shall be terminated and the parties released from their obligations under this Agreement from and after the effective date of such termination.

(b) **CONDEMNATION.** If all or any part of the Premises is taken under power of eminent domain, or sold to public authority under threat or in lieu of such taking, Landlord may, by written notice to Tenant delivered on or before the tenth (10th) day following the date of surrender of possession to the public authority, terminate this Agreement as of the date possession is taken by public authority. All Rental shall be paid up to the day possession is taken by public authority, with an appropriate refund by Landlord of such Rental payments as may have been paid in advance for a period subsequent to that date.

16. **DEFAULT; REMEDIES.**

If at any time Tenant shall fail to remedy any default in the payment of any sum due under this Agreement for ten (10) days after notice, or fail to remedy any default with respect to any of the other provisions, covenants or conditions of this Agreement to be kept or performed by Tenant within thirty (30) days after notice, or if Tenant ceases operating its business and/or abandons the Premises, or if Tenant vacates the Premises or otherwise breaches any obligation under this Agreement which cannot be cured, then in any such event, at Landlord's option and without limiting Landlord in the exercise of any other right or remedy Landlord may have on account of such default, and without any further demand or notice, Landlord may petition under legal process to have this Agreement terminated, and upon receipt of appropriate court order re-enter the Premises and eject all parties in possession therefrom, and repossess and enjoy the Premises together with all improvements, additions, alterations and fixtures thereon. Landlord shall thereupon be entitled to recover from Tenant the worth at the time of such termination, of the excess, if any, of the amount of all Rental required to be paid by Tenant under the terms of this Agreement for the balance of the Term over the then reasonable rental value of the Premises for the same period.

The foregoing remedy of Landlord is in addition to, and not exclusive of, any other remedy of Landlord herein given by this Agreement or which may be permitted by law. Any re-entry as provided for in this paragraph shall be allowed by Tenant without hindrance.

17. **NOTICES.**

(a) **LEGAL NOTICES.** Any notice or demand which either party hereto is required or desires to give to or make upon the other shall be in writing and shall be given or made by (i) certified mail of the United States Postal Service, return receipt requested, or (ii) air courier (such as Federal Express), addressed as follows:

Landlord: **HORTON PLAZA LP**
c/o Westfield, LLC
11601 Wilshire Boulevard, 11th Floor
Los Angeles, California 90025
Attn: Legal Department

Tenant: **CITY OF SAN DIEGO POLICE DEPARTMENT**
1401 Broadway
San Diego, California 92101
Attention: Facilities Management; MS770

Notices are subject to the right of either party to designate a different address by written notice similarly given; provided, however, that any notice address must be a street address and in no event shall either party use a post office box for a notice address. Any notice or demand shall be deemed to have been given or made on the date the same was deposited with the United States Postal Service as certified mail with postage thereon fully prepaid or the date delivered to the air courier service.

(b) **PAYMENT AND OTHER NOTICES.** All payments required to be made by Tenant pursuant to this Agreement shall be provided to Landlord at the following address:

Rental:
Payee: **HORTON PLAZA LP**
Address: c/o Bank of America
File #55708
Los Angeles, California 90074-5708

or at such other place as Landlord may from time to time designate by notice to Tenant.

18. **TENANT'S PROPERTY.**

Tenant acknowledges that Tenant shall be solely responsible for instituting adequate security measures to protect the Property of Tenant and its employees, including but not limited to, fixtures, inventory and all other personal property in, on or about the Premises. Any security devices to be installed at the Premises require the prior written consent of Landlord and shall be in conformance with

Landlord's design criteria for the Shopping Center. Tenant agrees to save Landlord, its agents and employees harmless from any and all liability due to the loss, damage or theft of such Property.

19. RELOCATION.

(a) Landlord hereby reserves the right at any time following the Commencement Date to change the location of the Premises in the Shopping Center, such right to be exercised upon sixty (60) days' prior written notice to Tenant. Tenant agrees that Landlord may effect such relocation, at Landlord's cost and expense, to a site within the Shopping Center which is mutually acceptable to the parties. Such new site shall become the Premises. In connection therewith, Tenant agrees to execute, upon request by Landlord, whatever amendment or other instrument as may be required to document the relocation. The following events may trigger the exercise of Landlord's right hereunder: (i) determination by Landlord that the location of the Premises adversely affects the leasing of any space in the Shopping Center; (ii) determination by Landlord that the location of the Premises impedes pedestrian traffic through the Shopping Center; (iii) the expansion, reduction, removal, alteration, modification or the construction of improvements in the Shopping Center; (iv) restrictive requirements by local codes or Landlord's insurance carrier; or (v) violation of any exclusive or other agreement between Landlord and any large user or other occupant of the Shopping Center.

(b) If Landlord, in its sole judgment, determines that it is necessary for Landlord to obtain possession of the Premises, Landlord, upon thirty (30) days' prior notice in writing to Tenant, may terminate this Agreement.

20. SURRENDER OF PREMISES; HOLDING OVER.

(a) If Landlord so directs upon the expiration or earlier termination of this Agreement, Tenant shall remove its trade fixtures, equipment and other Property installed by Tenant, and surrender the Premises to Landlord in substantially as good condition as when received, ordinary wear and tear excepted. If Tenant shall fail to remove any of its Property, Landlord may, at Landlord's option, retain either any or all of the Property, and title thereto shall thereupon vest in Landlord without compensation to Tenant, or remove all or any portion of the Property from the Premises and dispose of the Property in any manner, without compensation to Tenant. In such event, Tenant shall, upon demand, pay to Landlord for the repair of any damage to the Shopping Center common areas resulting from or caused by such removal. The obligations contained herein shall survive the expiration or earlier termination of this Agreement.

(b) Tenant shall not be permitted to hold over after the expiration or earlier termination of the Term without the prior written consent of Landlord, in Landlord's sole discretion. Any such holding over with Landlord's consent shall be considered a month-to-month tenancy, pursuant to the terms of this Agreement at one-twelfth (1/12th) of an amount equal to twice the Minimum Annual Rental payable for the last lease year of the Term, together with all Additional Rent payable under this Agreement. Any such holding over without Landlord's consent shall be considered a material default which shall entitle Landlord to all remedies set forth in this Agreement or by law. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all loss, claims, demands, liabilities, damages (including, without limitation, consequential damages), costs and/or expenses (including, without limitation, attorneys' fees and expenses) resulting from any failure by Tenant to surrender the Premises in the manner and condition required by this Agreement upon the expiration of the Term or earlier termination of this Agreement, including, without limitation, any claims made by any proposed new tenant founded upon such failure.

21. RULES AND REGULATIONS.

Tenant agrees to comply with and observe all rules and regulations established by Landlord from time to time, provided the same shall apply uniformly to all tenants of the Shopping Center's common areas. Tenant's failure to keep and observe said rules and regulations shall constitute a breach of the terms of this Agreement in the same manner as if the rules and regulations were contained herein as covenants. In the case of any conflict between said rules and regulations and this Agreement, this Agreement shall be controlling.

22. ATTORNEY FEES. INTENTIONALLY OMITTED.

23. INTEREST ON PAST DUE OBLIGATIONS.

Any amount due from Tenant to Landlord hereunder which is not paid when due (including, without limitation, amounts due as reimbursement to Landlord for costs incurred by Landlord in performing obligations of Tenant hereunder upon Tenant's failure to so perform) shall bear interest at the lesser of (a) the "Prime Rate" as published in Wall Street Journal plus Three Percent (3%); or (b) the highest rate then allowed under the usury laws of the state where the Shopping Center is located from the date due until paid, unless otherwise specifically provided herein, but the payment of such interest shall not excuse or cure any default by Tenant under this Agreement.

