

LEASE

ArtsTix
TRADE NAME

SAN DIEGO PERFORMING ARTS LEAGUE, a 501(C)(3) non-profit corporation
TENANT

[FSU 4]
KIOSK NUMBER

Westfield®

**HORTON PLAZA
URBAN PARK**

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EXHIBITS - See Data Sheet

HORTON PLAZA URBAN PARK

City of San Diego
County of San Diego
State of California

LEASE

THIS LEASE ("Lease") is made as of this 29 day of March, 2016, by and between **CITY OF SAN DIEGO**, a California municipal corporation ("City"), and the City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former body, corporate and politic ("Successor Agency"), hereinafter collectively referred to as "Owner", by and through their agent **HORTON PLAZA SERVICES, INC.**, a Delaware corporation, whose address is: 2049 Century Park East, 41st Floor, Los Angeles, California 90067 ("Landlord"), and **SAN DIEGO PERFORMING ARTS LEAGUE**, a 501(C)(3) non-profit corporation doing business as ArtsTix ("ArtsTix"), whose address is: 28 Horton Plaza, San Diego, CA 92101 ("Tenant").

Landlord, in consideration of the rent to be paid and the covenants to be performed by Tenant, does hereby, subject to the provisions of this Lease, demise and lease unto Tenant, and Tenant hereby rents and hires from Landlord, those certain premises identified on **Exhibit A-2 through Exhibit A-5** attached hereto and made a part hereof ("the Premises") which is in and part of the development commonly known as the "**HORTON PLAZA URBAN PARK**," a general site plan of which is shown on **Exhibit A-1** attached hereto and made a part hereof. Said site plan shows, among other things, the principal improvements which comprise or will comprise the Park/Plaza Development. The term "Park/Plaza Development", as defined in Lease Section 1.01 (a), shall include the real property shown on **Exhibit A-1**.

The Premises is described as follows:

Space No.	Level	Description	Approximate Floor Area
FSU 4	Site	Sales office for event tickets	165 square feet

RECITALS

A. City and the Successor Agency hold fee title to that certain real property consisting of a public park located in the City of San Diego, State of California and more particularly described in **Exhibit A-1** (referred to in this document as the "Horton Plaza Urban Park Property" but the official name is subject to change pending City Council consideration and approval).

B. On February 3, 2014, Horton Plaza Services, Inc., a Delaware corporation, City and Successor Agency entered into a Park/Plaza Property Event Programming and Use Agreement ("Programming Agreement") which authorizes Landlord to market to, select and negotiate with all potential lessees and enter into leases for all retail uses on behalf of Owner. The Successor Agency's agent for facilitating the Horton Plaza Urban Park is Civic San Diego, a nonprofit public benefit corporation ("Civic SD"). Pursuant to the Cooperation Agreement dated January 2011 entered into by and between City and Successor Agency, it was agreed that upon the completion of the Plaza Improvements, Successor Agency shall convey to and City shall accept what is referred to as the "Sales Parcel", which conveyance will include the Premises.

C. The Programming Agreement also sets forth objectives and policies related to event programming of the Park Property. To the extent that the terms of the Programming Agreement conflict with any of the City of San Diego's policies or regulations, the terms of the Programming Agreement shall apply.

DATA SHEET

The following references furnish data to be incorporated in the specified sections of this Lease and shall be construed as if set forth in this Lease:

(1) **Section 1.02: Term:**

Latest Rental Commencement Date: See Section 1.02 of the Lease

Expiration Date of Term: The last day of the 120th full calendar month following the Rental Commencement Date

(2) **Section 2.01: Minimum Annual Rental:**

Rental Commencement Date through the last day of the twelfth (12th) full month following the Rental Commencement Date: \$3,450.00;

On the first day of the thirteenth (13th) full month following the Rental Commencement Date, the Minimum Annual Rental shall be adjusted to reflect the percentage increase in the Consumer Price Index ("CPI") based on the average of the indices for the fourth quarter of the calendar year prior to each adjustment.

Index is defined in Section 27.23 of this Lease.

In no event shall the adjusted Minimum Annual Rental as established by the CPI be less than the Minimum Annual Rental in existence immediately prior to the adjustment dates. The failure of Landlord to deliver timely notice of any Minimum Annual Rental adjustment shall not constitute a waiver by Landlord of its rights hereunder.

(a) CPI Adjustment Computation. The Minimum Annual Rental for each one (1) year period shall be calculated as follows:

The "adjustment multiplier" shall be established by dividing the "current index" by the "base index" as defined below.

The "base index" denominator for the calculation is a fixed number representing the three (3) month average of index figures published by the CPI using the three calendar months prior to January 1 of the preceding year.

The "current index" numerator for the calculation is a variable number that shall be the three (3) month average of index figures published by the CPI using the three calendar months prior to January 1 of the current year.

The "base figure" for purposes of calculating the initial annual adjustment shall be a fixed amount of Three Thousand Four Hundred Fifty Dollars (\$3,450).

Example Calculation for Calendar Year

Current Index (Fourth Quarter 2015) 245.627 ÷ Base Index (Fourth Quarter 2014) 241.856 = 1.0156 (Adjustment Multiplier)

The "base figure" is then multiplied by the adjustment multiplier to determine the new Minimum Annual Rental. Using the foregoing example, the adjusted Minimum Annual Rental is calculated as follows:

\$3,450.00	(Base Figure)
x 1.0156	(Adjustment Multiplier)
\$3,504.00	(Adjusted)

(b) Maximum Increase. Notwithstanding the foregoing, the adjustments shall not increase the Minimum Annual Rent in excess of six percent (6%) per calendar year.

(3) **Section 2.02: Intentionally Deleted**

(4) **Section 2.05: Trash Removal Charge:** Paid Direct

(5) **Section 2.06: Additional Rent:** shall pay a one-time processing fee in the amount of Nine Hundred Sixty Dollars (\$960.00) at time of the execution of this Lease by Tenant.

(6) **Address for Rental Payments:**

Payee: Horton Plaza LLC

Address: P.O. Box 55708, Los Angeles, California 90074-5708

(7) **Section 3.02: Reports By Tenant:** Tenant's annual financial report should be submitted electronically to: sales_horton@us.westfield.com

(8) **Section 7.01: Permitted Use:** Sale of full-price and discounted tickets to performing arts events throughout San Diego at over 150 different performing arts organizations; sales of tickets to visitor attractions such as San Diego Zoo, Balboa Park Museums, harbor cruises, Old Town Trolley Tours, Sea World, the USS Midway; and provide visitor services including answering questions, disseminating printed materials, providing suggestions and directional information to downtown visitors (the "Permitted Use"). The Premises shall be used solely for the use stated above and for no other use or purpose.

(9) **Section 16.01: Trade Name:** ArtsTix_____.

(10) **Section 16.02: Promotional Program:** _____ zero _____ psf per annum.

Initial Assessment: _____ None _____.

(11) **Section 26.01: Section 26.01: Security Deposit:** _____ \$1,500. _____.

(12) **Section 27.05: Legal Notice Address:**

Landlord:

Horton Plaza Services, Inc.
2049 Century Park East
41st Floor
Los Angeles, California 90067
Attention: Legal Department

Owner:

c/o City of San Diego
1200 Third Street, Suite 1700
San Diego, CA 92101
Attn: Director, Real Estate Assets Dept.

With a copy to:

Civic San Diego
401 B Street, Suite 400
San Diego, CA 92101-4298

Tenant: To the Premises and:

San Diego Performing Arts League
dba: ArtsTix
28 Horton Plaza
San Diego, California 92101

Billing Address:

San Diego Performing Arts League
dba: ArtsTix
28 Horton Plaza
San Diego, California 92101

(13) **Guarantor:** San Diego Performing Arts League, whose address is: 28 Horton Plaza, San Diego 92101, in accordance with the provisions of the Guaranty attached hereto.

ATTACHMENTS AND EXHIBITS

The following exhibits, addenda and guaranty are attached hereto, and such attachments and exhibits, as well as all drawings and documents prepared pursuant thereto, shall be deemed to be a part hereof:

- EXHIBIT "A-1":.....SITE PLAN
- EXHIBIT "A-2":.....FLOOR PLAN
- EXHIBIT "A-3":.....LEGAL DESCRIPTION
- EXHIBIT "A-4":.....ACCESS TO PARK/PLAZA DEVELOPMENT AND PREMISES
- EXHIBIT "A-5":.....TRASH AREA
- EXHIBIT "A-6":.....INTENTIONALLY DELETED
- EXHIBIT "A-7":.....INTENTIONALLY DELETED
- EXHIBIT "B":.....CONSTRUCTION OF PREMISES
- EXHIBIT "C":.....ADDITIONAL INSURED ENTITIES
- EXHIBIT "D":.....SATELLITE DISH RIGHTS
- EXHIBIT "E":.....TENANT'S SERVICES
- GUARANTY:.....SAN DIEGO PERFORMING ARTS LEAGUE

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ARTICLE I

GRANT AND TERM

Section 1.01 CONDITIONS OF GRANT.

Landlord leases to Tenant and Tenant leases from Landlord, for the Term (as defined below) and upon the terms and conditions set forth in this Lease, the Premises (as defined in the Data Sheet), together with the easements listed in (a) through (c) herein below. For purposes of this Lease, all easements herein granted shall: (i) be irrevocable unless otherwise specified during the term hereof; (ii) be non-exclusive unless otherwise specified; (iii) be appurtenant and not easements in gross; and (iv) expire upon the expiration or the earlier termination of the Term hereof, or as otherwise specified in this Lease. The word "in" with respect to an easement granted "in" a particular area means, as the context may require, "in", "to", "on", "over", "through", "upon", "across", and "under", or any one or more of the foregoing.

(a) Landlord hereby grants to Tenant, for the benefit of the Premises, an easement during the Term hereof to use all portions of the Common Area, for the purpose, consistent with the permitted uses herein, of: (i) ingress to and egress from the Premises to and from other portions of the Horton Plaza Urban Park Property (hereinafter referred to as the "Park/Plaza Development") as set forth in **Exhibit A-4** and incorporated herein by this reference; (ii) for the passage and accommodation of pedestrians; and (iii) for the purpose of performing the work permitted under this Lease or exercising any other rights of Tenant which are granted under this Lease, such easements to be in common with Landlord, its permittees and those other occupants of the Park/Plaza Development from time to time authorized by Landlord to use the Common Area for such purposes. The nature of the use of the respective portions of the Common Areas shall be limited to the uses intended for such portions from time to time.

(b) Landlord hereby further grants to Tenant, its contractors, successors and assigns, for the Term of this Lease, a non-exclusive easement in the Common Area to install (to the extent Landlord and Owner have pre-approved such installation in writing) maintain, repair and replace, at Tenant's sole cost and expense, utility lines and systems all of which shall be underground, which provide service solely to the Premises and which lie outside of the Premises. Any installation, maintenance, repair or replacement of said utility lines or systems shall be done in accordance with this Lease, including without limitation, **Exhibit B**, upon reasonable written notice to Landlord and in a manner to minimize interference with the use, occupancy and enjoyment of other occupants of the Park/Plaza Development and Tenant shall promptly restore such areas to a condition which existed prior to such work.

(c) Landlord hereby further grants to Tenant, its contractors, successors and assigns, for the benefit of the Premises, a temporary easement over portions of the Park/Plaza Development adjacent to the Premises for such construction, reconstruction, repair, maintenance, and alteration work that Tenant is required or permitted to perform hereunder from time to time, as set forth in **Exhibit A-4** and incorporated herein by this reference.

Tenant hereby grants to Landlord for use by Landlord and other occupants (including their respective invitees, licensees, assigns, subtenants and patrons) of Landlord's property adjacent to the Premises, a non-exclusive easement to use any walkways, parking areas and driveways on the Premises for ingress/egress purposes during the Term of this Lease.

Section 1.02 TERM.

The "Term" of this Lease shall commence on the date (the "Commencement Date") of the execution of this Lease by Landlord and Tenant. Tenant's obligation for payment of Minimum Annual Rental, and Additional Rent shall commence upon the date (the "Rental Commencement Date") which is the earlier to occur of (a) the date on which Tenant opens its store in the Premises for business to the public, or (b) the Latest Rental Commencement Date which is defined as thirty (30) days following delivery ("Delivery Date") of the Premises to Tenant, said delivery and actual Delivery Date shall be as set forth in a written notice sent by Landlord to Tenant specifying same. Any occupancy of the Premises by Tenant following the Commencement Date and prior to the Rental Commencement Date shall be subject to all terms and conditions of this Lease other than payment of Rental. The Term of this Lease shall be ten (10) years and shall end on the Expiration Date set forth in Item (1) of the Data Sheet, unless sooner terminated in accordance with this Lease. Unless otherwise approved in writing by Landlord, Tenant shall open its store in the Premises for business to the public (with leasehold improvements pursuant to **Exhibit B** hereto completed and the Premises fully fixtured, stocked with current season merchandise in place and staffed, with Tenant prepared to engage in selling merchandise and/or services as provided pursuant to Article VII by the Rental Commencement Date.

For the purposes of this Lease, 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" shall mean a fiscal year of twelve (12) consecutive calendar months ending on January 31 of each

1 calendar year.

2
3 **Section 1.03 LATE OPENING.**

4 In the event Tenant shall fail to open its store for business by the Rental Commencement Date, the
5 parties agree that it is and will be impracticable and extremely difficult to determine the actual damages
6 suffered by Landlord. Therefore, the parties have agreed that in order to compensate Landlord for its loss,
7 Tenant shall pay to Landlord as Additional Rent, upon demand, the sum of \$50.00 per day for each day
8 Tenant delays its initial opening in accordance with Section 1.02 above, after and including the Rental
9 Commencement Date. This remedy shall be in addition to any and all other remedies provided in this Lease
10 or by law to Landlord in the event of default by Tenant. The amount has been determined based upon
11 numerous considerations including the fact that Landlord will have expended considerable sums of money
12 in reliance upon and based upon Tenant opening for business on the Rental Commencement Date.

13
14 **ARTICLE II**

15
16 **RENTAL**

17
18 **Section 2.01 MINIMUM ANNUAL RENTAL.**

19 (a) From and after the Rental Commencement Date, Tenant shall pay to Landlord as the
20 "Minimum Annual Rental" the sum set forth in the Data Sheet for each lease year during the Term in equal
21 consecutive monthly installments in advance on or before the first day of each month, without prior demand
22 or notice. Minimum Annual Rental, Additional Rent and all other sums payable to Landlord pursuant to
23 this Lease shall be paid to Landlord in currency of the United States or other customary commercial manner
24 at the address set forth in the Data Sheet under "Address for Rental Payments," or such other place as
25 Landlord may designate, without any deductions or offsets whatsoever.

26
27 (b) Should the Rental Commencement Date occur on a day other than the first day of a calendar
28 month, then the Minimum Annual Rental for such fractional month shall be one three hundred sixty-fifth
29 (1/365th) of the Minimum Annual Rental multiplied by the number of days remaining in the month. Should
30 any lease year contain less than twelve (12) calendar months, said Minimum Annual Rental shall be
31 prorated.

32
33 **Section 2.02 INTENTIONALLY DELETED.**

34
35 **Section 2.03 INTENTIONALLY DELETED.**

36
37 **Section 2.04 INTENTIONALLY DELETED.**

38
39 **Section 2.05 TRASH REMOVAL CHARGE.**

40 (a) Tenant, at Tenant's expense, shall at all times keep the Premises (including, without
41 limitation, the service areas adjacent to the Premises, display windows and signs) orderly, neat, safe, clean
42 and free from rubbish and dirt. Tenant shall dispose of all trash (wet or dry) on a daily basis in such
43 receptacles as may be designated by Landlord for such disposal, and until Tenant disposes of such trash,
44 Tenant shall store the trash and other solid waste within the Premises or in such areas as may be designated
45 by Landlord for such storage. Tenant shall not burn any trash or garbage at any time in or about the
46 Park/Plaza Development.

47
48 (b) Solid waste disposal contractors designated by Landlord shall remove trash from said
49 receptacles at such intervals as Landlord may determine, in Landlord's sole discretion. The Data Sheet will
50 set forth whether the Tenant will initially pay (i) the "Trash Removal Charge" as set forth on the Data Sheet,
51 or (ii) directly to the solid waste disposal contractor designated by Landlord. Landlord shall have the right
52 to change the method of payment at any time during the Term by providing Tenant thirty (30) days' prior
53 written notice.

54
55 (c) In the event Landlord elects that Tenant pay a Trash Removal Charge, Tenant shall be
56 solely responsible for and shall promptly pay, as Additional Rent hereunder, the sum set forth in the Data
57 Sheet as the "Trash Removal Charge" for each lease year during the Term in equal consecutive monthly
58 installments in advance on or before the first day of each month, without prior demand or notice. Such
59 Trash Removal Charge payable by Tenant shall be adjusted annually commencing on the 1st day of January
60 immediately following the Rental Commencement Date and each January 1st thereafter by the annual
61 percentage increase in the "Index" (as defined in Section 27.23) to the respective January or the closest
62 subsequent month thereto that the Index is published; provided, however, in no event shall Tenant pay less
63 than the Trash Removal Charge payable for the preceding year.

64
65 If Landlord elects that Tenant pay the solid waste disposal contractors directly, then
66 Landlord shall instruct such contractor to bill its charges directly to Tenant, and Tenant shall pay such

1 charges directly to the contractor, and no separate Trash Removal Charge shall be payable hereunder.

2
3 At any time during the Term, Landlord may, upon thirty (30) days' prior written notice to
4 Tenant, discontinue furnishing trash removal services to the Premises without thereby affecting this Lease
5 in any manner or otherwise incurring any liability to Tenant except that Landlord will no longer be required
6 to furnish trash removal services to the Premises. If Landlord does not provide such services and if
7 Landlord has elected not to retain a third party to provide such services, Tenant shall arrange for the regular
8 pickup of all trash, garbage and other solid waste with a contractor and upon terms approved in writing by
9 Landlord, in its sole discretion.