24. SECURITY DEPOSIT. INTENTIONALLY OMITTED.

25. MISCELLANEOUS.

(a) WAIVER; ELECTION OF REMEDIES. One or more waivers of any covenant or condition by Landlord shall not be construed as a waiver of a subsequent breach of the same covenant or condition, and the consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to render unnecessary Landlord's consent or approval to or of any subsequent similar act by Tenant. No breach by Tenant of a covenant or condition of this Agreement shall be deemed to have been waived by Landlord unless such waiver is in writing signed by Landlord. The rights and remedies of Landlord under this Agreement or under any specific Section, subsection or clause hereof shall be cumulative and in addition to any and all other rights and remedies which Landlord has or may have elsewhere under this Agreement or at law or equity, whether or not such Section, subsection or clause expressly so states.

(b) LANDLORD'S RIGHT TO PERFORM. Landlord reserves the right, at any time and in its sole discretion, to add or remove buildings, structures or common areas; change the number and location of buildings and structures; change the name of the Shopping Center; change the address or designation of the Premises or the building of which the Premises are a part; provide subterranean or multiple level parking decks; convert common areas into leasable areas or construct temporary or permanent buildings or improvements in the common areas; change the location or character of or make alterations in or additions to the common areas and otherwise alter, repair or reconstruct the common areas or change the use thereof; and/or expand the size of the Shopping Center; provided, however, that no such changes shall deny reasonable ingress to or egress from the Premises.

(c) BROKER'S COMMISSION. Tenant represents and warrants to Landlord that there are and shall be no claims for brokerage commissions or finder's fees in connection with this Agreement, and each party agrees to indemnify the other and hold it harmless from all liabilities arising from any claim for brokerage commissions and finder's fees in connection with this Agreement. Such agreement shall survive the termination of this Agreement.

(d) RECORDING. Tenant shall not record this Agreement or any short form or memorandum of this Agreement. Tenant, upon the request of Landlord's ground lessor(s), mortgagee(s) or beneficiary(ies) under deed(s) of trust, shall execute and acknowledge a short form or memorandum of this Agreement for recording purposes.

(e) LIABILITY OF LANDLORD. If Landlord shall fail to perform any covenant, term or condition of this Agreement upon Landlord's part to be performed, and if as a consequence of such default Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levied thereon against the right, title and interest of Landlord in the Shopping Center and out of rents or other income from such property receivable by Landlord, or out of the consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title and interest in the Shopping Center subject, nevertheless to the rights of Landlord's mortgagee, and neither Landlord nor any of the partners comprising the partnership which may be the Landlord herein shall be liable for any deficiency.

(f) ACCORD AND SATISFACTION. Payment by Tenant or receipt by Landlord of a lesser amount than the Rental or other charges herein stipulated shall be deemed to be on account of the earliest Rental or other charges due from Tenant to Landlord. No endorsements or statement on any check or any letter accompanying any check or payment as Rental or other charges shall be deemed an accord and satisfaction, and Landlord shall accept such check or payment without prejudice to Landlord's

right to recover the balance of any and all Rental or other charges due from Tenant to Landlord or to pursue any other remedy provided in this Agreement or by law.

(g) GOVERNING LAW. This Agreement shall be governed by and construed in accordance with laws of the state where the Premises is situated.

(h) CERTAIN RULES OF CONSTRUCTION. Time is of the essence in Tenant's performance of this Agreement. Notwithstanding the fact that certain references elsewhere in this Agreement to acts required to be performed by Tenant hereunder, or to breaches or defaults of this Agreement by Tenant, omit to state that such acts shall be performed at Tenant's sole cost and expense, or omit to state that such breaches or defaults by Tenant are material, unless the context clearly implies to the contrary, each and every act to be performed or obligation to be fulfilled by Tenant pursuant to this Agreement shall be performed or fulfilled at Tenant's sole cost and expense, and all breaches or defaults by Tenant hereunder shall be deemed material.

(i) CONFIDENTIALITY. Any and all information contained in this Agreement or provided to or by Tenant and/or Landlord by reason of the covenants and conditions of this Agreement shall remain confidential between Landlord and Tenant and shall not be divulged to third parties; provided, however Landlord shall be permitted to divulge the contents of statements and reports derived and received in connection with the provisions of this Agreement in connection with any contemplated sales, transfers, assignments, encumbrances or financing arrangements of Landlord's interest in the Shopping Center or in connection with any administrative or judicial proceedings in which Landlord is involved where Landlord may be required to divulge such information.

(j) WAIVER OF TRIAL BY JURY. Landlord and Tenant desire and intend that any disputes arising between them with respect to or in connection with this Agreement be subject to expeditious resolution in a court trial without a jury. Therefore, Landlord and Tenant each hereby waive the right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding or other hearing brought by either Landlord against Tenant or Tenant against Landlord or any matter whatsoever arising out of, or in any way connected with, this Agreement, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

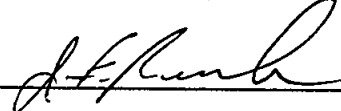
(k) REAL ESTATE INVESTMENT TRUST. If the ownership of the Shopping Center is in a Real Estate Investment Trust, then Landlord and Tenant agree that Minimum Annual Rental and all Additional Rent paid to Landlord under this Agreement (collectively referred to in this Section as "Rent") shall qualify as "rents from real property" within the meaning of Section 856(d) of the Internal Revenue Code of 1986, as amended (the "Code") and the U.S. Department of Treasury Regulations promulgated thereunder (the "Regulations"). Should the Code or the Regulations, or interpretations thereof by the Internal Revenue Service contained in Revenue Rulings, be changed so that any Rent no longer qualifies as "rent from real property" for the purposes of Section 856(d) of the Code and the Regulations promulgated thereunder, other than by reason of the application of Section 856(d)(2)(B) or 856(d)(5) of the Code or the Regulations relating thereto, such Rent shall be adjusted so that it will so qualify; provided, however, that any adjustments required pursuant to this Section shall be made so as to produce the equivalent (in economic terms) Rent as payable prior to such adjustment.

26. ENTIRE AGREEMENT.

All exhibits attached to this Agreement are hereby made a part of this Agreement, with full force and effect as if set forth herein. This Agreement supersedes all prior agreements between the parties and sets forth all the covenants, promises, agreements and conditions, and understandings between Landlord and Tenant concerning the Premises and there are no actual or implied covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are set forth herein and none thereof shall be used to interpret, construe, supplement or contradict this Agreement. Although the printed provisions of this Agreement were drawn by Landlord, the parties hereto agree that this circumstance alone shall not create any presumption, canon of construction or implication favoring the position of either Landlord or Tenant. The parties agree that any deletion of language from this Agreement prior to its mutual execution by Landlord and Tenant shall not be construed to have any particular meaning or to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse, obverse or opposite of the deleted language. No alteration, amendment, change or addition to this Agreement shall be binding upon Landlord or Tenant unless reduced to writing and signed by each party.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Agreement the day and year first above written.

CITY OF SAN DIEGO, CALIFORNIA

By: 
Print Name: James F. Barwick, CCIM
Director, Real Estate Assets
Its _____

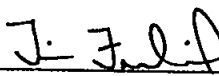
By:  5-6-08
Print Name: Tessa Brown
Its Deputy City Attorney
TENANT

HORTON PLAZA LP,
a Delaware limited partnership

By: Horton Plaza, GP, LLC,
a Delaware limited liability company,
its general partner

By: Westfield America Limited Partnership,
a Delaware limited partnership,
its sole member

By: Westfield U.S. Holdings, LLC,
a Delaware limited liability company,
its general partner

By: 
Tim Farahnik
Assistant Secretary

LANDLORD

CONVENTION
CENTER
(3 BLOCKS)
←

FIRST AVENUE

G STREET

NORDSTROM

3 Levels
144,495 sf

mervyn's

2 Levels
80,841 sf

WESTIN
HOTEL
452 ROOMS
(NOT A PART)

macys

4 Levels
129,505 sf

PARKING STRUCTURE ABOVE
7 LEVEL GARAGE

OPEN AIR
3 STORY MALL

(2350 PARKING STALLS)

PARKING
STRUCTURE
8 LEVEL GARAGE

THEATRE
ABOVE
PARKING

FOURTH AVENUE

GASLAMP
QUARTER

BROADWAY

EXHIBIT A1



HORTON PLAZA
ISSUE DATE: 01.30.02

A1

Westfield
Horton Plaza

325 HORTON PLAZA, SAN DIEGO, CALIFORNIA 92101-4481 (619) 239-5180

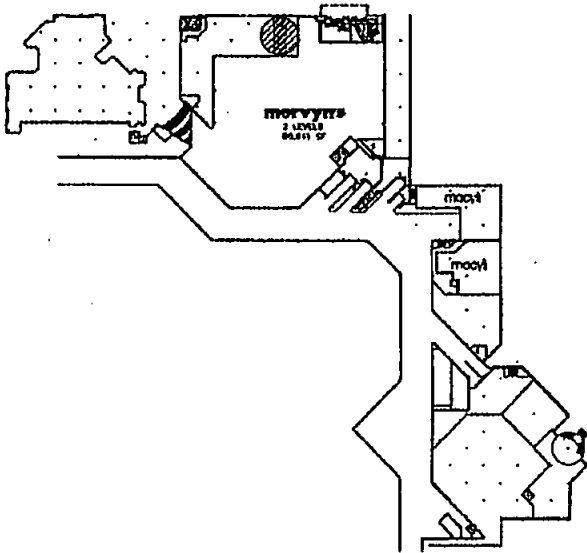
This drawing is a diagrammatic representation of the proposed development and shows only approximate conditions, locations, quantities, and dimensions. It is not intended to be used for construction or for any other purpose without the written consent of Westfield Corporation. The user assumes all responsibility for the accuracy and completeness of the information shown on this drawing.

N.T.S.
SCALE

Westfield Corporation, Inc.

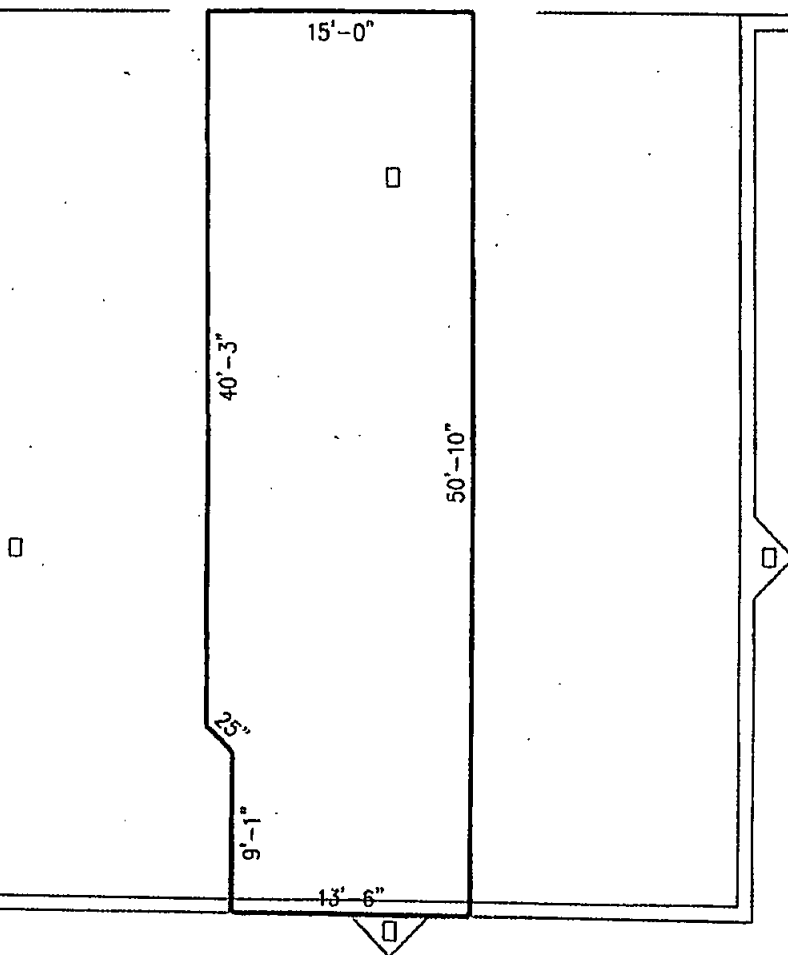
11601 WILSHIRE BLVD., 17TH FLOOR LOS ANGELES, CA. 90035-1748 (310) 478-4466

SITE PLAN



The document is diagrammatic and is intended only to show the demised premises of the project (hatched area.) It does not purport to show exact dimensions nor the final location of any mechanical, electrical, structural or architectural element. Further, the landlord reserves the right to add, eliminate or modify any such element, as

may be required from time to time. Tenant space dimensions, unless otherwise noted are to the centerlines of tenant partitions and column grids, face of exterior walls and to the outside face of service area partitions adjacent to the tenant space (vz. corridors, closets, and stairs.)



ORTON PLAZA

Level P1
22 SAN DIEGO POLICE DEPARTMENT
748 S.F.

EXHIBIT
A2

EXHIBIT B
DESIGN AND CONSTRUCTION OF THE
BUILDING AND THE PREMISES

This Exhibit B is part of the lease (the "Lease") between Landlord and Tenant.

I. DEFINITIONS

- A. The term "Landlord's Work" shall mean Landlord's total responsibilities (or any portion thereof) for the construction and improvement of the Shopping Center building ("building") and the Premises. The cost of Landlord's Work shall be borne as set forth under Article III and Article IV of this Exhibit B. Landlord's Work shall be of a design, type, size, location, elevation and quantity as may be selected by Landlord. Any item of work required to complete the Premises which is not hereinafter specifically made the responsibility of Landlord, shall be considered to be a part of Tenant's Work.
- B. The term "Tenant's Work" shall mean Tenant's total responsibilities (or any portion thereof) for the construction and improvement of the Premises. Tenant's Work shall be performed at Tenant's sole cost and expense. Tenant's Work shall include, but not be limited to, all work necessary and/or required to complete the Premises, except those items of work specifically set forth as Landlord's Work.
- C. The term "leasehold improvements" shall mean all of Tenant's work described and performed pursuant to this Exhibit B for the purpose of the Lease (except for removable trade fixtures, merchandise, and items of personal property).

II. GENERAL REQUIREMENTS AND PROVISIONS

- A. Tenant's Work shall be subject to Landlord's prior approval and shall be designed and constructed to comply with the requirements set forth in the most current edition of Landlord's criteria for the Shopping Center (the "Tenant Criteria Manual"). All details and information contained in the Tenant Criteria Manual, whether appearing on Tenant's plans or not, shall be considered a part of Tenant's plans and construction requirements. By this reference, the Tenant Criteria Manual is incorporated herein and made a part of this Lease. This Exhibit B and the Tenant Criteria Manual are hereinafter collectively referred to as "Tenant's Construction Requirements".
- B. The design and construction of Tenant's Work must comply with the following requirements:
 - 1. This Exhibit B;
 - 2. The Tenant Criteria Manual;
 - 3. Tenant's Final Working Drawings, as approved by Landlord;
 - 4. All applicable laws, ordinances, codes, regulations and the requirements of all jurisdictional authorities; and
 - 5. All applicable standards of the American Insurance Association, the National Electrical Code (latest edition), the American Society of Heating, Refrigeration and Air Conditioning Engineer's Guide (latest edition), Landlord's insurance carrier, the local building regulations and all local authorities having jurisdiction.

In the event of a conflict between any of the above-referenced items, the most stringent requirement shall govern each increment of Tenant's Work.
- C. Tenant's Work shall be performed in a first-class and workmanlike manner, and shall be in good and usable condition on the date of completion thereof. All materials used in Tenant's construction of the Premises and installations made by Tenant as a part of Tenant's Work shall be of new, commercial grade and first-class quality.
- D. After Tenant's initial construction of the Premises, any and all elective remodeling proposed by Tenant or any and all remodeling required of Tenant by Landlord under the applicable provisions of this Lease shall be performed in accordance with all requirements set forth in this Exhibit B and the most current edition of the Tenant Criteria Manual.