10
11 **Section 2.06 ADDITIONAL RENT.**

12 In addition to Minimum Annual Rental hereunder, Tenant shall pay, as "Additional Rent" (whether
13 or not so designated herein), in a manner and at the place provided in this Lease, all sums of money required
14 to be paid by Tenant under this Lease. If such amounts or charges are not paid at the time and in the manner
15 as provided in this Lease, they shall nevertheless be collectible as Additional Rent with the next installment
16 of Minimum Annual Rental thereafter falling due, but nothing herein contained shall be deemed to suspend
17 or delay the payment of any amount of money or charge at the time the same becomes due and payable
18 hereunder or to limit any other remedy of Landlord. All amounts of Minimum Annual Rental and
19 Additional Rent (also collectively referred to in this Lease as "Rental") payable in a given month shall be
20 deemed to comprise a single rental obligation of Tenant to Landlord.

21
22 **Section 2.07 LATE CHARGE.**

23 All Rental or other charges required to be paid by Tenant pursuant to this Lease shall be due and
24 payable without any notice from Landlord and without any deductions or offsets whatsoever. The parties
25 hereby agree that late payment by Tenant of any Rental owing under this Lease will cause Landlord to incur
26 certain costs and expenses not contemplated under this Lease, the exact amount of which costs are
27 extremely difficult and impracticable to fix. Such costs and expenses may include, for example,
28 administrative and collection costs, and processing and accounting expenses. Therefore, in the event Tenant
29 fails to pay any monthly installment of Rental within five (5) days after said payment is due, then Tenant
30 shall pay a late charge of ten percent (10%) of such amount as Additional Rent. The parties hereby agree
31 that such late charge represents a fair and reasonable estimate of the costs and expenses Landlord will incur
32 by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event
33 constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from
34 exercising any of the other rights and remedies granted in this Lease. In the event Tenant pays the late
35 charge set forth hereunder but fails to pay contemporaneously therewith all unpaid amounts of Rental,
36 Landlord's acceptance of this late charge payment shall not constitute a waiver of Tenant's default with
37 respect to Tenant's nonpayment nor prevent Landlord from exercising all other rights and remedies
38 available to Landlord under this Lease, at law or in equity.

39
40 **Section 2.08 TENANT'S PAYMENT OBLIGATIONS.**

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

48
49 (b) Tenant covenants to pay all charges under this Lease, including, without limitation,
50 Minimum Annual Rental and Additional Rent and other charges, independent of any obligation of
51 Landlord. No breach of this Lease by Landlord shall relieve Tenant of its obligation and duty to pay all
52 such charges when due under the terms of this Article II.

53
54 **ARTICLE III**

55
56 **RECORDS AND BOOKS OF ACCOUNT**

57
58 **Section 3.01 TENANT'S RECORDS.**

59 Tenant shall keep or cause to be kept true, accurate, and complete accounting records using
60 generally accepted accounting principles consistently applied, including double-entry books, a profit-and-
61 loss statement, and a balance sheet, making it possible at all times to determine the nature and amount of
62 revenue and expenditures. All of Tenant's expenditures and transactions shall be supported by documents
63 of original entry such as sales slips, cash register tapes, purchase invoices, and receipts. Tenant shall retain
64 documents supporting its profit-and-loss statements for a minimum period of five (5) years.

65
66 **Section 3.02 REPORTS BY TENANT.**

1 Tenant shall deliver to Landlord an annual financial report for each of Tenant's fiscal years during
2 the Term, certified by an independent certified public accountant. Tenant shall deliver each such financial
3 report within one hundred twenty (120) days after its fiscal year end. The financial report shall include an
4 operating statement and a report of net worth, shall be in a form reasonable satisfactory to Landlord, and
5 shall be subject to Landlord's review and audit. Within one hundred twenty (120) days after the expiration
6 or earlier termination of this Lease, Tenant shall deliver to Landlord a final financial report that complies
7 with the above requirements for an annual financial report, and covers the period between the last annual
8 report and the expiration or termination date of this Lease.

10 ARTICLE IV

12 AUDIT

14 Section 4.01 RIGHT TO EXAMINE BOOKS.

15 Notwithstanding the acceptance by Landlord of payments of Minimum Annual Rental or
16 installments thereof, Landlord shall have the right to audit all rentals and other charges actually due
17 hereunder. Within ten (10) days following Landlord's request, Tenant shall make available to Landlord at
18 the Premises or at Tenant's principal business office in the United States for examination, extracting and/or
19 copying all books, source documents, accounts, records and sales tax reports of Tenant and any subtenants,
20 concessionaires, licensees and/or assignees, including Tenant's state and federal income tax returns.

22 Section 4.02 AUDIT.

25 (a) At its option, Landlord may at any time upon ten (10) days' prior written notice to Tenant, cause a
26 complete audit (including a physical inventory) to be made by an auditor selected by Landlord of the entire
27 records and operations of Tenant and/or any subtenants, concessionaires, licensees and/or assignees relating
28 to the Premises for the period covered by any statement issued or required to be issued by Tenant or a
29 concessionaire as above set forth in Article III. Tenant shall make available to Landlord's auditor at the
30 Premises or at Tenant's principal business office in the United States, within ten (10) days following
31 Landlord's notice requiring such audit, all of the books, source documents, accounts, records and sales tax
32 reports of Tenant and any of its concessionaires which such auditor deems necessary or desirable for the
33 purpose of making such audit, including Tenant's state and federal income tax returns.

35 (b) If Tenant subleases, licenses, or in any manner allows the Premises to be used by another party (the
36 "Subtenant"), Tenant is responsible for ensuring that the Subtenant's Records conform to the requirements
37 of this Lease

39 ARTICLE V

41 CONSTRUCTION OF PREMISES

43 Section 5.01 CONSTRUCTION OF PREMISES.

44 (a) Any improvements to be made to the Premises shall be substantially as set forth in **Exhibit**
45 **B** attached hereto. Each of the parties hereto shall perform the obligations imposed upon such party in said
46 exhibit at the times and in the manner therein provided. It is understood and agreed by Tenant that any
47 minor changes from any plans or specifications covering Landlord's Work as defined in said exhibit shall
48 not affect or change this Lease or invalidate the same.

50 (b) Without limiting the generality of the incorporation by reference of all exhibits and/or
51 addenda to this Lease, Tenant's failure to furnish the plans and specifications required pursuant to **Exhibit**
52 **B** ("Plans and Specifications") to Landlord and Owner within the time periods and in the form required by
53 **Exhibit B**, or failure to perform any other obligation under **Exhibit B**, shall constitute a default under this
54 Lease pursuant to Article XIX below, which shall entitle Landlord to all remedies set forth in Article XIX
55 below. In addition, if Landlord determines that Landlord and Tenant are unable to agree upon the Plans
56 and Specifications, Landlord may at its option, terminate this Lease upon ten (10) days' notice to Tenant,
57 in which event this Lease shall terminate on the date specified in such notice and Tenant shall remain liable
58 as provided in this Lease. No deviation from the final Plans and Specifications, once approved by Landlord
59 and Owner, shall be made by Tenant without Landlord's and Owner's prior written consent. Approval of
60 the final Plans and Specifications by Landlord and Owner shall not constitute the assumption of any
61 responsibility by Landlord or Owner for their accuracy, efficacy, or sufficiency, and Tenant shall be solely
62 responsible for such items. Any occupancy of the Premises by Tenant prior to the Rental Commencement
63 Date shall be solely for the purpose of inspection, measurement and obtaining information necessary to
64 prepare Plans and Specifications and to construct its leasehold improvements, and shall be subject to all
65 terms and conditions of this Lease applicable to such entry prior to the Rental Commencement Date
66 pursuant to Section 1.02 above.

1
2 **Section 5.02 CERTIFICATE OF OCCUPANCY.**

3 Within the earlier of (a) ten (10) days after completion of construction of Tenant's Work in
4 accordance with the final Plans and Specifications as approved by Landlord and Owner (as described in
5 Section 5.01 and **Exhibit B**); or (b) ten (10) days after Tenant opens the Premises for business, Tenant shall
6 deliver to Landlord and Owner the original of the Certificate of Occupancy for the Premises issued by the
7 appropriate governmental agency, original execution copies of all mechanics' lien releases or other lien
8 releases on account of Tenant's Work, notarized and unconditional, in such form as Landlord shall have
9 approved, copies of all building permits indicating inspection and approval by the issuer of said permits,
10 and an architect's certification that Tenant's Work has been constructed in accordance with the final Plans
11 and Specifications and is fully complete in accordance with **Exhibit B**.
12

13 **Section 5.03 CONDITION OF PREMISES.**

14 Except as otherwise specifically provided in this Lease (including, without limitation, in **Exhibit**
15 **B** attached hereto), Tenant hereby agrees that upon delivery of possession of the Premises to Tenant, Tenant
16 shall accept such delivery of possession of the Premises in its then existing "AS IS" condition, and Tenant
17 acknowledges (i) that Tenant shall have inspected the Premises and shall be fully aware of the condition of
18 the Premises as of delivery of possession; (ii) that Landlord and Owner shall have no obligation to improve
19 or alter the Premises for the benefit of Tenant; (iii) that, except as may be expressly provided in this Lease,
20 neither Owner or Landlord nor any of Owner's or Landlord's employees, agents, representatives,
21 contractors nor brokers has made any representation or warranty of any kind respecting (a) the condition of
22 the Premises and the Park/Plaza Development, (b) the suitability thereof for Tenant's use or the conduct of
23 Tenant's business, or (c) occupancy or operation within the Park/Plaza Development by any other person
24 or entity. Tenant irrevocably waives any claim based upon or related to any such claimed representation
25 by Owner or Landlord or any claimed representation by Owner or Landlord as to traffic to be expected at
26 the Premises or sales to be expected at the Premises. Tenant's taking possession of the Premises shall
27 constitute Tenant's formal acceptance of the same and acknowledgment that the Premises are in the
28 condition called for under this Lease, subject to all field conditions existing at the time of delivery of
29 possession. In no event shall Landlord be liable for damages or otherwise as a result of any failure to make
30 the Premises available within the time and/or in the condition provided in this Lease and no such failure
31 shall permit Tenant to rescind or terminate this Lease.
32

33 **Section 5.04 ULTIMATE RENTAL COMMENCEMENT DATE.**

34 Notwithstanding anything to the contrary contained herein, if for any reason whatsoever (including,
35 without limitation, excusable delay), the Rental Commencement Date shall not have commenced prior to
36 such date as shall be two (2) years from the Commencement Date, then this Lease shall be automatically
37 terminated without further act of either party hereto and each of the parties hereto shall be released from
38 any further obligation hereunder.
39

40 **Section 5.05 REQUIRED IMPROVEMENTS.**

41 In the event the total length of the Term and any extended term (if applicable) is for a period of
42 nine (9) lease years or more, Tenant shall, at its sole cost and expense, be responsible for performing a
43 cosmetic refurbishment of the interior of the Premises to "like new" condition such work to include, but
44 not be limited to new paint and repair ceilings if necessary, (hereinafter "Required Improvements"). The
45 Required Improvements shall be performed during the first three (3) months of the sixth (6th) lease year of
46 the Term and every five (5) lease years thereafter, if applicable. The Required Improvements shall be
47 performed in accordance with the provisions contained in this Article V and **Exhibit B**.
48

49 **ARTICLE VI**

50 **ALTERATIONS, CHANGES AND ADDITIONS**

51 **Section 6.01 ALTERATIONS BY TENANT.**

52
53 Tenant shall not make or cause to be made any alterations, additions or improvements to the
54 Premises without the prior written approval of Landlord and Owner (for example, but without limiting the
55 generality of the foregoing, Tenant shall not install or cause to be installed any signs, floor covering, interior
56 or exterior lighting, plumbing fixtures, shades, canopies, awnings, electronic detection devices, antennas,
57 mechanical, electrical or sprinkler systems, or make any changes to the storefront). Tenant shall present to
58 Landlord and Owner Plans and Specifications for any other alterations, additions or improvements at the
59 time approval is sought, in accordance with criteria and procedures as provided in **Exhibit B**. All
60 alterations, decorations, additions, and improvements made by Tenant shall be deemed to have attached to
61 the Premises and to have become the property of Owner upon such attachment.
62
63

64 **Section 6.02 REMOVAL BY TENANT.**

65 Upon the expiration or earlier termination of this Lease, Tenant shall peaceably and quietly quit
66 and surrender the Premises, together with all alterations, additions and improvements which are then part

1 of the realty, broom clean, in good order and condition, reasonable wear and tear excepted. Notwithstanding
2 the foregoing to the contrary, all trade fixtures, lighting fixtures, furniture, furnishings, signs, equipment,
3 carpeting, cash registers, inventory and any and all items of personal property furnished or installed by
4 Tenant, its subtenants or licensees ("Property"), on, in or upon the Premises, regardless of the manner or
5 mode of attachment, including, but not limited to, display cases, counters, shelves, racks, and general store
6 fixtures, shall be and remain the property of Tenant and may be removed by Tenant at any time during the
7 Term or within the period of thirty (30) days after the expiration or sooner termination of this Lease. When
8 Tenant vacates the Premises, Tenant shall not remove from the Premises the then existing HVAC
9 equipment, heaters in the trellises, plumbing fixtures, lighting fixtures (except for decorative lighting
10 fixtures which Tenant may remove), hydraulic lifts or any other items (other than trade fixtures) deemed to
11 be real estate by reason of affixation to improvements, except as Landlord and Tenant may mutually agree.
12 Tenant shall promptly repair all damage (reasonable wear and tear excepted) to the Premises and/or any
13 part of the Park/Plaza Development caused by removal of any such decorative lighting and trade fixtures
14 by Tenant or its subtenants or licensees. Any such decorative lighting and trade fixtures remaining in the
15 Premises after the expiration of such thirty (30) day period shall be deemed abandoned and shall become
16 the property of Owner without payment therefor, unless Landlord shall have required removal by Tenant
17 by notice given to Tenant not less than thirty (30) days prior to the expiration date. The obligations
18 contained in this Section 6.02 shall survive the expiration or earlier termination of this Lease.

19
20 **Section 6.03 CHANGES AND ADDITIONS.**

21 (a) Owner and/or Landlord reserves the right at any time, and from time to time, to construct
22 other buildings and improvements in the Park/Plaza Development, including any modifications of the
23 Common Areas in connection therewith, to enlarge or reduce the Park/Plaza Development, and to lease any
24 part of the land comprising the Park/Plaza Development, as shown on **Exhibit A-1**. Landlord also reserves
25 the right at any time, and from time to time, to change, modify, or abolish any temporary off-site utility
26 serving the Park/Plaza Development. The purpose of **Exhibit A-1** is to show the approximate location of
27 the Park/Plaza Development while the purpose of **Exhibit A-2** is to show the approximate location of the
28 Premises within the Park/Plaza Development.

29
30 **Section 6.04 RIGHTS OF LANDLORD.**

31 (a) Landlord hereby reserves the right at any time following the Commencement Date to
32 change the location of the Premises in the Park/Plaza Development, as the same may be expanded from
33 time to time; provided such relocated premises shall contain approximately the same number of square feet
34 as the original Premises. In the event Landlord elects to exercise such right, it shall so advise Tenant by
35 sixty (60) days prior written notice, and Tenant hereby agrees to be bound by such election and to execute,
36 upon receipt from Landlord, whatever amendments or other instruments as may be required to correctly
37 reflect the foregoing. Landlord shall pay the costs of renovating the relocated Premises so that the same
38 are reasonably comparable to the original Premises (including leasehold improvements) and of moving and
39 reinstalling Tenant's trade fixtures and storefront sign. Landlord shall have no liability for such relocation
40 or the closing of the Premises other than as specifically set forth in this paragraph and Tenant waives any
41 such claims including, without limitation, claims for lost profits.

42
43 (b) In the event Landlord elects to expand or renovate the Park/Plaza Development in a manner
44 that Landlord in its sole judgment believes makes it desirable for Landlord to obtain possession of the
45 Premises, Landlord, upon one hundred eighty (180) days prior notice in writing to Tenant, may terminate
46 this Lease. In the event of such termination, within thirty (30) days following the date that Tenant shall
47 have vacated the Premises, paid all rents and performed all other accrued obligations under this Lease
48 through to the effective date of such termination, Landlord shall pay to Tenant a sum equal to the then
49 unamortized cost of Tenant's leasehold improvements paid for by Tenant exclusive of any construction
50 allowance which has been paid to Tenant and the value of any construction chargebacks set forth in **Exhibit**
51 **B** that have been waived by Landlord, such amortization to be as determined with reference to Tenant's
52 federal income tax returns but in no event more than an amount based on straight-line depreciation. Upon
53 written request from Landlord, Tenant shall furnish to Landlord such information as Landlord may
54 reasonably require in connection with the determination of such costs.

55
56 **ARTICLE VII**

57
58 **CONDUCT OF BUSINESS BY TENANT**

59
60 **Section 7.01 PERMITTED USE.**

61 Tenant shall use the Premises only for the purpose of conducting the business specifically set forth
62 in the Data Sheet and for no other use or purpose. If any governmental license or permit shall be required
63 for the proper and lawful conduct of Tenant's business or other activity conducted in the Premises, or if a
64 failure to procure such a license or permit might or would in any way adversely affect Owner, Landlord, or
65 the Park/Plaza Development, then Tenant, at Tenant's expense, shall duly procure and thereafter maintain
66 such license or permit and submit the same for inspection by Landlord. Tenant, at Tenant's expense, shall

1 at all times comply with the requirements of each such license or permit.