III. LANDLORD'S WORK AT LANDLORD'S EXPENSE

- A. Landlord's Work to be performed or provided at Landlord's sole cost and expense shall be limited to the following:
1. A basic building structure, with finished Common Areas, to Landlord specifications.
 2. Any building frontage above the storefront lines, and, where required in Landlord's sole determination, building frontage vertical neutral strips centered upon the lease lines of the Premises.
 3. Common use service corridors, located as required by code or as selected by Landlord, with such corridor walls finished on the corridor side only.
 4. All building finishes outside of the Premises which are not specifically made the responsibility of Tenant or another occupant of the Shopping Center.
 5. A main electrical service distribution system of a type and capacity set forth in the Tenant Criteria Manual and consisting of the following facilities:
 - a. A remote electrical service area outside the Premises;
 - b. Main electrical service distribution equipment within the remote electrical service area, from which Tenant's main electrical service will be available.
 6. A main telephone service terminal board located outside the Premises, from which Tenant's main telephone service shall be available.
 7. A domestic water service main for the Premises, from which Tenant's domestic water service shall be available.
 8. A sanitary sewer service main for the Premises, from which Tenant's sanitary sewer service shall be available.
 9. A fire sprinkler service main, or branch line, for the Premises, from which Tenant's fire sprinkler service shall be available.
- B. Landlord may provide additional items of construction or utility services for the Premises as a part of Landlord's Work. If applicable, such additional items of construction or utility services shall be provided in accordance with the provisions of the Tenant Criteria Manual.

IV. LANDLORD'S WORK AT TENANT'S EXPENSE

- A. The following items of Landlord's Work, if performed and/or provided, will be at Tenant's sole cost and expense and shall include but not necessarily be limited to the following:
1. The installation of metal studs, centered upon the lease lines of the Premises, as may be required to separate the Premises from adjacent tenant areas and/or Common Areas.
 2. The installation of a temporary construction barricade (including Landlord's graphics program) along the storefront lease line of the Premises.

Tenant shall reimburse Landlord for the cost of the above items of work and/or services. Tenant shall be billed at a rate equal to the actual cost of said construction plus a 15% administration fee. Such amount shall be due and payable by Tenant to Landlord upon receipt of Landlord's invoice therefor.

- B. Landlord may provide items of construction, work or services for the Premises as a part of Landlord's Work at Tenant's Expense. If applicable, such additional items of Landlord's Work at Tenant's Expense shall be provided in accordance with the provisions of the Tenant Criteria Manual.
- C. Tenant's plans and specifications must be designed to accommodate and provide access to any ducts, pipes, or conduits installed within the Premises that serve the Shopping Center or any part thereof, including, but not limited to, the premises of any occupant. If there is a conflict and relocation of any mechanical or electrical component is necessary, Tenant must submit to Landlord for approval, all plans, details and specifications required by Landlord for such relocation. If approved, the complete relocation shall be performed as directed by Landlord, and at Tenant's sole cost and expense.

V. TENANT'S WORK

A. Tenant's Work shall include, but not necessarily be limited to, the following:

1. Tenant shall perform any and all demolition work required to return the Premises to a shell condition. Such work shall include, but not be limited to, the removal of existing ceiling structures, finish materials, storefront, light fixtures, partitions (excluding demising partitions) and any plumbing, mechanical or electrical installations that will not be reused to serve the Premises. No existing plumbing, mechanical or electrical systems or system components shall be abandoned in place without Landlord's prior written approval. Tenant will be required to submit demolition plans for Landlord's review and approval. All items of existing construction which Tenant may wish to reuse, modify or abandon shall be subject to Landlord's prior written approval.
2. Tenant shall be responsible to provide, finish and level any concrete floor slab(s) within the Premises, as may be required to accept Tenant's finished floor material and eliminate any tripping hazards. Where floor slab elevations within the Premises are above or below Common Area floor elevations, Tenant shall provide the necessary transitions at storefront areas and rear service door areas to make the floor of the Premises even with any adjoining floor elevation.
3. Installation of a finished floor in all sales areas and all storage areas within the Premises visible to the public. Exposed finished concrete slab floors, vinyl tile or similar materials shall not be deemed to be a "finished floor" in any of the areas referenced above and therefore are not acceptable. As may be required by Landlord, in the area between Tenant's storefront leaseline to the store's closure line, Tenant shall match the Shopping Center finished floor material.
4. Installation of a finished ceiling throughout the Premises (or as may otherwise be approved by Landlord and all jurisdictional authorities).
5. Installation of fire rated partitioning and/or enclosures throughout the Premises as may be required by Landlord, all governing codes and all jurisdictional authorities.
6. Installation of interior partitioning throughout the Premises, as may be required to complete the Premises.
7. Installation of all construction and finish materials throughout the Premises and the storefront of the Premises which are not specifically made the responsibility of Landlord. Such material installations shall include, but not be limited to, all wall coverings, floor coverings, ceiling materials and Tenant's storefront construction.
8. Where required by any applicable codes, ordinances or jurisdictional authorities, Tenant shall provide a trash storage room of adequate capacity and fire rating; or, if such a room is not required, Tenant shall provide a designated area within the Premises which is adequate, in Landlord's judgment, to store Tenant's trash.
9. Tenant shall construct, where applicable, a recessed doorway to provide access from the Premises to a service area or egress corridor.
10. Installation of all interior doors and associated hardware as may be required to complete the Premises. Such doors and hardware shall comply with all required fire ratings, where applicable.
11. Installation of all furniture, fixtures, cabinetwork, shelving, personal property and equipment as may be required to complete the Premises.
12. Tenant shall ensure that all roof and slab penetrations made as a part of Tenant's Work are properly sealed and remain watertight to prevent possible damage. Failure to do so shall be at the sole risk and expense of Tenant in the event damage occurs.
13. Tenant must install a waterproof membrane to waterproof all floor/slab and slab penetrations in all lavatories, kitchens and similar water prone areas where water is used for food preparation or cleaning. Perimeter walls of such areas must be waterproofed to a point of no less than four inches (4") above the slab. In addition, Tenant must slope floor surfaces to prevent the passage of water, waste and other liquids out of such areas.
14. Installation of thermal and acoustical insulation within the Premises as required to comply with the following provisions:

- a. Installation of thermal insulation shall meet with the requirements of all governing codes and jurisdictional authorities, as may be required to complete the Premises for Tenant's occupancy.
 - b. Installation of acoustical insulation or sound dampening material shall meet with the requirements of all governing codes and Landlord's criteria. At a minimum, Tenant shall install sufficient acoustical insulation to prevent the transmission of any sound or noise in excess of 40 decibels (db) from the Premises. Tenant agrees that the 40 db sound level may be verified by Landlord through the use of a portable sound level meter, and in the event Landlord determines that Tenant is transmitting sound or noise outside the Premises in excess of the 40 db level, Tenant will immediately resolve this condition in a manner approved by Landlord.
15. Mezzanines will not be permitted within Tenant's Premises without Landlord's prior written approval. Where permitted, mezzanines shall be designed and installed to be independent of the building structure and shall comply with the requirements of all governing codes.
- B. Design, fabrication and installation of Tenant's sign(s) shall be performed by Tenant as a part of Tenant's Work and shall comply with the following provisions:
1. Tenant's sign(s) shall be subject to the prior approval of Landlord, and where applicable, the prior approval of all jurisdictional authorities, Department Stores, and any other party that Landlord may deem appropriate.
 2. Tenant shall submit all required plans, details and specifications necessary to obtain Landlord's approval for Tenant's sign(s), prior to fabrication and installation of the sign(s).
 3. Tenant's sign(s) shall be designed and constructed to comply with the standard tenant sign criteria established by Landlord for the Shopping Center.
- C. Installation and completion of utility services for the Premises and connection to the utility facilities provided by Landlord shall be performed by Tenant as a part of Tenant's Work in accordance with the requirements set forth in the Tenant Criteria Manual and the following provisions:
1. Tenant's main electrical service shall be of a type and capacity set forth in the Tenant Criteria Manual. If Tenant requires electrical service capacity in excess of that provided by Landlord, all costs of providing such increased service shall be paid by Tenant. Tenant shall:
 - a. Make application, where applicable, for metered electrical service to the Premises from the serving utility authority and comply with all utility authority requirements for such metered service, including the procurement and installation of all required meters, meter bases and current transformers, if applicable.
 - b. As may be required, provide all required electrical system installations within the remote electrical service area provided by Landlord in accordance with all applicable codes, ordinances and as specified in the Tenant Criteria Manual.
 - c. As may be required, provide all required conduit and conductor installations to complete Tenant's main electrical service to and within the Premises.
 - d. Provide all required electrical system installations within the Premises in accordance with all applicable codes, ordinances and as specified in the Tenant Criteria Manual.
 2. Tenant's telephone service will be available from the main terminal board located outside the Premises and provided by the serving telephone company. Tenant shall apply for telephone service and system wiring to and within the Premises as required by the serving telephone company and comply with all their requirements and regulations.
 3. Tenant shall install a fire/smoke detection system within the Premises. Such detection system shall include all required wiring, conduit, devices, equipment and controls, and shall comply with all system requirements set forth by Landlord and all jurisdictional authorities. Where applicable, Tenant shall use Fire-Life Safety contractor as specified by Landlord for certain portions of Tenant's Work.

4. Tenant shall make all required plumbing system installations to serve the Premises. Where provided, Tenant shall connect to, and extend from, the sanitary sewer and domestic water service mains provided by Landlord for the Premises. All such installations shall comply with the following provisions:
 - a. Tenant shall make application for metered water service as required.
 - b. Tenant shall procure and install a water meter and pressure regulating valve as required.
 - c. Tenant shall provide and install toilet facilities within the Premises in accordance with governing codes and Landlord's standard criteria. At a minimum, Tenant shall provide and install one (1) toilet room facility for the use of Tenant's employees.
 - d. Tenant shall install grease and hair traps as required to comply with all governing codes, and the requirements of the Landlord and all jurisdictional authorities. Wherever possible, such traps are to be located within the Premises.
 5. Tenant shall install a branch piped fire sprinkler system within the Premises. Tenant shall connect to Landlord's fire sprinkler supply main, or branch, and extend piping for branches, drops and heads as required to complete the fire sprinkler system within the Premises in accordance with Landlord's insurance carrier requirements, the requirements of the local fire marshal, all governing building codes, applicable NFPA standards and the Tenant Criteria Manual. Tenant sprinkler system shop drawings must be submitted for review and approval by Landlord's insurance carrier and all local authorities having jurisdiction prior to installation of the sprinkler system. Tenant shall provide Landlord with two (2) sets of approved sprinkler shop drawings bearing the seals of the local authorities having jurisdiction prior to installation of the sprinkler system. Final connection to Landlord's fire sprinkler supply main shall not be made until the entire system within the Premises is completed, pressure tested and ready for service.
 6. Tenant shall provide a heating, ventilating and air conditioning (HVAC) system to serve the Premises. The location of any equipment outside the Premises shall be approved in writing by Landlord. The design and installation of the HVAC system shall be in accordance with the provisions of the Tenant Criteria Manual.
 7. Tenant shall provide, as required, all exhaust air systems to serve the Premises. Said systems shall comply with the provisions of the Tenant Criteria Manual.
 8. As determined by Landlord at Landlord's sole discretion, tenants having odor producing operations must maintain a negative pressure within their Premises and shall install a forced draft ventilation system discharging to the atmosphere via the roof area. Tenant shall be responsible for proper diffusion of the exhaust in such a manner as to prevent these odors from entering adjacent air intakes. The total exhaust from the Premises must exceed maximum make up air provided for the Premises by an amount exceeding the minimum outside air requirements of the heated/air conditioned area for the Premises. Tenant shall provide said system, at Tenant's sole cost and expense, including, but not limited to, all necessary components, such as exhaust hood(s), make up and exhaust ducts, fire dampers and fire rated duct chases/shafts where required (construction as required by code and located in areas approved by Landlord), exhaust and make up fans, controls and grease drip pans, which shall be installed in a manner acceptable to Landlord.
- D. Tenant's Work shall include the procurement of all necessary permits, licenses, variances and utility services required to facilitate Tenant's construction and occupancy of the Premises, and the payment of any fees and taxes associated with such permits, licenses, variances and utility services, as may be required by public authorities and serving utility companies. Tenant shall make all necessary applications, provide all necessary information, pay all required monies and take all necessary actions to obtain such items from the applicable jurisdictional authorities and serving utility companies.
- E. Tenant shall not use any materials in connection with Tenant's Work which contain asbestos or other materials or substances that are hazardous or toxic. In the event that Tenant introduces or allows to be introduced in the Premises any asbestos containing material or other material or substance that is now or may hereafter be defined as hazardous or toxic or is otherwise regulated as a material or substance posing a potential health threat to persons, then prior to the expiration or earlier termination of this Lease or as required by applicable federal, state or local laws, rules or regulations, Tenant shall, at Tenant's sole cost and expense, remove any such materials or substances in accordance with all applicable federal, state or local laws, rules or regulations and in

the manner that Landlord may direct which may include the use of contractors and/or consultants specified by Landlord.

- F. All roof penetrations made as a part of Tenant's Work must conform to Landlord's standard criteria and shall be subject to Landlord's approval as to location and construction details. Roofing and weatherproofing of any installation or penetration by Tenant must be performed by Landlord's authorized roofing contractor, and Tenant shall pay all costs therefor directly to such roofing contractor.
- G. Tenant may be required to provide additional items of work or services as a part of Tenant's Work. If applicable, such work or services shall be provided in accordance with the provisions of the Tenant Criteria Manual.

VI. PLANS

- A. Landlord shall furnish to Tenant or, at Tenant's direction, to Tenant's agent, certain design and construction information pertinent to the Premises, including, but not limited to, one (1) copy of the Tenant Criteria Manual.
- B. Within fifteen (15) calendar days after the date of this Lease, or such other date as may be required by Landlord for Tenant to achieve its Rental Commencement Date, Tenant shall, at Tenant's sole cost and expense:
 - 1. Engage the services of a licensed architect and licensed mechanical, electrical and sprinkler system engineers ("Tenant's Architect and Engineers"), for the purpose of preparing Plans and Specifications for Tenant's Work.
 - 2. Notify Landlord of the identity of Tenant's Architect and Engineers.
- C. Tenant agrees that Tenant's Architect and Engineers may act as Tenant's agents for all Tenant design and plan development purposes and obligations of this Exhibit B. Tenant shall pay all fees of its Architect. ~~In addition, Tenant shall pay to Landlord upon receipt of a statement therefor for Plan Coordination and Administrative Services a fee based on the Floor Area of the Premises at the rate of seventy-five cents (\$0.75) per square foot of Floor Area of the Premises.~~
- D. Within thirty (30) calendar days, after the date of this Lease, or such other date as may be required by Landlord for Tenant to achieve its Rental Commencement Date, Tenant shall, at Tenant's sole cost and expense, cause Tenant's Architect and Engineers to coordinate, prepare and deliver to Landlord for Landlord's approval, the following:
 - 1. One (1) sample board of Tenant's final storefront and interior materials and colors;
 - 2. One (1) colored rendering or 8" x 10" colored photograph of Tenant's final storefront design; and
 - 3. One (1) complete sepia set and one (1) blue line print of preliminary drawings for Tenant's Work, containing all applicable architectural, structural, electrical, mechanical (HVAC and plumbing) and sprinkler system details and specifications, in accordance with the Tenant Criteria Manual. To evidence Tenant's approval, such preliminary drawings shall have been initialed by Tenant.
- E. Tenant covenants and agrees that the preliminary drawings have been prepared in strict accordance with Tenant's Construction Requirements. Landlord shall promptly review the preliminary drawings and notify Tenant's Architect of the matters, if any, in which the preliminary drawings fail to meet with Landlord's approval. Within ten (10) calendar days after receipt of any such notice from Landlord, Tenant or Tenant's Architect shall cause the preliminary drawings to be revised in such manner as is required to obtain Landlord's approval and shall submit the revised preliminary drawings for Landlord's approval. Upon Landlord's approval of the preliminary drawings, Landlord shall cause one (1) set to be initialed on Landlord's behalf, thereby evidencing Landlord's approval. Landlord shall return such set to Tenant or Tenant's Architect. The preliminary drawings bearing Landlord's approval shall become and are hereinafter referred to as the "Preliminary Plans".
- F. Within fifteen (15) calendar days after the date of Landlord's approval of the Preliminary Plans, or such other date as may be required by Landlord for Tenant to achieve its Rental Commencement Date, Tenant shall, at Tenant's sole cost and expense, cause Tenant's Architect and Engineers to coordinate, prepare and deliver to Landlord, in one package, one (1) complete sepia set and one (1) set of blue line prints of all applicable final architectural, structural, mechanical (HVAC and plumbing), electrical and sprinkler system working drawings and specifications. To evidence Tenant's approval, such working drawings and specifications shall have been initialed by Tenant.