2
3 **Section 7.02 OPERATION OF BUSINESS.**

4 (a) Tenant agrees to be open for business and to operate in all of the Premises during the entire
5 Term following the Rental Commencement Date, and to actively and diligently conduct its business at all
6 times in a first class and reputable manner, maintaining at all times a full staff of employees and a complete
7 stock of current season merchandise. Tenant shall install and maintain at all times a display of merchandise
8 in the display windows, if any, of the Premises and shall keep the same well lighted. Tenant shall be
9 obligated to be open for business and to operate continuously during all hours established by Landlord as
10 Park/Plaza Development business hours. Tenant shall be obligated to be open for business and to operate
11 continuously during its normal business hours of 10:00 A.M. to 8:00 P.M., Tuesday through Saturday and
12 10am to 2pm on Sunday. Closed on Monday. Tenant's obligation to be open for business shall include, but
13 not be limited to, opening for business not more than fifteen (15) minutes late, closing for business not more
14 than fifteen (15) minutes early, and closing for business for not more than fifteen (15) minutes during
15 Park/Plaza Development business hours. If Tenant fails to comply with any of the provisions of this Section
16 7.02(a), then Tenant shall pay within ten (10) days of demand therefor by Landlord Additional Rent in the
17 amount of \$1,000.00 per day until such time as Tenant is in compliance with this Section 7.02(a). This
18 remedy shall be in addition to any and all other remedies provided in this Lease or by law to Landlord.
19 Failure by Tenant to be open for business and to operate shall entitle Landlord, in addition to other remedies
20 provided in this Section 7.02, this Lease or by law, to mandatory injunctive relief. Without limiting the
21 generality of the foregoing, in the event the hours during which the Park/Plaza Development is legally
22 permitted to be open to the public are regulated by any lawful authority, then Landlord shall be the sole
23 judge of which hours and days shall be Park/Plaza Development business hours.

24
25 (b) Tenant, at Tenant's expense, shall promptly comply with all present and future laws,
26 ordinances, orders, rules, regulations and requirements of all governmental authorities having jurisdiction
27 affecting or applicable to the Premises or the cleanliness, safety, occupancy and use of the same, whether
28 or not any such law, ordinance, order, rule, regulation or requirement is substantial, or foreseen or
29 unforeseen, or ordinary or extraordinary, or shall necessitate changes or improvements (other than structural
30 changes or improvements) or interfere with the use and enjoyment of the Premises. Tenant shall not do or
31 permit anything to be done in or about the Premises, nor bring anything therein, which will in any way
32 conflict with any such law, ordinance, order, rule, regulation or requirement affecting the occupancy or use
33 of the Premises or the Park/Plaza Development which has been or may hereafter be enacted or promulgated
34 by governmental authorities, or in any way obstruct or interfere with the rights of others, nor shall Tenant
35 use or allow the Premises to be used for any improper, immoral or objectionable purposes or do any act
36 tending to injure the reputation of the Park/Plaza Development. Tenant shall not give samples, approach
37 customers, or otherwise solicit business in the adjoining areas or any part of the Park/Plaza Development
38 other than in the Premises, nor shall Tenant distribute any handbills, advertising signage boards, or other
39 advertising matter in the adjoining areas or any part of the Park/Plaza Development other than in the
40 Premises, unless approved in advance by Landlord and located in a mutually agreed upon area adjacent to
41 the Premises.

42
43 No auction, liquidation, going out of business, fire, or bankruptcy sale may be conducted
44 or advertised by sign or otherwise in the Premises. Tenant shall not permit the operation of any coin
45 operated or vending machines or pay telephones in the Premises, other than in the areas reserved solely for
46 the use of Tenant's employees. Tenant shall not use the areas adjacent to the Premises for business purposes
47 or any other purpose. Tenant shall not store anything in service or exit corridors. All receiving and delivery
48 of goods and merchandise for the Premises, and all removal of merchandise, supplies, equipment, trash and
49 debris and all storage of trash and debris from the Premises shall be made only by way of or in the areas
50 provided by Landlord. Tenant shall be solely responsible for prompt disposal within the Premises or in
51 such areas as may be provided for such disposal by Landlord of all trash and debris from the Premises.
52 Tenant shall not use or permit the use of any portion of the Premises as sleeping quarters, lodging rooms,
53 for any unlawful purpose, or for cooking, except as specifically permitted in Section 7.01. Tenant shall not
54 install any radio, television, communication dish or other similar device or related equipment to the exterior
55 to the Premises, shall not cause or make any penetration of the roof of the Premises or the building in which
56 the Premises is located and shall not erect any aerial or antenna on the roof or exterior walls of any building
57 within the Park/Plaza Development.

58
59 If Tenant shall fail to comply with any of the provisions of this Section 7.02(b), then Tenant
60 shall pay, within ten (10) days of demand therefor by Landlord, Additional Rent in the amount of \$100.00
61 per day until such time as Tenant is in compliance. This remedy shall be in addition to any and all other
62 remedies provided in this Lease or by law to Landlord.

63
64 (c) If Tenant is permitted pursuant to this Lease to engage in the sale of food and/or beverages
65 from the Premises, whether in the area designated as a dining area or otherwise, the same shall be offered
66 only pursuant to a menu approved in writing by the Landlord and attached as an exhibit to this Lease which

1 shall not be changed without Landlord's prior written consent. Further, in such event, Tenant shall provide
2 to Landlord upon demand proof satisfactory to Landlord that monthly cleaning and maintenance of all
3 grease traps, pans and hood ventilators located in the Premises has been performed by a suitable contractor.
4 A suitable contractor shall be one who is bondable and capable of performing Tenant's obligations
5 hereunder. If Tenant is permitted to engage in the sale of food and/or beverages from the Premises and the
6 Premises is not located within a dining area, Tenant shall be solely responsible for prompt collection of all
7 trash and debris within the area depicted on **Exhibit A-5** attached hereto and incorporated herein by this
8 reference. Tenant further acknowledges and agrees that if the Park/Plaza Development is used for a private
9 Park Use or private temporary pre-scheduled event, Landlord reserves the right to either utilize the Premises
10 or cause the Premises to be closed for an agreed upon period of time for an amount to be agreed upon
11 between the parties, and Tenant shall have the right to close the Premises without being subject to any
12 penalties as set forth in this Section.

13
14 (d) Tenant acknowledges that the Premises is located in the Park/Plaza Development and that
15 Owner and Landlord shall have the rights to utilize the Park/Plaza Development for: (i) non-programmed
16 passive and active public park recreational purposes ("Park Uses"); (ii) temporary pre-scheduled events
17 (either with or without an admission fee) including, but not limited to: (A) arts and entertainment programs
18 and events; (B) promotional programs and events; (C) concert and performance programs and events; (D)
19 educational programs and events; (E) fairs, festivals, and market programs and events; (F) awareness and
20 fundraising programs and events; (G) athletic, recreational and health programs and events; (H) holiday
21 special programs and events; (I) exhibits and shows; and (J) private events. Tenant acknowledges and
22 agrees that from time to time, the Park/Plaza Development may be used for a private Park Use or other
23 private temporary pre-scheduled event that would require Tenant or event operator to erect a shielding so
24 as to partially enclose the Premises and block visibility of said private Park Use or private temporary pre-
25 scheduled event. Tenant further acknowledges and agrees that if the Park/Plaza Development is used for a
26 private Park Use or private temporary pre-scheduled event, Landlord reserves the right to cause the
27 Premises to be closed for no more than twenty-four (24) hours at any one time and no more than fifteen
28 (15) times per annum and Landlord shall pay Tenant an amount of \$1,000.00 per closure. Tenant shall have
29 the right to close the Premises without being subject to any penalties as set forth in this Section. The remedy
30 set forth in this subsection 7.02(d) shall be Tenant's sole remedy for a closure of the Premises under this
31 Section 7.02(d).

32
33 (e) Tenant acknowledges that its employees work in the Park/Plaza Development which are
34 open to the public and will require its employees to be dressed and conduct themselves professionally.
35 Tenant shall not permit any of its employees to call out to or aggressively approach any customers of the
36 Park/Plaza Development or, by its manner of operation of business at the Park/Plaza Development, disturb
37 the quiet enjoyment of any other occupant or tenant of the Park/Plaza Development. If Landlord receives
38 two (2) or more complaints regarding the behavior of Tenant's salespeople and/or Tenant's sales practices
39 more than once during the Term, then Tenant shall pay, within ten (10) days of demand therefor by
40 Landlord, Additional Rent in the amount of \$250.00 for each additional complaint received by Landlord.
41 Further, if Tenant violates the provisions of this paragraph more than three times during the Term, or if
42 Landlord determines in its sole discretion that the standards of the operation of the Park/Plaza Development
43 are not being maintained due to the manner of Tenant's operation of business, then Landlord shall have the
44 right, at Landlord's sole option, to immediately terminate this Lease upon written notice to Tenant.

45
46 (f) **Exhibit D** attached hereto and made a part hereof contains certain additional rights and
47 obligations of Tenant concerning satellite dish equipment.

48 49 **Section 7.03 HAZARDOUS MATERIALS.**

50 (a) For the purposes of this Section 7.03 the following terms shall have the following
51 meanings: (i) the term "Hazardous Material" shall mean: (aa) any material or substance that, whether by
52 its nature or use, is subject to regulation under any Environmental Requirement, or (bb) any material,
53 substance or waste which is toxic, ignitable, explosive, corrosive or reactive, or (cc) asbestos, or (dd)
54 petroleum and petroleum-based products, or (ee) formaldehyde, or (ff) polychlorinated biphenyls (PCBs),
55 (gg) Freon and other chlorofluorocarbons or (hh) such other material as is designated in a notice from
56 Landlord to Tenant (whether such notice is provided before or after Tenant first commences to use such
57 material); (ii) the term "Environmental Requirement" shall include the Comprehensive Environmental
58 Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq.), the Hazardous Materials
59 Transportation Act (49 U.S.C. §1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C.
60 §6901 et seq.), the Toxic Substances Control Act (15 U.S.C. §2601 et seq.), the Clean Air Act (42 U.S.C.
61 §7401 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), all as presently in effect
62 and as the same may hereafter be amended, any regulation pursuant thereto, or any other present or future
63 law, ordinance, rule, regulation, order or directive addressing environmental, health or safety issues of or
64 by any Governmental Authority; and (iii) the term "Governmental Authority" shall mean the Federal
65 government, or any state or other political subdivision thereof, any local government, or any agency, court
66 or body of the Federal government, any state or other political subdivision thereof, exercising executive,

1 legislative, judicial, regulatory or administrative functions.

2
3 (b) Tenant hereby represents and warrants to Landlord that it will ensure that (i) no Hazardous
4 Material will be generated, manufactured, sold, transported or located at, on, in, under or about the
5 Premises; (ii) no Hazardous Material will be generated, manufactured, sold, transported or located at, in,
6 on, under or about the Premises in a manner which violates any Environmental Requirement, or which
7 requires cleanup or corrective action of any kind under any Environmental Requirement and (iii) no
8 Hazardous Material will be transported, released, emitted, sold, discharged, leached, dumped or disposed
9 of from the Premises onto or into any other property. However, the above prohibition concerning
10 Hazardous Materials shall not prevent Tenant from selling regular consumer products which contain small,
11 safe amounts of such Hazardous Materials or maintaining small, safe amounts of cleaning solutions at the
12 Premises.

13
14 (c) Tenant shall comply and shall cause any other person on or about the Premises, including,
15 without limitation, employees, invitees, contractors, subcontractors, licensees, subtenants or agents, to
16 comply in all respects with all Environmental Requirements, and shall cause itself and its employees,
17 invitees, contractors, subcontractors, licensees, subtenants or agents not to generate, store, handle,
18 manufacture, process, sell, dispose of, transport or otherwise use Hazardous Materials at, in, on, under or
19 about the Premises in a manner that could lead or potentially lead to the imposition on Landlord or the
20 Park/Plaza Development of any liability or lien of any nature whatsoever.

21
22 (d) Tenant shall (i) notify Landlord promptly in the event of any spill or other release of any
23 Hazardous Material at, in, on, under or about the Premises which is required to be reported to a
24 Governmental Authority under any Environmental Requirement; (ii) promptly forward to Landlord copies
25 of any notices received by Tenant relating to the alleged violations of any Environmental Requirement; and
26 (iii) promptly pay when due any fine or assessment against Tenant, Owner, Landlord or the Park/Plaza
27 Development relating to any Environmental Requirement or the existence of Hazardous Materials at the
28 Premises.

29
30 (e) If, at any time, it is determined that the operation or use of the Premises violates any
31 applicable Environmental Requirement, or that there are Hazardous Materials located at, in, on, under or
32 about the Premises which require special handling in collection, storage, treatment or disposal, or any other
33 form of cleanup or corrective action, Tenant shall within ten (10) days after receipt of notice thereof from
34 any Governmental Authority or from Landlord take, at its sole cost and expense, such actions as may be
35 necessary to fully comply in all respects with all Environmental Requirements; provided, however, that if
36 such compliance cannot reasonably be completed within such ten (10) day period, Tenant shall commence
37 such necessary action within such ten (10) day period and shall thereafter diligently and expeditiously
38 proceed to fully comply in all respects and in a timely fashion with all Environmental Requirements. If
39 Tenant fails to timely take, or to diligently and expeditiously proceed to complete in a timely fashion, any
40 such action, Landlord may, in its sole and absolute discretion, make advances or payments towards the
41 performance or satisfaction of the same, but shall in no event be under any obligation to do so. All sums
42 so advanced or paid by Landlord (including, without limitation, counsel and consultant fees and expenses,
43 investigation and laboratory fees and expenses, and fines or other penalty payments) and all sums advanced
44 or paid in connection with any judicial or administrative investigation or proceeding relating thereto, will
45 immediately, upon demand, become due and payable from Tenant. If Tenant fails to make such payment
46 within ten (10) days of such demand, Tenant shall be in default under this Lease and Landlord may, without
47 any further notice to Tenant terminate this Lease or resort to any other of its rights upon default set forth in
48 Article XIX. Tenant will execute and deliver, promptly upon request, such instruments as Landlord may
49 deem useful or necessary to permit Landlord to take such action, and such notes, mortgages, or other
50 security as Landlord may require to secure all sums to be advanced or paid by Landlord.

51
52 (f) If a lien is filed against the Premises or the Park/Plaza Development by any Governmental
53 Authority resulting from the need to expend or the actual expending of monies arising from an
54 Environmental Requirement, or a liability regarding Hazardous Materials related to an action or omission,
55 whether intentional or unintentional, of Tenant or for which Tenant is responsible, then Tenant shall, within
56 ten (10) days from the date that the Tenant is first given notice that such lien has been placed (or within
57 such shorter period of time as may be specified by Landlord if such Governmental Authority has
58 commenced steps to cause the property to be sold pursuant to such lien) either (i) immediately pay the claim
59 and remove the lien, or (ii) immediately furnish a cash deposit, bond, or such other security with respect
60 thereto as is satisfactory in all respects to Landlord and is sufficient to effect a complete discharge of such
61 lien.

62
63 (g) If Landlord reasonably believes that (i) Tenant has permitted a Hazardous Material at the
64 Premises, or (ii) that any other condition violates or threatens to violate any Environmental Requirement,
65 Landlord may, at its option, cause an environmental site assessment of the Premises or portions thereof to
66 be conducted to confirm Tenant's compliance with the provisions of this Section, and Tenant shall cooperate

1 in all reasonable ways with Landlord in connection with any such environmental site assessment and shall
2 pay all costs and expenses incurred in connection therewith.

3
4 (h) Tenant shall defend, indemnify, and hold harmless Owner, Landlord, their affiliates, parent
5 corporation, subsidiaries, partners, members, management company, successors and assigns, and the
6 employees, agents, officers, directors, shareholders, members, advisers, trustees and fiduciaries of any of
7 them from and against any and all loss, claims, demands, penalties, causes of action, fines, liabilities,
8 settlements, damages, consequential damages, costs or expenses of whatever kind or nature, known or
9 unknown, foreseen or unforeseen, contingent or otherwise (including, without limitation, counsel and
10 consultant fees and expenses, investigation and laboratory fees and expenses, court costs, and litigation
11 expenses) directly or indirectly arising out of, or in any way related to (i) any breach by Tenant of any of
12 the provisions of this Section 7.03; (ii) the presence, use, generation, transportation, disposal, spillage,
13 discharge, emission, leakage, release, or threatened release of any Hazardous Material which is at, in, on,
14 under, about, from or affecting the Premises, the Park/Plaza Development including, without limitation,
15 any damage or injury resulting from any such Hazardous Material to or affecting the Premises, the
16 Park/Plaza Development or any soil, water, air, vegetation, buildings, personal property, persons or animals;
17 (iii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or
18 related to any such Hazardous Material; (iv) any lawsuit brought or threatened, settlement reached, or order
19 or directive of or by any Governmental Authority relating to such Hazardous Material; or (v) any violation
20 of any Environmental Requirement or any policy or requirement of Owner and Landlord hereunder. The
21 indemnities set forth in this subparagraph (h) are limited to actions or omissions of Tenant, its contractors,
22 subcontractors, licensees, concessionaires or others on the Premises at the request of or with the consent of
23 Tenant. Tenant shall indemnify Owner and Landlord for all losses, including, but not limited to, damages
24 occasioned by the inability of Owner and Landlord to relet the Premises or a reduction in the fair market
25 and/or Rental value of the Premises or Park/Plaza Development.

26
27 This indemnification shall, notwithstanding any exculpatory or other provision of any
28 nature whatsoever to the contrary set forth in the Lease, or any other document or instrument now or
29 hereafter executed between Owner, Landlord and Tenant, constitute the personal recourse undertaking,
30 obligation and liability of the Tenant and any guarantor. The obligations set forth in this Section 7.03 shall
31 survive the termination of the Lease.

32
33 (i) If the Lease is assigned to, or assumed by another party, or in the event of a sublease, it
34 shall be a condition of such assignment, assumption or sublease that the assignee, party assuming or
35 sublessee shall assume the obligations of this Section 7.03 in addition to such obligations of Tenant
36 continuing after and surviving such sublease, assignment or assumption. The obligations and liabilities of
37 Tenant under this Section 7.03 shall survive and continue in full force and effect and shall not be terminated,
38 discharged or released, in whole or in part, irrespective of any assignment, sublease, or assumption and
39 irrespective of any other fact or circumstance of any nature whatsoever.