- G. Tenant covenants and agrees that the final working drawings set forth in Paragraph F above have been prepared in conformity to the Preliminary Plans and in strict accordance with Tenant's Construction Requirements. Landlord shall promptly review the final working drawings and notify Tenant's Architect of the matters, if any, in which such final working drawings and specifications fail to conform to the Preliminary Plans and Tenant's Construction Requirements. Within ten (10) calendar days after receipt of any such notice from Landlord, Tenant or Tenant's Architect shall cause the final working drawings and specifications to be revised in such manner as is required to obtain Landlord's approval and shall submit one (1) complete sepia set and one (1) set of blue line prints of the revised final working drawings and specifications for Landlord's approval. Upon Landlord's determination that the final working drawings and specifications conform to the Preliminary Plans and Tenant's Construction Requirements, Landlord shall cause one (1) set of the final working drawings and specifications, or the revised final working drawings and specifications, as the case may be, to be initialed on Landlord's behalf, thereby evidencing Landlord's approval thereof. Landlord shall return such set to Tenant or Tenant's Architect. The final working drawings and specifications bearing Landlord's final approval shall become and are hereinafter referred to as the "Final Working Drawings". Tenant shall commence Tenant's Work promptly after Landlord's approval of the Final Working Drawings, but not prior to the date that the Premises are in the condition for delivery by Landlord.
- H. After Landlord's approval of the Final Working Drawings, no changes shall be made in the Final Working Drawings except with the prior written approval of Landlord. However, in the course of construction Landlord may make such changes in, on or about the building or the Premises as may be required as a result of "as built" conditions. During all phases of plan development and prior to bidding plans or commencing construction, Tenant or Tenant's Architect and Engineers shall make a physical on-site inspection of the Premises to verify the "as built" location, conditions and physical dimensions of the Premises and conformance of the Final Working Drawings. Failure to do so shall be at the sole risk and expense of Tenant. Landlord's review and approval of Tenant's plans, working drawings and specifications is for compliance with Landlord's criteria only, and this approval does not relieve Tenant of responsibility for compliance with the Lease, field verification of dimensions and existing conditions, discrepancies between Final Working Drawings and "as built" conditions of the Premises, coordination with other trades, job conditions and compliance with all governing codes and regulations applicable to Tenant's Work. No responsibility for proper engineering, safety, design of facilities or compliance with all applicable governing codes and regulations is implied or inferred on the part of Landlord by any such approval.

VII. GENERAL BUILDING SPECIFICATIONS

- A. Tenant shall engage the services of a licensed general contractor ("Tenant's General Contractor") for the purpose of constructing the Premises and performing related services as required to complete Tenant's Work. Tenant's General Contractor shall be bonded and insured as required under the provisions of this Lease. By this reference, Tenant agrees not to act as its own general contractor and further agrees that Tenant's General Contractor can act as Tenant's agent for all Tenant construction purposes and obligations of this Exhibit B.
- B. Each contractor and subcontractor participating in the construction of Tenant's Work shall be duly licensed, and each contract and subcontract shall contain the guaranty of the contractor or subcontractor that the portion of Tenant's Work covered thereby will be free from any and all defects in workmanship and materials for the period of time which customarily applies in good contracting practices, but in no event less than one (1) year after the completion of Tenant's Work. The aforesaid guaranty shall include the obligations to repair or replace in a first-class and workmanlike manner, and without any additional charge, any and all of Tenant's Work done or furnished by said contractor or subcontractor, or by any of his subcontractors, employees or agents, which shall be or become defective because of faulty materials or workmanship within the period covered by such guaranty (and of which notice is given to such contractor or subcontractor within such period); and the correction, as aforesaid, of any such matter shall include, without any additional charge therefor, all expenses and damages in connection with the removal, replacement or repair in a first-class manner of any other part of Tenant's Work which may be damaged or disturbed thereby. All warranties or guarantees as to materials or workmanship on or with respect to Tenant's Work shall be written so that they shall inure to the benefit of Landlord and Tenant as their respective interests may appear and can be directly enforced by either, and Tenant shall give to Landlord any assignments or other assurance necessary to effectuate the same.
- C. Tenant shall submit to Landlord at least five (5) days prior to the commencement of construction the following information:
1. The name and address of the General Contractor Tenant intends to engage for the construction of the Premises, including names and telephone numbers of on-site and off-site representatives.
 2. The names and addresses of Tenant's mechanical, electrical and plumbing subcontractors, including names and telephone numbers of on-site and off-site representatives.

3. A schedule setting forth key dates relating to Tenant's construction.
4. Copies of insurance certificates required by Article IX below.
5. A copy of Tenant's written contract with its General Contractor(s) and an itemized statement of estimated construction costs, including architectural, engineering and contractor's fees.

D. The following provisions with respect to construction procedures and materials shall apply to Tenant's Work at Tenant's expense:

1. Tenant and Tenant's General Contractor participating in Tenant's Work shall:
 - a. Prior to the commencement of Tenant's construction, submit one (1) full set of Final Working Drawings, endorsed with the approval stamp and permit number of the local municipality's building department, local fire marshal or other governmental entity having jurisdiction over Tenant's construction or other evidence that the Tenant has received building department approval, to Landlord's tenant construction coordinator.
 - b. Provide a full-time supervisor or representative, representing either Tenant's General Contractor or Tenant, who will be present at all times when work is being performed in the Premises.
 - c. Make appropriate arrangements as directed by Landlord for temporary utility connections if available within the Shopping Center. Landlord does not represent that any temporary utility services will be available for Tenant's use. Tenant must verify the availability of such services with Landlord prior to the commencement of Tenant's Work. If temporary services are not available, Tenant must install permanent utility services for the Premises immediately upon the commencement of Tenant's Work. If temporary services are available, Tenant shall pay the cost of all connections, proper maintenance and the removal of such temporary services. Tenant shall pay all utility charges incurred by Tenant's General Contractor and any subcontractor.
 - d. Store all building materials, tools and equipment within the Premises or such other locations as may be specifically designated by Landlord's tenant construction coordinator. In no event shall any material be stored in the Common Areas or service corridors.
 - e. During Tenant's construction of the Premises, Tenant shall store all trash, debris and rubbish as directed by Landlord and upon completion of Tenant's Work, shall remove all temporary structures, surplus materials, debris and rubbish of whatever kind remaining in the Premises, the building or the Shopping Center. No debris shall be deposited in the Common Areas except as directed by Landlord.
 - f. Properly protect Tenant's Work with lights, guard rails and barricades and secure all parts of Tenant's Work against accident, storm and any other hazard. Tenant's Work must be performed within the Premises, behind a temporary construction barricade. The design and construction of any temporary construction barricade shall comply with the Landlord's standard criteria for such installations and shall be subject to Landlord's approval prior to installation.
2. Tenant's Work shall be coordinated with all work being performed or to be performed by Landlord and other occupants of the Shopping Center to the extent that Tenant's Work will not interfere with or delay the completion of any other work. No contractor or subcontractors participating in Tenant's Work shall at any time damage, injure, interfere with or delay the completion of the building or any other construction within the Shopping Center, and each of them shall comply with all procedures and regulations prescribed by Landlord for the integration of Tenant's Work with the work to be performed in connection with the building and all other construction within the Shopping Center.