40
41 (j) Tenant shall surrender the Premises to Landlord upon the expiration or earlier termination
42 of the Lease free of Hazardous Materials and free of any violation of any Environmental Requirement.
43 Upon surrender, Tenant shall provide Landlord with a report by experts acceptable to Landlord showing
44 the Premises free of Hazardous Materials.

45
46 **Section 7.04 INTENTIONALLY DELETED.**

47
48 **ARTICLE VIII**

49
50 **COMMON AREAS**

51
52 **Section 8.01 OPERATION AND MAINTENANCE OF COMMON AREAS.**

53 Landlord shall cause to be operated and maintained during the Term all "Common Areas" (as
54 defined below). The manner in which such areas and facilities shall be operated and maintained, and the
55 expenditures therefor, shall be at the sole discretion of Landlord and the use of such areas and facilities
56 shall be subject to such regulations as Landlord may establish, modify and enforce from time to time.

57
58 **Section 8.02 USE OF COMMON AREAS.**

59 The term "Common Area(s)", as used in this Lease, shall mean, to the extent provided by Landlord,
60 all improved and unimproved areas within the Park/Plaza Development including, without limitation: (i)
61 traffic control and traffic information signs and equipment, roadways, pedestrian sidewalks, curbs,
62 driveways, a monorail system, if any, public transportation loading and unloading facilities not devoted to
63 a single tenant, truckways, delivery areas, landscaped areas, roofs, skylights, beams, stairs and ramps not
64 contained within any Floor Area, public restrooms and comfort stations, service areas, service and fire exit
65 corridors, passageways and other areas, amenities, facilities and improvements provided by Landlord, and
66 (ii) those areas within the Park/Plaza Development and areas adjacent to the Park/Plaza Development

1 containing signs, pylons or structures advertising the Park/Plaza Development. The use and occupancy by
2 Tenant of the Premises shall include the non-exclusive use of the Common Areas in common with Landlord
3 and with all others for whose convenience and use the Common Areas have been or may hereafter be
4 provided by Landlord or by the owners of Common Areas not within the Park/Plaza Development as
5 specified in the preceding sentence, subject, however, to such rules and regulations for the use thereof as
6 may be prescribed from time to time by Landlord or the owner of such Common Areas. In no event,
7 however, shall Tenant, its agents or employees, use the Common Areas for the display or sale of
8 merchandise.

9
10 Landlord shall have the right, but not the obligation, from time to time, to modify the Common
11 Areas, remove portions of the Common Areas from common use, to permit entertainment events,
12 advertising displays, educational displays and other displays in the Common Areas that in Landlord's
13 judgment tend to attract the public, to erect buildings or other improvements on the Common Areas, to
14 lease kiosks and to establish, modify and enforce reasonable rules and regulations with respect to all
15 Common Areas. Tenant shall not be entitled to any credit for income earned by Landlord with respect to
16 the Common Area.

17
18 Owner or Landlord may at any time close all or any portion of the Common Area to make repairs
19 or changes, to prevent the acquisition of public rights, and may do such other acts in and to the Common
20 Areas as in its reasonable judgment may be desirable.

21
22 **Section 8.03 COMMON AREA OPERATING COSTS AND EXPENSES.**

23 (a) From and after the Rental Commencement Date, Tenant shall pay to Landlord the Common
24 Area Charge (as defined hereinbelow) as a contribution for the following (collectively "Operating Costs
25 and Expenses"): all costs and expenses of every kind and nature paid or incurred by Landlord in managing,
26 operating, equipping, policing and protecting, lighting, signing, cleaning, painting, heating, ventilating, air
27 conditioning, providing sanitation and sewer and other services, insuring, defending or prosecuting lawsuits
28 (or other legal proceedings), repairing, replacing and maintaining (i) the Common Areas (including the
29 parking facilities), (ii) all buildings and roofs within the Park/Plaza Development and (iii) all other areas,
30 facilities, work and storage areas, leased or owned property, and buildings whether located within or outside
31 of, the Park/Plaza Development.

32
33 (b) The "Common Area Charge" shall initially mean an amount equal to \$10 per square foot
34 of Floor Area of the Premises per annum. The Common Area Charge shall be payable for each year during
35 the Term and shall be increased annually on a compounded basis at each January 1st following the Rental
36 Commencement Date by three percent (3%). Landlord and Tenant hereby agree that the Common Area
37 Charge has been freely negotiated and agreed upon by the parties and is not subject to dispute, review, or
38 challenge by Tenant whether at law or in equity. **Accordingly, Tenant expressly waives any and all**
39 **rights it has or may have to inspect and/or audit Landlord's records relating to the Common Area**
40 **Charge.** The Common Area Charge shall be paid as Additional Rent to Landlord at the address shown on
41 the Data Sheet in monthly installments on the first day of each calendar month, in advance, without demand,
42 offset or reduction.

43
44 **ARTICLE IX**

45
46 **SIGNS**

47
48 **Section 9.01 TENANT'S SIGNS.**

49 Tenant shall affix a sign to the exterior surface of the storefront of the Premises located inside the
50 Park/Plaza Development. Tenant shall pay all costs of fabricating, constructing, operating, and maintaining
51 such sign including, without limitation, all charges for electricity. Tenant shall keep said sign well lighted
52 during such hours as Landlord shall designate and shall maintain said sign in good condition and repair
53 during the entire Term of this Lease. Said sign shall conform to the criteria for signs contained in **Exhibit**
54 **B**, and the size, content, design and location thereof shall be subject to the prior written approval of
55 Landlord. Unless approved in advance by Landlord, except as hereinabove mentioned, Tenant shall not
56 place or cause to be placed, erected or maintained on any exterior door, wall, window or the roof of the
57 Premises, or on the interior or exterior surface of the glass of any window or door of the Premises, or on
58 any sidewalk or other location outside the Premises, or on or within any display window space in the
59 Premises, whether or not there is display window space in the Premises, or within any entrance to the
60 Premises, any sign (flashing, moving, hanging, handwritten, or otherwise), decal, placard, decoration,
61 flashing, moving or hanging lights, lettering, or any other advertising matter of any kind or description;
62 provided, however, that subject to the prior written approval of Landlord with respect to design and
63 placement, Tenant may place decals for safety purposes on glass storefronts where warranted. No symbol,
64 design, name, mark, or insignia adopted by Owner or Landlord for the Park/Plaza Development shall be
65 used without the prior written consent of Landlord. No illuminated sign located in the interior of the
66 Premises and visible from outside the Premises shall be permitted without the prior written approval of

1 Landlord. All signs located in the interior of the Premises shall be in good taste so as not to detract from
2 the general appearance of the Premises or the Park/Plaza Development. In the event Tenant shall be in
3 default of this Section 9.01, Tenant shall pay as Additional Rent the sum of \$100.00 for each day of default
4 in order to reimburse Landlord for the additional administrative expenses resulting therefrom.

5 6 ARTICLE X

7 8 MAINTENANCE OF PREMISES

9 10 Section 10.01 TENANT'S OBLIGATIONS FOR MAINTENANCE.

11 (a) Subject to all other terms and provisions of this Lease, Tenant shall, at its sole cost and
12 expense, keep and maintain the Premises, including without limitation, the roof, foundation, HVAC
13 systems, utility lines and systems exclusively serving the Premises wherever located, and building
14 equipment, together with any and all alterations, additions and improvements therein or thereto permissible
15 under this Lease, in order, condition and repair consistent with the prevailing practices in retail operations
16 in the same proximate geographical area as the Park/Plaza Development, except for ordinary wear and tear,
17 and shall, at Tenant's expense, make all repairs and replacements as may be necessary in order to keep and
18 maintain said improvements in such order, condition and repair, including structural and non-structural and
19 interior and exterior repairs and replacements, foreseen and unforeseen, ordinary and extraordinary, and
20 regardless of the time remaining to the expiration of the term hereby granted. All such repairs and
21 replacements shall be of good quality sufficient for the proper maintenance and operation of the Premises
22 and shall be constructed and installed in compliance with all applicable laws and all directions, rules and
23 regulations of the health officer, fire marshal, building inspector or other proper officials of the
24 governmental agencies having jurisdiction, and Tenant shall comply with all requirements of law,
25 ordinances and otherwise and insurance requirements. Tenant also agrees to comply with requirements of
26 any insurance underwriters, inspection bureaus or a similar agency designated by Landlord with respect to
27 the Premises. At the end of the Term, Tenant shall surrender the Premises in good order, condition, and
28 repair, reasonable wear and tear excepted. Tenant, at its own expense, shall install and maintain such fire
29 extinguishers and other fire protection devices as may be required from time to time by any agency having
30 jurisdiction thereof or by the insurance underwriter insuring the building in which the Premises are located.

31
32 (b) Tenant shall keep the Premises and all other parts of the Park/Plaza Development free from
33 any and all liens arising out of any work performed, materials furnished, or obligations incurred by or on
34 behalf of Tenant. Within ten (10) days after written request therefor by Landlord, Tenant shall (a) bond
35 against or discharge any mechanics' or materialmen's lien or (b) furnish Landlord with a copy of the
36 recorded waiver of lien, recorded release of lien, or of the recorded bond discharging such lien. Tenant
37 shall reimburse Landlord as Additional Rent for any and all costs and expenses including, without
38 limitation, attorneys' fees, which may be incurred by Landlord by reason of the filing of any such liens
39 and/or removal of same, such reimbursement to be made within ten (10) days after receipt by Tenant from
40 Landlord of a statement setting forth the amount of such costs and expenses such reimbursement to be paid
41 to Landlord in the manner and at the place provided in this Lease. Tenant shall give Landlord at least fifteen
42 (15) days' written notice prior to commencing or causing to be commenced any work on the Premises
43 (whether prior or subsequent to the Commencement Date), so that Landlord shall have reasonable
44 opportunity to file and post a notice of non-responsibility for Tenant's work.

45
46 (c) In the event Tenant fails, refuses or neglects to maintain the Premises as required hereunder
47 or to commence and complete repairs promptly and adequately, to remove or bond against any lien, to pay
48 any cost or expense, to reimburse Landlord, or otherwise to perform any act or fulfill any obligation required
49 of Tenant pursuant to this Section 10.02, Landlord may, but shall not be required to, perform such
50 maintenance or to make or complete any such repairs, remove or bond against such lien, pay such cost or
51 perform such act or the like without prior notice to, but at the sole cost and expense of Tenant. Tenant shall
52 reimburse Landlord, as Additional Rent, for all cost and expense of Landlord thereby incurred within ten
53 (10) days after receipt by Tenant from Landlord of a statement setting forth the amount of such cost and
54 expense.

55 56 ARTICLE XI

57 58 INSURANCE AND INDEMNITY

59 60 Section 11.01 TENANT'S INSURANCE.

61 (a) Tenant, at its sole cost and expense, shall maintain during the Lease Term, property
62 insurance against loss by fire and all other risks and perils included under a Special Form (formerly known
63 as "all risk") coverage, as such term is known on the Commencement Date of this Lease, including a
64 demolition cost endorsement and in Builder's Risk form when appropriate, in an amount not less than one
65 hundred percent (100%) of the actual replacement cost of the leasehold improvements (as defined in
66 Exhibit B) and Tenant's Personal Property, at the time in question (excluding cost of excavations,

1 foundations, footings, underground pipes, conduits, flues and drains) and on an agreed value basis, without
2 diminution of such cost for depreciation or obsolescence or changes in Legal Requirements, with
3 responsible insurance companies (who are qualified to write insurance and conduct business in the State
4 and has (have) at a minimum a rating of A-/VIII in Bests Rating Guide ("Responsible Insurance
5 Companies"). In addition, Tenant, at its sole cost and expense, shall, during the entire Term hereof, procure
6 and keep in force: (i) Commercial General Liability Insurance with respect to the Premises and the
7 operations of Tenant in, on or about the Premises, in which the limits shall be not less than \$3,000,000.00
8 per occurrence combined single limit, and general aggregate limit of not less than \$3,000,000.00 and
9 additional coverage under umbrella policies of at least \$5,000,000.00, broad form/extended bodily injury,
10 death and property damage, and business automobile liability insurance covering all owned, non-owned
11 and hired or borrowed vehicles of Tenant used in connection with the operation of its business from the
12 Premises, in which the limits shall be not less than \$1,000,000.00 per occurrence combined single limit,
13 insuring for bodily injury, death and property damage; (ii) plate glass insurance, at full replacement value;
14 (iii) insurance against fire, extended coverage, vandalism, malicious mischief, water damage which does
15 not exclude backup from sewers or drains and/or sprinkler leakage, and such other additional perils
16 including earthquake and flood as now are or hereafter may be included in a standard extended coverage
17 endorsement from time to time in general use in the county in which the Park/Plaza Development is located,
18 insuring Tenant's merchandise, trade fixtures, furnishings, equipment and all other items of personal
19 property of Tenant located on or in the Premises, including steam boiler insurance, if applicable, in an
20 amount equal to the full replacement cost thereof; (iv) workers' compensation coverage as required by law
21 and including Employer's Liability Insurance in the amount of \$2,000,000.00 each accident, \$2,000,000.00
22 each employee, by disease, \$2,000,000.00 policy aggregate by disease; (v) with respect to alterations,
23 improvements and the like required or permitted to be made by Tenant under this Lease, contingent liability
24 and builders' risk insurance, in an amount satisfactory to Owner and Landlord; (vi) the insurance required
25 under **Exhibit B**, and (vii) product liability coverage (including, without limitation, if this Lease covers
26 Premises in which food and/or beverages are sold and/or consumed, liquor liability coverage for acts arising
27 out of the serving and/or consumption of food and/or alcoholic beverages on or obtained at the Premises,
28 to the extent obtainable), for not less than \$3,000,000.00 combined single limit, bodily injury, death and
29 property damage. In addition, if Owner or Landlord deems it necessary to increase the amounts or limits
30 of insurance required to be carried by Tenant hereunder, Landlord may reasonably increase said amounts
31 or limits, and Tenant shall so increase the amounts or limits of the insurance required to be carried by
32 Tenant hereunder and shall provide Owner and Landlord with policies or certificates indicating the
33 increased amounts or limits as provided in this Section 11.01.

34
35 (b) All policies of insurance required to be carried by Tenant pursuant to this Section 11.01
36 shall be written by insurance companies of adequate financial capacity satisfactory to Owner and Landlord
37 with a Best's rating and Financial Size Category of not less than A-/VII and authorized to do business in
38 the state in which the Park/Plaza Development is located. Any such insurance required of Tenant hereunder
39 may be furnished by Tenant under any blanket policy carried by it or under a separate policy therefor. An
40 insurance certificate (and endorsements where same become necessary) together with a copy of the policy
41 declaration page from Tenant's insurer, certifying that such policy has been issued, provides the coverage
42 required by this Section 11.01 and contains all of the provisions specified in this Section 11.01 (including,
43 without limitation, naming of additional insured entities as required by Section 11.01(c) below and a
44 statement that no deductible or self-insured retention applies to such policy), shall be delivered to Owner
45 and Landlord, at the address set forth on the Data Sheet prior to the commencement of the Term of this
46 Lease, and such insurance information shall also be provided in connection with all renewals, not less than
47 thirty (30) days prior to the expiration of the term of each such policy. As often as any such policy shall
48 expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in like
49 manner and to like extent. Landlord may, at any time, and from time to time, inspect and copy any and all
50 insurance policies required to be procured by Tenant hereunder.

51
52 (c) Each policy evidencing insurance required to be carried by Tenant pursuant to this Section
53 11.01 shall contain the following clauses and provisions: (i) a provision that such policy and the coverage
54 evidenced thereby shall be primary and non-contributing with respect to any policies carried by Owner and
55 Landlord and that any coverage carried by Owner and Landlord be excess insurance; (ii) a provision
56 including Landlord and the parties set forth on **Exhibit C** of this Lease and any other parties designated by
57 Owner and Landlord from time to time as additional insured entities; (iii) a waiver by the insurer of any
58 right to subrogation against Owner and Landlord and other additional insured entities (as set forth on
59 **Exhibit C**), their agents, employees and representatives, which arises or might arise by reason of any
60 payment under such policy or by reason of any act or omission of Owner, Landlord, their agents, employees
61 or representatives; (iv) a severability of interest clause or endorsement; (v) a provision that the insurer will
62 not cancel or change the coverage provided by such policy without giving Landlord thirty (30) days' prior
63 written notice; and (vi) such policy shall be an "occurrence form" policy. Any policy of insurance required
64 to be carried by Tenant that names the parties set forth in this Section 11.01 (c) (ii) as additional insured
65 entities shall not be subject to a deductible or self-insured retention, it being the intent of the parties that
66 such insurance shall fully and completely insure such additional insured entities for all loss or expense.

(d) In the event that Tenant fails to procure or to maintain, at the times and for the duration specified in this Section 11.01, any insurance required by this Section 11.01, or fails to carry insurance required by law or governmental regulation, Landlord may (but shall not be required to) at any time or from time to time, and without notice to Tenant, procure such insurance and pay the premiums therefor, and the cost of same, plus a fifteen percent (15%) administrative fee shall be deemed Additional Rent and shall be payable upon Landlord's demand.

(e) Tenant will not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises which will violate Owner's and Landlord's policies of hazard or liability insurance or which will prevent Owner and Landlord from procuring such policies in companies acceptable to Owner and Landlord. If anything done, omitted to be done or suffered by Tenant to be kept in, upon or about the Premises shall cause the rate of fire or other insurance on the Premises or on other property of Landlord or of others within the Park/Plaza Development to be increased beyond the minimum rate from time to time applicable to the Premises or to any property for the use or uses made thereof, Tenant will pay, as Additional Rent, the amount of any such increase upon Landlord's demand.

Section 11.02 OWNER'S/LANDLORD'S INSURANCE.

During the Term following the Rental Commencement Date, Owner shall provide, in amounts and coverages determined by Owner, (i) commercial general liability insurance covering claims for bodily injury, death and property damages with respect to occurrences in, upon or about the Park/Plaza Development, (ii) property insurance covering the kiosk structures, and (iii) any other insurance which Owner determines in its reasonable judgment is proper with respect to the Park/Plaza Development and the kiosk structures. Notwithstanding the foregoing, Owner may, in its sole discretion, determine that it will self-insure its interests in/with the Park/Plaza Development instead of purchasing the foregoing referenced insurance policy(ies). Landlord shall provide insurance as indicated in Section 26 of the Programming Agreement between Landlord and Owner.

Section 11.03 COVENANT TO HOLD HARMLESS.

Tenant covenants to defend and indemnify Landlord, the City of San Diego, a California municipal corporation, the City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic and Civic San Diego, a nonprofit public benefit corporation, and all of their affiliates, parent corporation, subsidiaries, partners, members, management company, successors, and assigns, and elected officials, the employees, agents, officers, directors, shareholders, members, advisers, trustees and fiduciaries of any of them, (collectively referred to as the "**Indemnified Parties**"), 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 the Indemnified Parties not required to be insured against by Tenant pursuant to this Article XI) from and against any and all claims, actions, demands, judgments, awards, fines, mechanics' liens or other liens, losses, damages, liability and expense, including attorneys' fees and 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 Lease) caused 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, Owner, 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 reasonable attorneys' fees and court costs incurred or paid by them in connection with such litigation. The Indemnified Parties reserve to themselves, at their sole option, the right to appoint or approve of counsel to defend their separate interests in any action where it or its related entity is a named party.

Section 11.04 WAIVER OF RIGHT OF RECOVERY.

Except as otherwise provided in this Lease, neither Owner, 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 Section 11.04 shall not limit the indemnification for liability to third parties pursuant to Section 11.03.

ARTICLE XII

UTILITIES

Section 12.01 UTILITY CHARGES.

(a) Tenant shall be solely responsible for and shall promptly pay for all fees, deposits and charges, including use and/or connection fees, hook-up fees, standby fees, and/or penalties for discontinued or interrupted service, and the like, for water, gas, electricity, HVAC, fire alarm, burglar alarm, telephone,

1 cable television, sewer and sanitation, solid waste disposal and any other service or utility used in or upon
2 or furnished to the Premises, including, without limitation, any services to be supplied by Landlord from a
3 central utility plant or other utility system, as more particularly set forth in the Data Sheet if applicable,
4 irrespective of whether any of the foregoing are initially paid in advance by Landlord, or otherwise.
5 Landlord, at its sole option, may elect to furnish any or all of such services with a separate charge therefor
6 to Tenant, at competitive rates within the immediate geographic area in which the Park/Plaza Development
7 is located, such charge to be based upon the services used by Tenant, as reflected by meter, submeter or
8 otherwise. Tenant shall pay such charge, as Additional Rent, at such time and upon such terms as
9 installments of Minimum Annual Rental are due.

10
11 In addition to the foregoing, Tenant shall be solely responsible for providing and for paying
12 for charges for temporary utilities required by Tenant during the course of Tenant's Work. Landlord shall
13 cooperate with Tenant, at no cost or expense to Owner or Landlord, in arranging for such temporary utilities.
14

15 (b) Except to the extent of Owner's or Landlord's gross negligence, in no event shall Owner
16 or Landlord be liable for damages or otherwise for any interruption, reduction, disruption, curtailment or
17 failure in the supply, quality or character of electricity, services from a central utility plant or any other
18 utility or other service, or if either the quantity, quality or character thereof supplied to or by Landlord is
19 changed or is no longer available for Tenant's requirements, nor shall any such interruption, reduction,
20 disruption, curtailment, failure or change in quantity, quality or character constitute or be deemed to
21 constitute constructive eviction of Tenant, or excuse or relieve Tenant from its obligations under this Lease,
22 including but not limited to the payment of Rental.
23

24 (c) Prior to the commencement of Tenant's occupancy of the Premises and/or at any time
25 thereafter until the expiration of the Term, Landlord may, upon thirty (30) days' prior written notice to
26 Tenant, elect to have Tenant obtain, and/or discontinue furnishing, as applicable, any utility to the Premises
27 (including, without limitation, heating, ventilation and air conditioning services), without thereby affecting
28 this Lease in any manner or otherwise incurring any liability to Tenant, and Landlord shall no longer be
29 obligated to furnish such utility to the Premises. If Landlord shall give Tenant notice of intention to so have
30 Tenant obtain, or for Landlord to cease furnishing, a utility to the Premises, Tenant may contract for and
31 receive such utility directly from the public utility corporation then serving the Park/Plaza Development,
32 and if Tenant does so, Landlord shall permit Tenant, at Tenant's sole cost, to use Landlord's risers, wiring,
33 electric and any other installations then serving the Premises for such purpose, if any, to the extent that the
34 same are available, suitable and may be safely so used, consistent with concurrent and anticipated future
35 use by Landlord and other tenants. If Landlord is the initial provider of a utility service to Tenant, Landlord
36 agrees not to discontinue furnishing any utility to Tenant pursuant hereto until such time as Tenant shall be
37 able to receive said utility service from an alternate source of supply. Tenant agrees to act diligently in
38 connecting to such alternate source as soon as it becomes available. Landlord may from time to time during
39 the Term elect to provide, or resume provision of, any utility to the Premises obtained or provided by Tenant
40 pursuant hereto, and thereafter make an election for Tenant to provide such utility pursuant hereto, and
41 thereafter re-elect again pursuant hereto on an ongoing basis.
42

43 (d) Notwithstanding any other provisions of this Article, to the extent utilities provided by
44 Landlord are utilities which could be supplied to Tenant as a direct customer of a public utility, the value
45 of such utility used by Tenant shall be computed for the purposes of this Article so as not to exceed the rate
46 schedules which would be applicable if Tenant were at the time a direct customer of such public utility
47 corporation.
48

49 (e) Any obligation of Landlord to furnish light, power, and services from a central utility plant
50 shall be conditioned upon the availability of adequate energy sources. Landlord shall have the right to
51 reduce heating, cooling, and lighting within the Premises and the Common Areas as required by any
52 mandatory or voluntary fuel or energy saving allocation, or similar statute, regulation, order or program.
53

54 (f) Tenant shall operate its heating, ventilating, and air conditioning ("HVAC") system(s)
55 serving the Premises so as to maintain comfortable conditions during regular Park/Plaza Development
56 business hours. Tenant's obligation to connect to the services supplied by Landlord, as set forth in this
57 Section 12.01 and **Exhibit B**, as well as Tenant's installation, operation and maintenance of its HVAC
58 system(s) within the Premises, shall be as set forth herein, in **Exhibit B** and in any related exhibit(s).
59

60 (g) If Tenant desires to install any equipment which shall exceed the capacity of any utility
61 facilities or which shall require additional utility facilities, Tenant shall not have the right to do so without
62 Landlord's prior written approval of Tenant's Plans and Specifications and specifications therefor. If such
63 installation is approved by Landlord, and if Landlord provides such additional facilities to accommodate
64 Tenant's installation, Tenant agrees to pay Landlord, on demand, the cost of providing such additional utility
65 facilities or utility facilities of greater capacity. Tenant shall in no event use any of the utility facilities in
66 any way which shall overload or overburden the utility systems.

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ARTICLE XIII

ESTOPPEL STATEMENT, ATTORNMENT, AND SUBORDINATION

Section 13.01 ESTOPPEL STATEMENT.

Within ten (10) days after request therefor by Owner and/or Landlord (which request may not be given more often than one (1) time during any twelve (12) month period, unless requested by Landlord's mortgagee or required in connection with a financing or sale of the Park/Plaza Development), Tenant shall execute, in recordable form, and deliver to Landlord a statement, in writing, certifying (a) that this Lease is in full force and effect, (b) the Commencement Date, the Rental Commencement Date and the expiration date of this Lease, (c) that Rental and all other charges hereunder are paid currently without any offset or defense thereto, (d) the amount of Rental and all other charges hereunder, if any, paid in advance, (e) whether this Lease has been modified and, if so, identifying the modifications, (f) 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 (g) such other matters as may be reasonably requested by Landlord. Tenant's failure or refusal to execute timely such statement shall constitute an acknowledgment by Tenant that the statements contained in such statement are true and correct without exception, and may be relied upon by Owner, Landlord or by any prospective or existing transferee of all or any part of Owner's or Landlord's interest in the Park/Plaza Development or this Lease or by any of Owner's or Landlord's lenders.

Section 13.02 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 Owner or Landlord covering the Premises, or in the event Owner or Landlord sells, conveys or otherwise transfers its interest in the Park/Plaza Development or any portion thereof containing the Premises, this Lease 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 Lease.

Section 13.03 SUBORDINATION.

Tenant further agrees this Lease 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 Park/Plaza Development 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 Lease. Tenant agrees that upon the demand of Owner, 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 Owner, Landlord or such mortgagee, beneficiary or ground lessor, including, without limitation, an appropriate recordable subordination agreement.

Section 13.04 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 Lease.

ARTICLE XIV

ASSIGNMENT AND SUBLETTING

Section 14.01 RESTRICTIONS ON TRANSFER.

Tenant shall not assign or sublet the whole or any part of the Premises without the prior written consent of Landlord and Owner, which may be granted or withheld in Landlord's sole discretion.

ARTICLE XV

WASTE OR NUISANCE

Section 15.01 WASTE OR NUISANCE.

Tenant shall not commit nor permit any of its employees, invitees, contractors, subcontractors, licensees, subtenants, or agents to commit any waste upon the Premises and shall not place a load upon the floor of the Premises which exceeds the floor load per square foot which such floor was designed to carry. Tenant shall not commit nor permit any of its employees, invitees, contractors, subcontractors, licensees, subtenants or agents to commit any nuisance or other act or thing which may impact Landlord's operation of the Park/Plaza Development or disturb the quiet enjoyment of any other occupant or tenant of the

1 Park/Plaza Development. Tenant shall not use or permit to be used any medium that might constitute a
2 nuisance, such as loudspeakers, sound amplifiers, tape decks, compact disc players, radios, televisions, or
3 any other sound producing or other device which will carry sound or odors outside the Premises and, upon
4 written notice from Landlord, Tenant shall cause any such noise or odors to cease. Tenant agrees that
5 business machines and mechanical equipment used by Tenant which cause vibration or noise that may be
6 transmitted to the building or buildings comprising the Park/Plaza Development or to the Premises to such
7 a degree as to be reasonably objectionable to Landlord or to any occupant, shall be placed and maintained
8 by Tenant at its expense in a manner sufficient to eliminate such vibrations or noise, such as by cork, rubber
9 or spring-type vibration isolators. Tenant shall not allow any use of the Premises or any other portion of the
10 Park/Plaza Development in a manner which is a source of annoyance, disturbance or embarrassment to
11 Owner, Landlord or to the other tenants of the Park/Plaza Development or which is deemed by Landlord,
12 in its sole discretion, as not in keeping with the character of the Park/Plaza Development. The Premises
13 shall not be used for any unlawful, immoral, or other purpose deemed improper by Landlord.

14 15 **ARTICLE XVI**

16 17 **TRADE NAME; PROMOTIONAL PROGRAM**

18 19 **Section 16.01 TRADE NAME.**

20 (a) Tenant shall operate its business in the Premises under the name specifically set forth in
21 the Data Sheet ("Trade Name") so long as the same shall not be held to be in violation of any applicable
22 law, and shall not change the advertised name or character of the business operated in the Premises without
23 the prior written approval of Landlord.

24
25 (b) Tenant shall use "Horton Plaza Urban Park" (or such other name as Landlord shall
26 designate during the Term as provided by written notice to Tenant) to describe the location of the Premises
27 for all advertising, promotional and marketing materials which refer to the location of the Premises. This
28 will include all television, radio, print, or collateral materials which are used to promote Tenant's location.
29 However, Tenant shall obtain the approval for the Park/Plaza Development logo or representations from
30 the Marketing Director of the Park/Plaza Development prior to using such logo or representations, which
31 approval shall not be unreasonably withheld or delayed.

32 33 **Section 16.02 PROMOTIONAL PROGRAM.**

34 (a) Landlord shall provide or cause to be provided a program of advertising and promotional
35 events and services ("Promotional Program") which, in Landlord's sole judgment, will serve to promote
36 the Park/Plaza Development. Landlord shall not be obligated to spend more than is actually collected from
37 tenants in providing the Promotional Program. Any promotional services and personnel provided shall be
38 under the exclusive control and supervision of Landlord, who shall have the sole authority to employ and
39 discharge personnel and to establish a budget for the Promotional Program. Tenant agrees to the mention
40 or nonmention of Tenant's Trade Name in the general advertising and, in either event, Tenant shall, upon
41 the request of Landlord, furnish copy, pictures, or an example of its merchandise for promotion in such
42 advertising.

43
44 (b) Tenant shall pay to Landlord, as Tenant's share of the cost of the Promotional Program, an
45 annual promotional charge ("Promotional Charge") which originally shall equal the amount set forth in the
46 Data Sheet. All payments, charges, dues and assessments payable under this Section shall be payable in
47 monthly installments on the first day of each month as Additional Rent. Such Promotional Charge payable
48 by Tenant shall be increased annually commencing on the January 1st immediately succeeding the Rental
49 Commencement Date and annually thereafter by five percent (5%) of the amount due and payable by Tenant
50 for the prior year. In the event the Premises is located within an expansion and/or specially constructed
51 area within the Park/Plaza Development where a grand opening date shall be set by Landlord, then Tenant
52 shall also pay an initial assessment in the amount set forth in the Data Sheet in addition to the Promotional
53 Charge, such initial assessment payable in one lump sum within thirty (30) days after the Rental
54 Commencement Date.

55 56 **ARTICLE XVII**

57 58 **DAMAGE AND DESTRUCTION**

59 60 **Section 17.01 RECONSTRUCTION OF DAMAGED PREMISES.**

61 Unless this Lease is terminated as provided for below, if fire, the elements, or other casualty
62 damages the leasehold improvements (as defined in **Exhibit B**), Tenant shall promptly repair the Premises
63 ("Restoration Work") to its condition just prior to the damage. Tenant's obligation for Rental shall not be
64 abated because of destruction or damage to the Premises. Tenant agrees to diligently pursue issuance of all
65 building and other permits required for such Restoration Work. If Tenant has not completed the Restoration
66 Work within one hundred twenty (120) days from the date Tenant receives all its required building and

1 other permits for such work (for which permits Tenant shall make prompt application following such
2 destruction or damage and shall diligently pursue thereafter), or within such additional period of time which
3 may be needed for Tenant to complete such Restoration Work provided Tenant has diligently commenced
4 and is pursuing such Restoration Work to completion, Landlord shall have the right to take over and
5 complete such work at Tenant's cost.

6
7 **Section 17.02 INTENTIONALLY DELETED.**

8
9 **Section 17.03 TOTAL OR PARTIAL DESTRUCTION OF PREMISES.**

10 In the event of total or partial destruction of the leasehold improvements (as defined in **Exhibit B**)
11 for any reason whatsoever, the obligations and rights of Landlord and Tenant shall be governed by the terms
12 of this Lease. In the event that any law or statute, present or future, provides different rights or obligations,
13 the terms of this Lease shall control to the extent permitted by law.

14
15 **Section 17.04 CASUALTY DURING LAST LEASE YEAR.**

16 If fifty percent (50%) or more of the replacement cost of the Premises is damaged by fire, the
17 elements or other casualty, during the last lease year of the Term, Landlord or, provided Tenant is not in
18 default hereunder, Tenant, may terminate this Lease as of the date of the damage by written notice to the
19 other party within thirty (30) days after said date.

20
21 **Section 17.05 NOTICE OF CASUALTY.**

22 Tenant shall give Landlord prompt written notice of any accident, fire or damage occurring on or
23 to the Premises.

24
25 **ARTICLE XVIII**

26
27 **EMINENT DOMAIN**

28
29 **Section 18.01 TOTAL CONDEMNATION OF PREMISES.**

30 If the whole of the Premises shall be taken by any public authority under the power of eminent
31 domain or sold to a public authority under threat or in lieu of such taking (collectively, a "Condemnation"),
32 then the Term of this Lease shall cease as of the day upon which possession is taken by such public
33 authority, and Minimum Annual Rental and Additional Rent and other charges shall be paid up to that day
34 with a proportionate refund by Landlord of such Rental payments as may have been paid in advance for a
35 period subsequent to the date of the taking.

36
37 **Section 18.02 PARTIAL CONDEMNATION.**

38 During the Term, if as a result of a Condemnation twenty percent (20%) or more of the Premises
39 is taken and if such Condemnation substantially and permanently impairs the use of the Premises for the
40 Permitted Use, then Tenant may terminate this Lease, on not less than sixty (60) nor more than ninety (90)
41 days' notice to Landlord, at any time during the period commencing on the date that Tenant receives notice
42 of such Condemnation and ending on the date which is three (3) months after physical possession by the
43 Condemnation authority.

44
45 **Section 18.03 ADJUSTMENTS IN MINIMUM ANNUAL RENTAL AND ADDITIONAL**
46 **RENT.**

47 If any Condemnation does not result in the termination of this Lease, Minimum Annual Rental and
48 any other payments provided for herein shall be reduced proportionately to the reduction in the square
49 footage of the Premises.