Recognizing that Landlord shall be employing such contractors, Tenant agrees to engage the services of contractors whose employees employed at the job site are members of, or represented by, organizations for the purpose of collective bargaining, to the end that there shall be no labor dispute which would interfere with the operation, construction and completion of the Shopping Center or any other work, and Tenant further agrees to

enforce the same condition upon all contractors engaged by Tenant with respect to their subcontractors which may be engaged by any such contractors.

Tenant will comply with the instructions of Landlord or Landlord's General Contractor for the purpose of avoiding, ending and/or minimizing labor disputes. Upon notice from Landlord or Landlord's General Contractor, Tenant will take such action, including the prosecution of legal proceedings in court or with agencies such as the National Labor Relations Board, as Landlord or Landlord's General Contractor shall deem appropriate.

- E. If required by Landlord, prior to Tenant's commencement of construction, Tenant shall obtain or cause Tenant's General Contractor to obtain payment and performance bonds covering the faithful performance of the contract for the construction of Tenant's Work and the payment of all obligations arising thereunder. Such bonds shall be for the mutual benefit of both Landlord and Tenant, and shall be issued in the names of both Landlord and Tenant as beneficiaries and obligees. Tenant shall submit a copy of all such bonds, or other evidence satisfactory to Landlord that such bonds have been issued, to:

Westfield, LLC
11601 Wilshire Boulevard, 12th Floor
Los Angeles, CA 90025
Attention: Tenant Coordination

- F. During construction Tenant's General Contractor shall be required to comply with the following:

1. The work of Tenant's General Contractor and subcontractors shall be subject to inspection by Landlord and its supervisory personnel. Any defects and/or deviations from the Final Working Drawings shall be rectified by Tenant's General Contractor and/or subcontractors at no expense to Landlord.
2. Unless otherwise approved by Landlord, Tenant shall cause its General Contractor and/or subcontractors to limit their access to the Premises via the rear entrances and no access will be allowed from or to the Shopping Center Common Areas.
3. Repair of damage caused to Landlord's Work by Tenant's General Contractor or subcontractors shall be at Tenant's expense. Landlord will carry out necessary repairs without notice and Tenant shall pay for the cost of such repairs upon demand.
4. Tenant's General Contractor will be required to abide by certain Construction Rules and Regulations, copies of which will be provided prior to the commencement of Tenant's Work, and to make certain deposits with and/or payments to Landlord. Notwithstanding such requirements, Tenant shall indemnify and protect Landlord with respect to any breach of such Construction Rules and Regulations by Tenant's General Contractor or the failure of Tenant's General Contractor to make such deposits or payments.

- G. Landlord shall have the right to perform, on behalf of and for the account of Tenant, which shall be subject to reimbursement of the cost thereof by Tenant, any and all of Tenant's Work which Landlord determines in its sole discretion should be performed immediately and on an emergency basis for the best interest of the project, or to achieve the Rental Commencement Date, including without limitation work which pertains to structural components, mechanical, sprinkler and general utility systems, roofing and removal of unduly accumulated construction material and debris. The cost of such Tenant's Work carried out by Landlord on behalf of Tenant shall be the cost paid by Landlord and based on the cost of similar work and to include any loading for overtime or any other loading as a result of carrying out emergency work.

Whenever Landlord shall have elected to perform any or all of Tenant's Work, whether pursuant to this Paragraph G or any other provision of the Lease, Landlord may revoke such election by written notice to Tenant. In such event, full responsibility for such work shall revert to Tenant.

VIII. COMPLETION OF CONSTRUCTION

- A. Tenant shall not be permitted to, and shall not, open for business in the Premises until the "Opening Requirements" set forth below are met. In order that Landlord shall have assurance that the Premises shall be in a good and safe condition, in compliance with all laws, that adequate insurance has been obtained, that the Premises has been constructed in accordance with the Final Working Drawings and that Tenant's obligations under the Lease have been performed, the following requirements (the "Opening Requirements") shall be satisfied:
1. At least five (5) days prior to the opening of the Premises for business, Tenant shall deliver to Landlord (a) insurance certificates; (b) mechanics' or construction lien waivers as the case may be, as required by the Lease including this Exhibit B; (c) a permanent certificate of occupancy or its equivalent; (d) certificate by Tenant's Architect certifying

that the construction of the Premises has been completed in accordance with all plans and specifications approved by Landlord; and (e) all evidence typically required in the jurisdiction where the Shopping Center is located to provide evidence of compliance with all applicable building and fire codes and all other government requirements.

2. Tenant shall give Landlord at least five (5) days' notice of the date of completion of Tenant's Work in the Premises, and Landlord shall have inspected the Premises to determine whether Tenant's Work is complete in accordance with the requirements of the Lease and Landlord shall have approved all such work;
3. Tenant shall pay Landlord all Minimum Annual Rental and Additional Rent which has then accrued under the Lease.

No approval by Landlord shall make Landlord responsible for the condition of the Premises or constitute a representation by Landlord of compliance with any applicable requirements or constitute a waiver of any rights and remedies that Landlord may have under this Lease or at law or in equity. If Tenant shall open the Premises in violation of the requirements of this Article VIII, such action by Tenant shall constitute a material default under this Lease. On the date Tenant opens for business in the Premises, Tenant shall be deemed to have accepted the Premises and agrees that it is in the condition, with respect to any of Landlord's obligations, which is required under this Lease. The Opening Requirements shall apply not only to Tenant's initial construction, but to any subsequent opening after any temporary closure, casualty, damage or permitted alterations.

B. Upon completion of Tenant's Work, Tenant shall deliver to Landlord the following:

1. Tenant's final notarized original affidavit that Tenant's Work has been completed to Tenant's satisfaction and in strict accordance with the Final Working Drawings and Tenant's Construction Requirements, which affidavit may be relied on by Landlord. Any deliberate or negligent misstatement, or any false statement made by Tenant therein, shall constitute a breach of this Lease.
2. The final notarized original affidavit of Tenant's General Contractor performing Tenant's Work stating that Tenant's Work has been completed in accordance with the Final Working Drawings and that all subcontractors, laborers and material suppliers engaged in furnishing materials or rendering services for Tenant's Work have been paid in full.
3. A final notarized original, unconditional waiver of lien with respect to the Premises executed by Tenant's General Contractor and, if requested by Landlord, final notarized original, unconditional waiver of liens executed by each subcontractor, laborer and material supplier engaged in or supplying materials or services for Tenant's Work. All waiver of lien documents must, in every circumstance, be totally unconditional releases.

IX. INSURANCE

A. Tenant shall secure, pay for and maintain, or cause Tenant's General Contractor to secure, pay for and maintain, for all periods of construction and fixturing work within the Premises, all of the insurance policies required in the amounts as set forth herein below. Tenant shall not permit its General Contractor to commence any work until all required insurance has been obtained and certificates evidencing such insurance have been delivered to Landlord.