50
51 **Section 18.04 PAYMENT OF PROCEEDS AWARD.**

52 All damages awarded for such taking under the power of eminent domain or proceeds from any
53 sale under threat or in lieu of such a taking, whether for the whole or part of the Premises or leasehold
54 improvements thereto, shall belong to and be the property of Owner, irrespective of whether such damages
55 shall be awarded or proceeds obtained as compensation or diminution in value to the leasehold
56 improvements thereto, or to the fee of the Premises, and Tenant shall have no claim against either Owner,
57 Landlord or the condemning authority with respect thereto; provided, however, that Owner and Landlord
58 shall not be entitled to any award specifically designated as compensation for, depreciation to, and cost of
59 removal of, Tenant's stock and trade fixtures, or (subject to the rights of any mortgagee or beneficiary of
60 any mortgage or deed of trust made by Owner or Landlord covering the Premises or the Park/Plaza
61 Development) to any award specifically designated as compensation for the unamortized cost of Tenant's
62 leasehold improvements less any Owner or Landlord contribution to Tenant's Work, such amortization to
63 be calculated on a straight-line basis over the Term of this Lease. Tenant waives the provisions of any
64 statute or other law that may be in effect at the time of the occurrence of any such taking under which a
65 lease is automatically terminated or pursuant to which a tenant is given the right to terminate a lease by
66 reason of such a taking. Tenant, Landlord and Owner shall each have the right, at its own expense, to appear

1 in any condemnation proceedings and to participate in any and all hearings, trials, and appeals therein. In
2 the event any party to this Lease shall receive notice of any proposed or pending condemnation affecting
3 the Premises, the party receiving such notice shall promptly notify the other party of the receipt and contents
4 thereof.

6 ARTICLE XIX

8 DEFAULT

10 Section 19.01 RIGHTS UPON DEFAULT.

11 (a) Notwithstanding any provision herein to the contrary and irrespective of whether all or any
12 rights conferred upon Owner and Landlord by this Article XIX are expressly or by implication conferred
13 upon Landlord elsewhere in this Lease, in the event of (i) any failure of Tenant to pay any Minimum Annual
14 Rental or Additional Rent or any other charges or sums whatsoever due hereunder (including without
15 limitation, amounts due as reimbursement to Landlord for costs incurred by Landlord in performing
16 obligations of Tenant hereunder upon Tenant's failure so to perform) for more than five (5) days after
17 written notice from Landlord to Tenant that such rental or any other charges or sums whatsoever due
18 hereunder were not received on the date required for payment pursuant to this Lease, provided that such
19 notice from Landlord shall be in lieu of, and not in addition to, any notice of default required by applicable
20 laws, or (ii) any default or failure by Tenant to perform any other of the terms, conditions, or covenants of
21 this Lease to be observed or performed by Tenant for more than twenty (20) days after written notice from
22 Landlord to Tenant of such default (unless such default cannot be cured within said twenty (20) days in
23 which event Tenant shall not be deemed to be in default hereunder if Tenant shall have commenced to cure
24 said default promptly within twenty (20) days and shall thereafter proceed to prosecute such cure to
25 completion with all reasonable dispatch and diligence, provided that in no event shall such cure period
26 extend beyond one hundred twenty (120) days), provided that such notice from Landlord shall be in lieu
27 of, and not in addition to, any notice of default required by applicable laws, or (iii) any failure by Tenant to
28 move into the Premises and to initially open for business on or before the Rental Commencement Date, or
29 (iv) any failure by Tenant to operate continuously in the manner and during the hours established by
30 Landlord pursuant to Section 7.02(a) hereof or for the purpose specified in the Data Sheet (the Permitted
31 Use), or (v) Tenant's abandonment of the Premises, or permitting this Lease to be taken under any writ of
32 execution or similar writ or order, then Landlord, in addition to or in lieu of other rights or remedies it may
33 have under this Lease or by law, shall have the following rights: Landlord may at its sole discretion: (A)
34 immediately terminate this Lease and Tenant's right to possession of the Premises by giving Tenant written
35 notice that this Lease is terminated, in which event, upon such termination, Landlord shall have the right to
36 recover from Tenant the sum of (1) the worth at the time of award of the unpaid rental which had been
37 earned at the time of termination; (2) the worth at the time of award of the amount by which the unpaid
38 rental which would have been earned after termination until the time of award exceeds the amount of such
39 rental loss that Tenant affirmatively proves could have been reasonably avoided; (3) the worth at the time
40 of award of the amount by which the unpaid rental for the balance of the Term after the time of award
41 exceeds the amount of such rental loss that Tenant affirmatively proves could be reasonably avoided; (4)
42 any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's
43 failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be
44 likely to result therefrom; and (5) all such other amounts in addition to or in lieu of the foregoing as may
45 be permitted from time to time under applicable law; or (B) have this Lease continue in effect for so long
46 as Landlord does not terminate this Lease and Tenant's right to possession of the Premises, in which event
47 Landlord shall have the right to enforce all of Owner's and Landlord's rights and remedies under this Lease
48 including the right to recover the Minimum Annual Rental, Additional Rent and other charges payable by
49 Tenant under this Lease as they become due under this Lease; or (C) without terminating this Lease,
50 Landlord may pay or discharge any breach or violation hereof which amount so expended shall be added
51 to the next monthly incremental payment of Minimum Annual Rent and Additional Rent due and treated in
52 the same manner as Rental hereunder; or (D) without terminating this Lease, make such alterations and
53 repairs as may be necessary in order to relet the Premises, and relet the Premises or any part thereof for
54 such term or terms (which may be for a term extending beyond the Term) at such rental or rentals and upon
55 such other terms and conditions as Landlord in its sole discretion may deem advisable.

56
57 (b) If Landlord proceeds under Section 19.01(a)(D) above, upon such reletting all Rental and
58 other sums received by Landlord from such reletting shall be applied, first, to the payment of any
59 indebtedness other than Rental due hereunder from Tenant to Landlord; second, to the payment of any costs
60 and expenses of such reletting, including reasonable brokerage fees and attorney fees and of costs of such
61 alterations and repairs; third, to the payment of Rental due and unpaid hereunder; and the residue, if any,
62 shall be held by Landlord and applied in payment of future Minimum Annual Rental and Additional Rent
63 payable by Tenant hereunder, as the same may become due and payable hereunder. If such Minimum
64 Annual Rental, Additional Rent and other sums received from such reletting during any month are less than
65 that to be paid during that month by Tenant hereunder, Tenant shall pay such deficiency to Landlord; if
66 such rentals and sums shall be more, Tenant shall have no right to the excess. Such deficiency shall be

1 calculated and paid monthly. No re-entry or taking possession of the Premises by Landlord shall be
2 construed as an election on its part to terminate this Lease unless a written notice of such intention is given
3 to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding
4 any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease
5 for such previous breach and shall have the remedies provided herein. Should Landlord at any time
6 terminate this Lease for any breach, in addition to any other remedies it may have, it may recover from
7 Tenant all damages it may incur by reason of such breach, including the cost of recovering the Premises,
8 all of which amount shall be immediately due and payable from Tenant to Landlord. Landlord shall use its
9 reasonable efforts to mitigate its damages hereunder; however, the failure or refusal of Landlord to relet the
10 Premises shall not affect Tenant's liability. The terms "entry" and "re-entry" are not limited to their
11 technical meanings. If Tenant shall default hereunder prior to the date fixed as the commencement of any
12 renewal or extension of this Lease, Landlord may cancel and terminate such renewal or extension agreement
13 by written notice. In the event of re-entry by Landlord, Landlord may remove all persons and property
14 from the Premises and such property may be stored in a public warehouse or elsewhere at the cost of, and
15 for the account of Tenant, without notice or resort to legal process and without Landlord being deemed
16 guilty of trespass, conversion or becoming liable for any loss or damage which may be occasioned thereby.
17 In the event Tenant shall not remove its property from the Premises within ten (10) days after Tenant has
18 vacated the Premises, then such property shall be deemed abandoned by Tenant and Landlord may dispose
19 of the same without Landlord having any liability to Tenant. If Landlord removes such property from the
20 Premises and stores it at Tenant's risk and expense, and if Tenant fails to pay the cost of such removal and
21 storage after written demand therefor and/or to pay any Rental then due, then after the property has been
22 stored for a period of thirty (30) days or more Landlord may sell such property at public or private sale, in
23 the manner and at such times and places as Landlord deems commercially reasonable following reasonable
24 notice to Tenant of the time and place of such sale. The proceeds of any such sale shall be applied first to
25 the payment of the expenses for removal and storage of the property, the preparation for the conducting of
26 such sale, and for attorneys' fees and other legal expenses incurred by Landlord in connection therewith,
27 and the balance shall be applied as provided in this Section 19.01(b).

28
29 (c) At any time that Tenant has either failed to pay Rental or other charges within five (5) days
30 after the same shall be due or shall have delivered checks to Landlord for payments pursuant to this Lease
31 which shall have on at least three (3) occasions during the Term of this Lease (whether consecutive or not
32 or whether involving the same check or different checks) been returned by Landlord's bank for any reason,
33 Landlord shall not be obligated to accept any payment from Tenant unless such payment is made by
34 cashier's check or in bank certified funds.

35
36 (d) For purposes of subclauses (1) and (2) of Section 19.01(a), "worth at the time of award"
37 shall be computed by allowing interest at the rate of interest set forth in Section 27.13 of this Lease and for
38 purposes of subclause (3) of Section 19.01(a), "worth at the time of award" shall be computed by
39 discounting such amount at the discount rate of the Federal Reserve Bank whose jurisdiction includes the
40 Park/Plaza Development at the time of award, plus one percent (1%); the Rental reserved in this Lease shall
41 be deemed to be a monthly rental arrived at (i) by adding to the monthly installment of Minimum Annual
42 Rental payable under this Lease an amount equal to the monthly average of all the Percentage Rental based
43 on Gross Sales received by or payable to Landlord hereunder during the period that Tenant was conducting
44 Tenant's business in the Premises in the manner and to the extent required pursuant to this Lease, plus (ii)
45 one twelfth (1/12th) of the annual average of all Additional Rent payable by Tenant hereunder.

46
47 (e) Anything to the contrary notwithstanding, Landlord shall not be required to give notice
48 under this Article XIX more than twice in any consecutive twelve month period.

49 50 ARTICLE XX

51 52 BANKRUPTCY OR INSOLVENCY

53 54 Section 20.01 TENANT'S INTEREST NOT TRANSFERABLE.

55 Except as may specifically be provided pursuant to the Federal Bankruptcy Code, neither Tenant's
56 interest in this Lease, nor any estate hereby created in Tenant nor any interest herein, shall pass to any
57 trustee or receiver or assignee for the benefit of creditors or otherwise by operation of law.

58 59 Section 20.02 TERMINATION.

60 In the event the interest or estate created in Tenant hereby shall be taken in execution or by other
61 process of law, or if Tenant's guarantor, if any, or its executors, administrators, or assigns, if any, shall be
62 adjudicated insolvent or bankrupt pursuant to the provisions of any state act or the Federal Bankruptcy
63 Code or if Tenant is adjudicated insolvent by a court of competent jurisdiction other than the United States
64 Bankruptcy Court, or if a receiver or trustee of the property of Tenant or Tenant's guarantor, if any, shall
65 be appointed by reason of the insolvency or inability of Tenant or Tenant's guarantor, if any, to pay its debts
66 as the same become due or if any assignment shall be made of the property of Tenant or Tenant's guarantor,

1 if any, for the benefit of creditors, then Landlord shall have the right to elect by written notice to Tenant to
2 terminate this Lease and all rights of Tenant hereunder, and Tenant shall vacate and surrender the Premises
3 but shall remain liable as herein provided.

4
5 **Section 20.03 TENANT'S OBLIGATION TO AVOID CREDITORS' PROCEEDINGS.**

6 Tenant or Tenant's guarantor, if any, shall not cause or give cause for the appointment of a trustee
7 or receiver of the assets of Tenant or Tenant's guarantor, if any, and shall not make any assignment for the
8 benefit of creditors, or become or be adjudicated insolvent. The allowance of any petition under insolvency
9 law except under the Federal Bankruptcy Code or the appointment of a trustee or receiver of Tenant or
10 Tenant's guarantor, if any, or of the assets of either of them, shall be conclusive evidence that Tenant caused,
11 or gave cause therefor, unless such allowance of the petition, or the appointment of a trustee or receiver, is
12 vacated within sixty (60) days after such allowance or appointment. Any act or occurrence described in
13 this Section 20.03 shall be deemed a material breach of Tenant's obligations hereunder, and providing
14 Landlord with the right to elect by written notice to Tenant to terminate this Lease and all rights of Tenant
15 hereunder, and Tenant shall vacate and surrender the Premises but shall remain liable as herein provided.
16 Landlord does, in addition, reserve any and all other remedies provided in this Lease or by law.

17
18 **Section 20.04 ELECTION TO ASSUME LEASE.**

19 (a) This is a lease of real property adjacent to a shopping Center within the meaning of Section
20 365(b)(3) of the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq. (the "Bankruptcy Code").

21
22 (b) In the event that Tenant becomes a Debtor under Chapter 7, 11 or 13 of the Bankruptcy
23 Code, and the Trustee or Tenant, as Debtor-In-Possession, elects to assume this Lease for the purpose of
24 assignment to a third party or otherwise, such election and assignment, if any, may only be made if all of
25 Landlord's conditions are met. If the Trustee or Tenant, as Debtor-In-Possession, fails to elect to assume
26 or reject this Lease by the sixtieth (60th) day after the entry of the Order for Relief in a case under Chapter
27 7, 11 and 13 of the Bankruptcy Code, this Lease shall thereafter be deemed rejected and terminated in
28 accordance with Section 365(d)(4) of the Bankruptcy Code. The Trustee or Tenant, as Debtor-In-
29 Possession, shall thereupon immediately surrender possession of the Premises to Landlord and Owner and
30 Landlord shall have no further obligation to Tenant or Trustee under the Lease. The acceptance of rent by
31 Landlord after the sixtieth (60th) day shall not be deemed a waiver of Owner's and Landlord's rights herein
32 and under Section 365(d)(4) of the Bankruptcy Code, and Owner's and Landlord's right to be compensated
33 for damages in such bankruptcy case shall survive.

34
35 **Section 20.05 SUBSEQUENT BANKRUPTCY.**

36 In the event that this Lease is assumed by a Trustee appointed for Tenant or by Tenant as Debtor-
37 In-Possession and thereafter Tenant is liquidated or files a subsequent Petition for reorganization or
38 adjustment of debts under Chapter 11 or 13 of the Bankruptcy Code, then, and in either of such events,
39 Landlord may, at its option, terminate this Lease and all rights of Tenant hereunder, by giving Tenant
40 written notice of its election to so terminate, by no later than thirty (30) days after the occurrence of either
41 of such events.

42
43 **Section 20.06 ASSIGNMENT.**

44 If the Trustee or Debtor-In-Possession has assumed this Lease pursuant to the terms and conditions
45 of Sections 20.02 or 20.03, for the purpose of transferring Tenant's interest under this Lease or the estate
46 created thereby, to any other person, such interest or estate may be so transferred only if Owner and
47 Landlord shall acknowledge in writing that the intended transferee has provided "adequate assurance of
48 future performance" of all of the terms, covenants and conditions of this Lease to be performed by Tenant.

49
50 **Section 20.07 OCCUPANCY CHARGES.**

51 When, pursuant to the Bankruptcy Code, the Trustee or Tenant, as Debtor-In-Possession shall be
52 obligated to pay reasonable use and occupancy charges for the use of the Premises or any portion thereof,
53 such charge shall not be less than the Minimum Annual Rental as defined in this Lease and other monetary
54 obligations of Tenant for the payment of Additional Rent.

55
56 **Section 20.08 CONSENT.**

57 Neither Tenant's interest in this Lease, nor any lesser interest of Tenant herein, nor any estate of
58 Tenant hereby created, shall pass to any trustee, receiver, transferee for the benefit of creditors, or any other
59 person or entity, or otherwise by operation of law under the laws of any state having jurisdiction of the
60 person or property of Tenant unless Owner and Landlord shall consent to such transfer in writing. No
61 acceptance by Landlord of Rental or any other payments from any such trustee, receiver, transferee, person,
62 or other entity shall be deemed to have waived the need to obtain Owner's and Landlord's consent for any
63 transfer of Tenant's interest under this Lease.

64
65 **Section 20.09 ATTORNEY FEES.**

66 If, in the context of Tenant's bankruptcy case, Owner and Landlord are compelled at any time to

1 incur any expense, including attorneys' fees, in enforcing or attempting to enforce the terms of this Lease
2 or to enforce or attempt to enforce any actions required under the Bankruptcy Code to be taken by the
3 Trustee or by Tenant, as Debtor-In-Possession, then the sum so paid by Owner and Landlord shall be
4 awarded to Owner and Landlord by the Bankruptcy Court and shall be immediately due and payable by the
5 Trustee or by Tenant's bankruptcy estate to Owner and Landlord in accordance with the terms of the order
6 of the Bankruptcy Court.

7
8 **Section 20.10 OTHER LAWS.**

9 The provisions of this Article XX concerning the rights of Landlord and Owner, and the obligations
10 of Trustee, Tenant, Debtor, Receiver, Debtor-In-Possession and assignee are in addition to such rights and
11 obligations provided by law, including those applicable provisions of the Bankruptcy Code. Nothing
12 contained in this Article XX shall limit or reduce in any manner whatsoever such rights and obligations
13 which are otherwise provided by law.

14
15 **ARTICLE XXI**

16
17 **ACCESS BY LANDLORD**

18
19 **Section 21.01 RIGHT OF ENTRY.**

20 Landlord and Landlord's agents shall have the right to enter the Premises during normal business
21 hours (except in the event of emergency) for any reasonable purpose upon reasonable advance notice to
22 Tenant. Landlord shall have the further right to enter the Premises to make such repairs, alterations,
23 improvements or additions as Landlord may deem necessary or desirable, and Landlord shall be allowed to
24 take all material into and upon the Premises that may be required therefor without the same constituting an
25 eviction of Tenant in whole or in part, and Minimum Annual Rental, Additional Rent and other charges
26 reserved hereunder shall not abate while said repairs, alterations, improvements or additions are being
27 made, by reason of loss or interruption of business of Tenant, or otherwise. In exercising such right of
28 entry, Landlord shall use every reasonable effort not to disrupt Tenant's business in the Premises. Landlord
29 or Landlord's agents shall have the further right to enter the Premises at any time without notice in the event
30 of emergency. During the six (6) months prior to the expiration of the Term of this Lease, Landlord may
31 exhibit the Premises to prospective tenants and their representatives, including brokers, for purposes
32 including but not limited to the inspection and measurement of the Premises.

33
34 **ARTICLE XXII**

35
36 **TENANT'S PROPERTY**

37
38 **Section 22.01 TAXES ON TENANT'S PROPERTY.**

39 (a) Tenant shall be responsible for, and agrees to pay prior to delinquency, any and all Taxes
40 or other taxes, assessments, levies, fees and other governmental charges and impositions of every kind or
41 nature, regular or special, direct or indirect, presently foreseen or unforeseen or known or unknown, levied
42 or assessed by municipal, county, state, federal or other governmental taxing or assessing authority, upon,
43 against or with respect to (i) Tenant's leasehold interest in the Premises, (ii) all furniture, fixtures,
44 equipment, inventory and any other personal property of any kind owned by, or placed, installed or located
45 in, within, upon or about the Premises by Tenant, any concessionaire or any previous tenant or occupant,
46 and (iii) all alterations, additions, or improvements of whatsoever kind or nature, if any, made to the
47 Premises, by Tenant, any concessionaire or any previous tenant or occupant, irrespective of whether any
48 such tax is assessed, real or personal, and irrespective of whether any such tax is assessed to or against
49 Landlord or Tenant (collectively, "Tenant's Taxes"). Tenant shall provide Landlord with evidence of
50 Tenant's timely payment of such Tenant's Taxes upon Landlord's request. If at any time any of such
51 Tenant's Taxes are not levied and assessed separately and directly to Tenant (for example, if the same are
52 levied or assessed to Landlord, or upon or against the building containing the Premises and/or the land
53 underlying said building), Tenant shall pay to Landlord Tenant's share thereof as determined and billed by
54 Landlord.

55
56 Tenant acknowledges that this Lease may create a possessory interest subject to property taxation and that
57 Tenant may be subject to the payment of taxes levied on that possessory interest; that Tenant's payment of
58 taxes, fees, and assessments shall not reduce any Rental due under this Lease; and that Owner shall not
59 assume any responsibility for any taxes whatsoever resulting from Tenant's possession, use, or occupancy
60 of the Premises.

61
62 **Section 22.02 LOSS AND DAMAGE.**

63 Landlord shall not be responsible or liable to Tenant for any loss or damage that may be occasioned
64 by or through the acts or omissions of persons occupying premises or any part of the premises adjacent to
65 or connected with the Premises or any part of the building of which the Premises are a part, or any other
66 area in the Park/Plaza Development, or for any loss or damage resulting to Tenant or its property from

1 bursting, stoppage or leaking of water, gas, sewer or steam pipes, or (without limiting the foregoing) for
2 any damage or loss of property within the Premises from any cause whatsoever.

3
4 **Section 22.03 NOTICE BY TENANT.**

5 Tenant shall give immediate notice to Landlord in case of any damage to or destruction of all or
6 any part of, or of accidents occurring within the Premises, or of defects therein or of any damage to or
7 destruction of any inventory, fixtures or equipment within the Premises.

8
9 **ARTICLE XXIII**

10 **HOLDING OVER**

11
12
13 **Section 23.01 HOLDING OVER.**

14 If possession of the Premises is not surrendered to Landlord on the Expiration Date or earlier
15 termination of this Lease, then Tenant shall pay to Landlord on account of use and occupancy of the
16 Premises, for each month (or any portion thereof) during which Tenant (or a Person claiming by, through
17 or under Tenant) holds over in the Premises after the Expiration Date, an amount equal to the greater of
18 two (2) times: (i) the aggregate Rental that was payable under this Lease during the last month of the Term;
19 and (ii) the then fair market rental value of the Premises plus the monthly Additional Rent that was payable
20 by Tenant during the last month of the Term. Landlord's right to collect such amount from Tenant for use
21 and occupancy shall be in addition to any other rights or remedies that Landlord may have hereunder or at
22 law or in equity. Nothing contained in this Section 23.01 shall permit Tenant to retain possession of the
23 Premises after the Expiration Date, or earlier termination date, or limit in any manner Landlord's right to
24 regain possession of the Premises, through summary proceedings or otherwise. Landlord's acceptance of
25 any payments from Tenant after the Expiration Date, or earlier termination date, shall be deemed to be on
26 account of the amount to be paid by Tenant in accordance with the provisions of this Section 23.01. Tenant
27 expressly waives, for itself and for any person claiming through or under Tenant, any rights that Tenant or
28 any such person may have under the provisions of legal requirements, in connection with any holdover
29 summary proceedings that Landlord may institute to enforce the foregoing provisions of this Article.
30 Tenant shall indemnify, defend and hold harmless Owner and Landlord from and against any and all loss,
31 claims, demands, liabilities, damages (including, without limitation, consequential damages), costs and/or
32 expenses (including, without limitation, attorneys' fees and expenses) resulting from any failure by Tenant
33 to surrender the Premises in the manner and condition required by this Lease upon the expiration of the
34 Term or earlier termination of this Lease, including, without limitation, any claims made by any proposed
35 new tenant founded upon such failure.

36
37 **Section 23.02 SUCCESSORS.**

38 All rights and liabilities herein given to, or imposed upon, the parties to this Lease shall inure to
39 and be imposed upon the respective heirs, executors, administrators, successors and assigns of the said
40 parties; and if there shall be more than one Tenant, they shall all be bound jointly and severally by the
41 terms, covenants and agreements herein. No rights, however, shall inure to the benefit of any assignee of
42 Tenant unless the assignment to such assignee has been approved in advance by Landlord in writing or
43 permitted by Article XIV.

44
45 **ARTICLE XXIV**

46 **RULES AND REGULATIONS**

47
48
49 **Section 24.01 RULES AND REGULATIONS.**

50 Tenant agrees to comply with and observe all reasonable, non-discriminatory rules and regulations
51 established by Landlord, which may from time to time be revised, provided the same shall apply uniformly
52 to all tenants of the Park/Plaza Development. Tenant's failure to keep and observe said rules and regulations
53 shall constitute a breach of the terms of this Lease in the same manner as if the rules and regulations were
54 contained herein as covenants. In the case of any conflict between said rules and regulations and this Lease,
55 this Lease shall be controlling to the extent it does not conflict with the Owner's regulations, ordinances
56 and policies.

57
58
59 **ARTICLE XXV**

60 **QUIET ENJOYMENT**

61
62
63 **Section 25.01 LANDLORD'S COVENANT.**

64 Upon payment by Tenant of Rental herein provided and other charges payable by Tenant under this
65 Lease, and upon the observance and performance of all the covenants, terms and conditions on Tenant's
66 part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Premises for the

1 Term hereby demised without hindrance or interruption by Landlord or any other person or persons lawfully
2 or equitably claiming by, through or under Landlord, subject nevertheless to the terms and conditions of
3 this Lease, any mortgage and/or deed of trust to which this Lease is subordinated and any reciprocal
4 easement agreement made between Landlord and tenants or others.

5
6 **ARTICLE XXVI**

7
8 **SECURITY DEPOSIT**

9
10 **Section 26.01 DEPOSIT.**

11 At or before Tenant's execution of this Lease, Tenant shall deposit with Landlord the sum set forth
12 in the Data Sheet as a security deposit and payment and performance guaranty. Landlord shall retain said
13 sum throughout the Term of this Lease as security for the faithful performance by Tenant of all of the terms,
14 covenants, and conditions of this Lease. (Such sum is occasionally referred to herein as the "deposit".) If
15 Tenant defaults with respect to any provision of this Lease, including but not limited to the provisions
16 relating to the payment of Rental, Landlord may use, apply or retain all or any part of the deposit for the
17 payment of any Rental or any other sum in default, or for the payment of any loss or damage which Landlord
18 may suffer by reason of Tenant's default, or to compensate Landlord for any other amount which Landlord
19 may spend or become obligated to spend by reason of Tenant's default. In no event, except as specifically
20 hereinafter provided, shall Landlord be obliged to apply the same to Rental or other charges in arrears or to
21 damages for Tenant's failure to perform said covenants, conditions and agreements; however, Landlord
22 may so apply the deposit, at its option. Landlord's right to bring a special proceeding to recover or otherwise
23 to obtain possession of the Premises before or after Landlord's declaration of the termination of this Lease
24 for non-payment of Rental or for any other reason shall not in any event be affected by reason of the fact
25 that Landlord holds the deposit.

26
27 In the event that Landlord regains possession of the Premises, whether by special proceeding,
28 reentry or otherwise, because of Tenant's default or failure to carry out the covenants, conditions and
29 agreements of this Lease, Landlord may apply such deposit to all damages suffered through the date of said
30 repossession and may retain the deposit to apply to such damages as may be suffered or shall accrue
31 thereafter by reason of Tenant's default or breach. In the event any bankruptcy, insolvency, reorganization
32 or other creditor-debtor proceedings shall be instituted by or against Tenant, or its successors or assigns, or
33 any guarantor of Tenant hereunder, such deposit shall be deemed to be applied first to the payment of any
34 Rental and/or other charges due Landlord for all periods prior to the institution of such proceedings, and
35 the balance, if any, of such deposit may be retained by Landlord in partial liquidation of Landlord's
36 damages.

37
38 The deposit shall not constitute a trust fund. Landlord shall not be obligated to keep such deposit
39 as a separate fund but may commingle the deposit with its own funds. Tenant shall not be entitled to interest
40 on the deposit. In the event Landlord applies the deposit in whole or in part, Tenant shall, within five (5)
41 days after written demand by Landlord, deposit sufficient funds to maintain the deposit in the initial amount.
42 Failure of Tenant to deposit such additional funds shall entitle Landlord to avail itself of the remedies
43 provided in this Lease for non-payment of Rental by Tenant. If Tenant fully and faithfully performs every
44 provision of this Lease to be performed by it, the security deposit or any balance thereof, less any sums
45 then due Landlord from Tenant under this Lease, shall be returned to Tenant (or, at Landlord's option to the
46 last assignee of Tenant's interest thereunder) within thirty (30) days following the later of the expiration of
47 the Term of this Lease or Tenant's vacating the Premises.

48
49 **ARTICLE XXVII**

50
51 **MISCELLANEOUS**

52
53 **Section 27.01 WAIVER; ELECTION OF REMEDIES.**

54 One or more waivers of any covenant or condition by Landlord shall not be construed as a waiver
55 of a subsequent breach of the same covenant or condition, and the consent or approval by Landlord to or of
56 any act by Tenant requiring Landlord's consent or approval shall not be deemed to render unnecessary
57 Landlord's consent or approval to or of any subsequent similar act by Tenant. No breach by Tenant of a
58 covenant or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver
59 is in writing signed by Landlord. The rights and remedies of Landlord under this Lease or under any
60 specific Section, subsection or clause hereof shall be cumulative and in addition to any and all other rights
61 and remedies which Landlord has or may have elsewhere under this Lease or at law or equity, whether or
62 not such Section, subsection or clause expressly so states.

63
64 **Section 27.02 ENTIRE AGREEMENT.**

65 The Data Sheet and all attachments, exhibits and/or addendum(s), and/or rider(s), if any, attached
66 to this Lease are hereby made a part of this Lease, with full force and effect as if set forth herein. This

1 Lease supersedes all prior agreements between the parties and sets forth all the covenants, promises,
2 agreements and conditions, and understandings between Owner, Landlord and Tenant concerning the
3 Premises and there are no actual or implied covenants, promises, agreements, conditions or understandings,
4 either oral or written, between them other than as are set forth herein and none thereof shall be used to
5 interpret, construe, supplement or contradict this Lease. Owner and Landlord have made no representations
6 or warranties regarding the profitability of the Premises or the Park/Plaza Development, and Tenant has not
7 entered into this Lease in reliance on any such representations, warranties or financial projections prepared
8 or furnished to Tenant by Owner or Landlord. Although the printed provisions of this Lease were drawn
9 by Owner and Landlord, the parties hereto agree that this circumstance alone shall not create any
10 presumption, canon of construction or implication favoring the position of either Owner, Landlord or
11 Tenant. The parties agree that any deletion of language from this Lease prior to its mutual execution by
12 Owner, Landlord and Tenant shall not be construed to have any particular meaning or to raise any
13 presumption, canon of construction or implication, including, without limitation, any implication that the
14 parties intended thereby to state the converse, obverse or opposite of the deleted language. No alteration,
15 amendment, change, or addition to this Lease shall be binding upon Owner, Landlord or Tenant unless
16 reduced to writing and signed by each party. Tenant shall pay all of Owner's and Landlord's costs, expenses
17 and reasonable fees of its attorney(s) in connection with any assignment of this Lease, subletting of the
18 Premises or amendment, change or addition to this Lease made at the request of or to accommodate Tenant.

19
20 **Section 27.03 INTERPRETATION; USE OF PRONOUNS; AUTHORITY.**

21 Except as specifically set forth in this Lease, nothing contained herein shall be deemed or construed
22 by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of
23 partnership or of joint ventures between the parties hereto, it being understood and agreed that neither the
24 method of computation of Rental, nor any other provision contained herein, nor any acts of the parties
25 herein, shall be deemed to create any relationship between the parties hereto other than the relationship of
26 landlord and tenant. Whenever herein the singular number is used the same shall include the plural, and
27 the masculine gender shall include the feminine and neuter genders. If this Lease is signed on behalf of a
28 corporation, partnership or other entity, such entity is authorized to enter into and the signer is duly
29 authorized to execute this Lease on behalf of such corporation, partnership, or entity.

30
31 **Section 27.04 DELAYS; FORCE MAJEURE.**

32 In the event any party hereto shall be delayed in the performance of its initial construction, or
33 maintenance and/or repair obligations, by reasons of strikes; lockouts; labor disputes; Acts of God; inability
34 to procure labor, materials, or reasonable substitutes therefor; or shall at any time be so delayed by reason
35 of the diminution of power or power failure(s); restrictive governmental laws or controls; judicial orders;
36 enemy or hostile governmental action; civil commotion; fire or other casualty, or reasons of a similar nature
37 not the fault of the party delayed in performing work or doing acts required under the terms of this Lease,
38 then performance of such act shall be excused for the period of the delay and the period for the performance
39 of any such act shall be extended for a period equivalent to the period of such delay; provided, however,
40 that the time for performance shall in no event be extended due to financial or economic problems of either
41 party, their architects, contractors, agents or employees, or delay caused by the inability of architects,
42 contractors, suppliers or other employees and agents to meet deadlines, delivery or contract dates (unless
43 such inability is caused by Acts of God, war, civil disobedience or strike). Notwithstanding anything to the
44 contrary, the occurrence of any of the events of force majeure herein described shall not excuse Tenant's
45 obligations to pay Minimum Annual Rental and Additional Rent (unless the provisions of Article XVII or
46 Article XVIII apply) or excuse such obligations as this Lease may otherwise impose on the party to obey,
47 remedy or avoid such event; moreover should the work performed by Tenant or Tenant's contractor result
48 in a strike, lockout and/or labor dispute, such strike, lockout and/or labor dispute shall not excuse Tenant's
49 performance. Further, Landlord's reduction of heat, light, air conditioning, or any other services whatsoever
50 to the Park/Plaza Development because of any similar or dissimilar event constituting a cause for excusable
51 delay hereunder shall not relieve Tenant from its obligations pursuant to Article VII of this Lease. It shall
52 be a condition of Tenant's right to claim an extension of time as a result hereof that Tenant notify Landlord
53 in writing within ten (10) calendar days after the first occurrence of any such event, and the cause,
54 specifying the nature thereof and the period of time contemplated or necessary for performance.

55
56 **Section 27.05 NOTICES.**

57 Notwithstanding the fact that certain descriptions elsewhere in this Lease of notices required to be
58 given by one party to the other may omit to state that such notices shall be in writing, any notice, demand,
59 request or other instrument which may be or is required to be given under this Lease shall be in writing and
60 sent by (i) United States certified mail, return receipt requested, postage prepaid, (ii) telegram, mailgram,
61 or other electronic medium using a third party carrier, (iii) United States express mail, (iv) air courier (such
62 as Federal Express), (v) personal delivery or (vi) any other method creating a receipt, waybill or other
63 indication of delivery, and shall be addressed (a) if to the Landlord, at the address set forth on the Data
64 Sheet, or such other address or addresses as Landlord may designate by written notice, together with copies
65 thereof to such other parties designated by Landlord and, (b) if to Tenant, at the Premises or the address set
66 forth on the Data Sheet, or such other address or addresses as Tenant shall designate by written notice

1 provided that Tenant's address for notices shall be a street address and not a post office box. Landlord may,
2 at its sole discretion, provide such notice to Tenant solely to the Premises and such delivery of notice shall
3 be conclusively presumed to be notice to the Tenant for all purposes under this Lease or applicable law.

4
5 **Section 27.06 CAPTIONS AND SECTION NUMBERS.**

6 The captions, section numbers, article numbers, and index appearing in this Lease are inserted only
7 as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such
8 sections or articles of this Lease nor in any way affect this Lease.

9
10 **Section 27.07 BROKER'S COMMISSION.**

11 Tenant represents and warrants to Landlord that there are and shall be no claims for brokerage
12 commissions or finder's fees in connection with this Lease, and each party agrees to indemnify the other
13 and hold it harmless from all liabilities arising from any claim for brokerage commissions and finder's fees
14 in connection with this Lease. Such agreement shall survive the termination of this Lease.