B. Tenant's General Contractor's and Subcontractor's Required Minimum Coverages and Limits to Liability.

1. Worker's Compensation, as required by State law, and including Employer's Liability Insurance with a limit of not less than Two Million Dollars (\$2,000,000.00) each accident, Two Million Dollars (\$2,000,000.00) each employee by disease, Two Million Dollars (\$2,000,000.00) policy aggregate by disease, and any insurance required by any Employee Benefit Acts or other statutes applicable where the work is to be performed as will protect Tenant's General Contractor and subcontractors from any and all liability under the aforementioned acts.
2. Commercial General Liability Insurance (including Contractor's Protective Liability) in which the limits shall be not less than Three Million Dollars (\$3,000,000.00) per occurrence combined single limit, bodily injury and property damage. Such insurance will provide for explosion, collapse and underground coverage. Such insurance shall insure Tenant's General Contractor against any and all claims for bodily injury, including death resulting therefrom and damage to or destruction of property of any kind whatsoever and to whomever belonging and arising from its operations under the contract whether such operations are performed by Tenant's General Contractor, subcontractors,

or any of their subcontractors, or by anyone directly or indirectly employed by any of them.

3. Comprehensive Automobile Liability Insurance, including the ownership, maintenance and operation of any automotive equipment, owned, hired and non-owned, in the minimum amount of Three Million Dollars (\$3,000,000.00) combined single limit, bodily injury and property damage. Such insurance shall insure Tenant's General Contractor and all subcontractors against any and all claims for bodily injury, including death resulting therefrom and damage to the property of others caused by accident and arising from its operations under the Contract and whether such operations are performed by the General Contractor, subcontractors or by anyone directly or indirectly employed by any of them.

- C. Tenant's Protective Liability Insurance - Tenant shall provide Owner's Protective Liability Insurance insuring Tenant against any and all liability to third parties for damages because of bodily injury (or death resulting therefrom) and property damage liability of others or a combination thereof which may arise from work in connection with the Premises, and any other liability for damages which Tenant's General Contractor and/or subcontractors are required to insure against under any provisions herein. Said insurance shall provide policy limits which shall provide, at a minimum, coverage of Three Million Dollars (\$3,000,000.00) combined single limit, bodily injury and property damage.
- D. Tenant's Builder's Risk Insurance - Completed Value Builders' Risk Material Damage Insurance policy covering the work to be performed for Tenant in the Premises as it relates to the building within which the Premises is located. The policy shall include as insureds Tenant, its General Contractor, all subcontractors and Landlord, as their interests may appear. The amount of insurance to be provided shall be at one hundred percent (100%) of the replacement cost.
- E. All such insurance policies required under this Exhibit, except as noted above, shall include Landlord, its Architect, its Consultant, its General Contractor, subcontractors, and parties set forth in the Lease and any other parties designated by Landlord from time to time as additional insured entities, except the Worker's Compensation Insurance; further provided, said Worker's Compensation Insurance shall contain an endorsement waiving all rights of subrogation against Landlord, its Architect, its Consultant, its General Contractor and subcontractors.
- F. Certificates of insurance shall provide that no reduction in the amounts or limits of liability or cancellation of such insurance coverage shall be undertaken without thirty (30) days prior written notice to Landlord.
- G. The insurance required under this Exhibit shall be in addition to the insurance required to be procured by Tenant pursuant to the Lease.

EXHIBIT C

ADDITIONAL INSURED ENTITIES

WESTFIELD HORTON PLAZA

Horton Plaza LP, Horton Plaza GP, LLC, Westfield America Limited Partnership, Westfield U.S. Holdings, LLC, and any and all of their respective parent organizations, partners, subsidiaries and affiliates together with any mortgagee, as their interests may appear.

EXHIBIT D

AIR CONDITIONING SYSTEM

This Exhibit D is hereby attached to and made a part of the Lease between Landlord and Tenant.

Air Conditioning. The "Air Conditioning System" (for the purposes of this Exhibit defined as the air conditioning system serving the Premises either exclusively or in common with other tenants of the Shopping Center, including all pipes, ducts, machinery, fans, coolers, chillers, condensers, and other equipment used in connection therewith) serving the Premises is either an individual unit serving the Premises exclusively or a centralized system serving the Premises on a nonexclusive basis.

Air Conditioning Charge. If the Air Conditioning System exclusively serves the Premises, Tenant shall have no separate Air Conditioning Charge, but Tenant shall pay all costs of utilities used to operate the Air Conditioning System as part of any of the Utility Charges payable to Landlord pursuant to Article XII. If the Air Conditioning System is a centralized system serving the Premises on a nonexclusive basis, Tenant shall pay the Air Conditioning Charge in monthly installments as Additional Rent.

Calculation of Air Conditioning Charge. The "Air Conditioning Charge" shall be Tenant's share of the total expense associated with the operation and maintenance of the non-exclusive portions of the Air Conditioning System (including amortization of capital items) for any given calendar year and an amount for accounting, bookkeeping and collection of the Air Conditioning Charge equal to fifteen percent (15%) of the total of Tenant's Air Conditioning Charge with respect to all such expenses. Initially, such share shall be equal to the proportion that Tenant's Engineered Value bears to the total of the Engineered Values of all tenants utilizing the Air Conditioning System during each calendar month of the calendar year and averaged for that calendar year. Within thirty (30) days after Tenant opens the Premises for business, Tenant shall submit to Landlord a certified air balance report stating the amount of cubic feet of air per minute, (hereinafter "CFM"), actually being used by Tenant in the Premises. If Tenant fails to submit such certified air balance report to Landlord within said thirty (30) day period, Landlord may obtain such a certified air balance report at Tenant's expense, which air balance report as completed by Landlord shall be binding and conclusive. If the Air Conditioning System supplies chilled water or other fluid refrigerant to the Premises, Landlord shall measure the gallons of water or fluid per minute, (hereinafter "GPM"), actually being used by Tenant in the Premises on the basis of the air balance report. Landlord may, at any time, install meters to verify the amount of CFM/GPM used by Tenant. After receipt and verification of the air balance report and/or the metered CFM or GPM readings, Landlord shall use such actual CFM or GPM in the foregoing formula, in lieu of Tenant's Engineered Value.

Tenant's Engineered Value. "Engineered Value" means the total CFM, or the total GPM, which Tenant has calculated under Exhibit D-1 as necessary for supply to the Premises, or which have been calculated as necessary for supply to other leasable premises in the Shopping Center. Tenant shall not at any time cause an increase in the Engineered Value without the prior written approval of Landlord. Upon Landlord's request, Tenant shall submit to Landlord the current calculations requested under Exhibit D-1.

**EXHIBIT D-1
MECHANICAL/ELECTRICAL SCHEDULE**

1. Tenant Name _____ Space No. _____
2. Tenant Drawing Nos. _____ Mechanical _____ Electrical _____
3. Floor Area (Sq. Ft.) _____
4. Electrical Load Breakdown
 - a. Lighting _____ Watts
 - b. Sign(s) _____ Watts
 - c. Appliances _____ Watts
 - d. Receptacles _____ Watts
 - e. Equipment _____ Watts
 - f. Electric Water Heater _____ Watts
 - g. Electric Heater _____ Watts
 - h. Miscellaneous _____ Watts
5. Total Connected Electrical Load _____ Watts: _____ Watts/Sq.Ft. of Floor
6. Tenant Calculated Design Heating Load _____ BTUH
7. Tenant Calculated Design Cooling Load _____ BTUH
8. Tenant Calculated Design Air Supply _____ CFM (per Tenant plans)
9. Landlord Allotted Air Supply _____ CFM
10. Additional Air Supply Required _____ CFM
11. Variable Volume Air Terminal Units
 - a. Air CFM Max _____
 - b. Inlet/Outlet Sizes _____
12. Chilled Water Air Handler Units
 - a. Max GPM _____
13. Toilet Exhaust _____ CFM
14. Special Exhaust/Make-up System(s) Data
(Use, CFM, HP, Method of Operation, Etc.)

15. Air Conditioning Unit Data (if Tenant is installing its own system.)
 - a. Make _____ b. Model # _____ c. CFM _____