15
16 **Section 27.08 INTENTIONALLY DELETED.**

17
18 **Section 27.09 FURNISHING OF FINANCIAL STATEMENTS.**

19 Tenant has provided Landlord at or prior to the date of this Lease with statements reflecting its
20 financial condition as of a date within the last twelve (12) months as an inducement to Owner and Landlord
21 to enter into this Lease, and Tenant hereby represents and warrants that its financial condition has not
22 materially changed since the date of those statements. Upon Landlord's written request in connection with
23 a proposed sale, transfer or financing transaction with respect to all or any portion of the Park/Plaza
24 Development, Tenant shall promptly furnish Landlord, from time to time, but not more frequently than
25 once in any lease year, with financial statements reflecting Tenant's then current financial condition and
26 written evidence of ownership of controlling stock interest if Tenant is a corporation or controlling
27 partnership interest if Tenant is a partnership. Landlord shall treat such financial statements and
28 information provided to it pursuant to Articles III and IV of this Lease confidentially, and shall not disclose
29 them except to Landlord's lenders or otherwise as reasonably necessary for the operation of the Park/Plaza
30 Development or administration of Landlord's business or unless disclosure is required by any judicial or
31 administrative order or ruling, to the extent permitted by law.

32
33 **Section 27.10 WAIVER OF COUNTERCLAIM OR DEFENSES IN ACTION FOR**
34 **POSSESSION.**

35 Landlord and Tenant agree that in any action brought by Owner or Landlord to obtain possession
36 of the Premises, the parties desire an expeditious resolution of such litigation. Accordingly, Tenant shall
37 not file and hereby waives the right to file any non-compulsory counterclaim in such action. Tenant also
38 shall not file and hereby waives the right to file any defense to such action for possession other than the
39 defense that the default alleged by Landlord did not occur.

40
41 **Section 27.11 INTENTIONALLY DELETED.**

42
43 **Section 27.12 FLOOR AREA.**

44 (a) "Floor Area" as used in this Lease means with respect to any leasable area in the Park/Plaza
45 Development, the aggregate number of square feet of floor space with a vertical clearance of 7 feet 6 inches
46 or more of all floor levels therein, including any mezzanine space, measured from (i) the outside faces of
47 all perimeter walls thereof other than any demising wall separating such premises from other leasable
48 premises, (ii) the center lines of any such demising wall, (iii) the outside face of any interior wall, and (iv)
49 the building and/or leaseline adjacent to any entrance to such premises.

50
51 (b) For the purposes of this Lease, in determining the gross leasable Floor Area or the gross
52 leased and occupied Floor Area of the Park/Plaza Development, there shall be excluded therefrom any
53 premises leased for the operation of a U.S. Government Post Office facility or other governmental facility,
54 a child care center, community room, library, project offices and related rooms, movable retail
55 merchandising units and temporary uses or units located in the Common Areas. No deduction or exclusion
56 from Floor Area shall be made by reason of columns, ducts, stairs, elevators, escalators, shafts or other
57 interior construction or equipment. At the Commencement Date, the gross leased and occupied Floor Area
58 in effect for the whole of any lease year shall be the average gross leased and occupied Floor Area in effect
59 during such lease year. Landlord reserves the right during the Term to change the method of computation
60 to determine Floor Area on a monthly or quarterly "average" basis.

61
62 **Section 27.13 INTEREST ON PAST DUE OBLIGATIONS.**

63 Any amount due from Tenant to Landlord hereunder which is not paid when due (including,
64 without limitation, amounts due as reimbursement to Owner and/or Landlord for costs incurred by Owner
65 and/or Landlord in performing obligations of Tenant hereunder upon Tenant's failure to so perform) shall
66 bear interest at the lesser of (a) the "Prime Rate" as published in Wall Street Journal plus three percent

1 (3%); or (b) the highest rate then allowed under the usury laws of the state where the Park/Plaza
2 Development is located from the date due until paid, unless otherwise specifically provided herein, but the
3 payment of such interest shall not excuse or cure any default by Tenant under this Lease.
4

5 **Section 27.14 LIABILITY OF OWNER/LANDLORD.**

6 If Owner or Landlord shall fail to perform any covenant, term or condition of this Lease upon
7 Owner's or Landlord's part to be performed, and if as a consequence of such default Tenant shall recover a
8 money judgment against Owner or Landlord, such judgment shall be: (a) if applicable to both Owner and
9 Landlord, first out of rents or other income from such property receivable by Owner or Landlord; (b) if
10 applicable to only Landlord, out of the consideration received by Landlord from the sale or other disposition
11 of all or any part of Landlord's right, title and interest in the Park/Plaza Development subject, nevertheless
12 to the rights of Landlord's mortgagee, and neither Landlord nor any of the partners comprising the
13 partnership which may be the Landlord herein shall be liable for any deficiency; or (c) if applicable to one
14 or both the Owner and Landlord, secondly to other legal funds controlled by Owner or Landlord.
15

16 **Section 27.15 ACCORD AND SATISFACTION.**

17 Payment by Tenant or receipt by Landlord of a lesser amount than the Rental or other charges
18 herein stipulated shall be deemed to be on account of the earliest Rental or other charges due from Tenant
19 to Landlord. No endorsements or statement on any check or any letter accompanying any check or payment
20 as Rental or other charges shall be deemed an accord and satisfaction, and Landlord shall accept such check
21 or payment without prejudice to Landlord's right to recover the balance of any and all Rental or other
22 charges due from Tenant to Landlord or to pursue any other remedy provided in this Lease or by law.
23

24 **Section 27.16 EXECUTION OF LEASE; NO OPTION.**

25 The submission of this Lease to Tenant shall be for examination purposes only, and does not and
26 shall not constitute a reservation of an option for Tenant to lease, or otherwise create any interest by Tenant
27 in the Premises or any other premises in the Park/Plaza Development. Execution of this Lease by Tenant
28 and the return of same to Landlord shall not be binding upon Owner and Landlord, notwithstanding any
29 time interval, until all parties have executed this Lease and delivered an executed copy of this Lease to
30 Tenant.
31

32 **Section 27.17 GOVERNING LAW.**

33 This Lease shall be governed by and construed in accordance with laws of the state where the
34 Premises is situated. If any provision of this Lease or the application thereof to any person or circumstances
35 shall, to any extent be invalid or unenforceable, such provision shall be adjusted rather than voided, if
36 possible, in order to achieve the intent of the parties, to the extent possible; in any event, all other provisions
37 of this Lease shall be deemed valid and enforceable to the full extent.
38

39 **Section 27.18 SPECIFIC PERFORMANCE OF LANDLORD'S RIGHTS.**

40 Landlord shall have the right to obtain specific performance of any and all covenants or obligations
41 of Tenant under this Lease, and nothing contained in this Lease shall be construed as or shall have the effect
42 of abridging such right.
43

44 **Section 27.19 SURVIVAL OF TENANT'S OBLIGATIONS.**

45 All obligations of Tenant under this Lease which cannot be ascertained to have been fully
46 performed prior to the expiration or earlier termination of this Lease shall survive the expiration or earlier
47 termination of this Lease.
48

49 **Section 27.20 CERTAIN RULES OF CONSTRUCTION.**

50 Time is of the essence in Tenant's performance of this Lease. Notwithstanding the fact that certain
51 references elsewhere in this Lease to acts required to be performed by Tenant hereunder, or to breaches or
52 defaults of this Lease by Tenant, omit to state that such acts shall be performed at Tenant's sole cost and
53 expense, or omit to state that such breaches or defaults by Tenant are material, unless the context clearly
54 implies to the contrary, each and every act to be performed or obligation to be fulfilled by Tenant pursuant
55 to this Lease shall be performed or fulfilled at Tenant's sole cost and expense, and all breaches or defaults
56 by Tenant hereunder shall be deemed material. Tenant shall be fully responsible and liable for the
57 observance and compliance by concessionaires of and with all the terms and conditions of this Lease, which
58 terms and conditions shall be applicable to concessionaires as fully as if they were the Tenant hereunder;
59 and failure by a concessionaire fully to observe and comply with the terms and conditions of this Lease
60 shall constitute a default hereunder by Tenant. Nothing contained in the preceding sentence shall constitute
61 a consent by Owner and/or Landlord to any concession, subletting, or other arrangement proscribed by
62 Article XIV.
63

64 **Section 27.21 INTENTIONALLY DELETED.**
65
66

1 **Section 27.22 ATTORNEY FEES.**

2 If at any time after the date that this Lease has been executed by the parties hereto, any of the parties
3 institutes any action or proceeding against the other relating to the provisions of this Lease or any default
4 hereunder, the non-prevailing party in such action or proceeding shall reimburse the prevailing party for
5 the reasonable expenses of attorneys' fees and all costs and disbursements incurred therein by the prevailing
6 party, including, without limitation, any such fees, costs or disbursements incurred on any appeal from such
7 action or proceeding. As used in this Agreement, the term prevailing party means that party whose position
8 is upheld in a final judgment rendered in any litigation, or, if the final judgment is appealed, that party
9 whose position is upheld by the decision of the final appellate body that considers the appeal. Subject to
10 the provisions of local law, the prevailing party shall recover all such fees, costs, or disbursements as costs
11 taxable by the court or arbiter in the action or proceeding itself without the necessity for a cross-action by
12 the prevailing party.

13
14 Notwithstanding anything to the contrary contained herein, if Owner and/or Landlord is compelled
15 to engage the services of attorneys (either outside counsel or in-house counsel) to enforce the provisions of
16 this Lease, to the extent that Owner and/or Landlord incurs any cost or expense (including such reasonable
17 attorney fees for outside counsel or payroll and overhead expenses for in-house counsel, as the case may
18 be) in connection with such enforcement, including instituting, prosecuting or defending its rights in any
19 action, proceeding or dispute by reason of any default by Tenant, or as otherwise set forth in this Section
20 27.22 or elsewhere in this Lease, the sum or sums so paid or billed to Owner and/or Landlord, together with
21 all interest, costs and disbursements, shall be deemed Additional Rent and shall be due from Tenant
22 immediately upon receipt of an invoice therefor following the occurrence of such expenses.

23
24 **Section 27.23 INDEX.**

25 As used in this Lease, the term "Index" shall mean the Consumer Price Index For All Urban
26 Consumers (1982-84=100), Los Angeles-Riverside-Orange County, CA, All Items, published by the
27 Bureau of Labor Statistics of the U.S. Department of Labor. In the event such Index is not published by
28 the Bureau of Labor Statistics or another governmental agency at any time during the Term of this Lease,
29 the most closely comparable statistics on the purchasing power of the consumer dollar as published by a
30 responsible financial authority and as selected by Landlord shall be used for making any computation under
31 this Lease otherwise to be made on the basis of the Index. If during the Term the Consumer Price Index is
32 changed or discontinued, Landlord shall choose a comparable index, formula or other means of
33 measurement of the relative purchasing power of the dollar and such substitute index, formula or other
34 means shall be utilized in place of the Consumer Price Index as if it had been originally designated in this
35 Lease.

36
37 **Section 27.24 WAIVER OF TRIAL BY JURY.**

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

46
47 **Section 27.25 MORTGAGEE CHANGES.**

48 Tenant shall not unreasonably withhold its consent to changes or amendments to this Lease
49 requested by any current or future ground lessor or holder of a mortgage or deed of trust or such similar
50 financing instrument covering Owner's and/or Landlord's fee or leasehold interest in the Premises, as the
51 case may be, so long as such changes do not materially alter the economic terms of this Lease or otherwise
52 materially diminish the rights or materially increase the obligations of Tenant.

53
54 **Section 27.26 REAL ESTATE INVESTMENT TRUST.**

55 It is agreed that Minimum Annual Rental and all Additional Rent paid to Landlord under this Lease
56 (collectively referred to in this Section as "Rent") shall qualify as "rents from real property" within the
57 meaning of Section 856(d) and Section 512(b)(3) of the Internal Revenue Code of 1986, as amended (the
58 "Code") and the U.S. Department of Treasury Regulations promulgated thereunder (the "Regulations"). In
59 the event that Landlord, in its sole discretion, determines that there is any risk that all or part of any Rent
60 shall not qualify as "rents from real property" for the purposes of Section 856(d) or Section 512(b)(3) of
61 the Code and the Regulations promulgated thereunder, other than by reason of the application of Section
62 856(d)(2)(B) or 856(d)(5) of the Code or the Regulations relating thereto, then such Rent shall be adjusted
63 so that, in Landlord's sole discretion, it will so qualify; as "rents from real property", provided, however,
64 that any adjustments required pursuant to this Section shall be made so as to produce the equivalent (in
65 economic terms) Rent as payable prior to such adjustment.

1 **Section 27.27 EQUAL EMPLOYMENT OPPORTUNITY.**

2 It has been determined that Landlord qualifies as a Federal Contractor. If applicable, during the
3 performance of this Lease, the parties hereto hereby incorporate by reference the provisions set forth in 41
4 C.F.R. § 60-1.4, § 60-250.5 and § 60-741.5 and those set forth in 29 C.F.R. Part 471, Appendix A to Subpart
5 A, which provisions apply to all nonexempt contractors and vendors.

6
7 **Section 27.28 INTENTIONALLY DELETED.**

8
9 **Section 27.29 INTENTIONALLY DELETED.**

10
11 **Section 27.30 EQUAL OPPORTUNITY AND CONTRACTING.**

12 Tenant shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders
13 11246, 11375, and 12086; the California Fair Employment Practices Act; and all other laws, rules and
14 regulations of competent governmental authority. Tenant shall not discriminate against any employee or
15 applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability,
16 medical condition or place of birth. Tenant shall cause the foregoing provisions to be inserted in all
17 commercial subleases and all contracts for any work covered by this Lease so that such provisions will be
18 binding upon each commercial sublessee and contractor. Tenant shall fully cooperate with any
19 investigation conducted by Owner, in its governmental capacity, pursuant to its Nondiscrimination in
20 Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517, as amended from time to
21 time], and upon Owner's request, Tenant shall submit a current Workforce Report. Tenant acknowledges
22 that failure to comply with the requirements of this section and/or submitting false information in response
23 to these requirements may result in termination of this Lease and debarment from participating in Owner
24 contracts for a period of not less than one (1) year.

25
26 Any conflict resulting from the requirements as set forth in this Lease section and the requirements
27 as set forth in the applicable San Diego Municipal Code section(s) shall be resolved in favor of the
28 requirements as set forth in the applicable San Diego Municipal Code section(s).

29
30 **Section 27.31 EQUAL BENEFITS.**

31 Tenant shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require
32 lessees of City of San Diego-owned property to offer the same employment benefits to employees with
33 spouses and employees with domestic partners. Tenant shall certify that it will maintain such equal benefits
34 throughout the term of this Lease. Tenant's failure to maintain equal benefits shall be a default of this
35 Lease.

36
37 Any conflict resulting from the requirements as set forth in this Lease section and the requirements
38 as set forth in the applicable San Diego Municipal Code section(s) shall be resolved in favor of the
39 requirements as set forth in the applicable San Diego Municipal Code section(s).

40
41 **Section 27.32 DISABLED ACCESS COMPLIANCE.**

42 Tenant shall, as applicable to the Premises and Tenant's possession, use and occupancy thereof,
43 comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of
44 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable
45 state and federal laws and regulations hereafter enacted protecting the rights of people with
46 disabilities. Tenant's compliance shall include but not necessarily be limited to the following:

47
48 (a) Tenant shall not discriminate against qualified persons with disabilities in any aspects of
49 employment, including recruitment, hiring, promotions, conditions and privileges of employment, training,
50 compensation, benefits, discipline, layoffs, and termination of employment.

51
52 (b) No qualified individual with a disability may be excluded on the basis of disability from
53 participation in, or be denied the benefits of, services, programs, or activities of Tenant.

54
55 (c) Tenant shall post a statement addressing the requirements of the ADA in a prominent place
56 at the work site.

57
58 (d) Where required by law, any improvements made to the Premises by Tenant shall comply
59 with municipal disabled access requirements by bringing up to code and making accessible any areas of the
60 Premises which deny access to disabled persons. All improvements and alterations shall be at the sole cost
61 of Tenant.

62
63 (e) Tenant shall include language in each sublease agreement which indicates the sublessee's
64 agreement to abide by the foregoing provisions. Tenant and sublessees shall be individually responsible
65 for their own ADA employment programs.

1 (f) Tenant understands that failure to comply with the above requirements and/or submitting
2 false information in response to these requirements shall constitute a default under this Lease.

3
4 **Section 27.33 ACCESSABILITY ASSESSMENT.**

5 In accordance with California Civil Code Section 1938, Owner hereby states that the Premises has
6 not been inspected by a Certified Access Specialist (CASP).

7
8 **Section 27.34 DRUG-FREE WORKPLACE.**

9 Tenant shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by
10 adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

11
12 (a) Publish a statement notifying employees that the unlawful manufacture, distribution,
13 dispensation, possession, or use of controlled substances are prohibited on the Permit Area and specifying
14 the actions that will be taken against employees for violations of the prohibition; and.

15
16 (b) Establish a drug-free awareness program to inform employees about all of the following:

17 (i) The dangers of drug abuse in the workplace;

18 (ii) Tenant's policy of maintaining a drug-free workplace;

19 (iii) Any available drug counseling, rehabilitation, and employee assistance programs;
20 and

21 (iv) The penalties that may be imposed upon employees for drug abuse violations.

22
23 (c) Tenant shall include in each of its sublicenses and contracts related to this Permit language
24 obligating each sublicensee and contractor to comply with the provisions of this section to maintain a drug-
25 free workplace. Tenant, and each of its sub-licensees and contractors, shall be individually responsible for
26 their own drug-free workplace program.

27
28 **Section 27.35 INTENTIONALLY DELETED.**

29
30 **Section 27.36 LOCAL BUSINESS AND EMPLOYMENT.**

31 Tenant acknowledges that the City of San Diego seeks to promote employment and business
32 opportunities for local residents and firms in all City of San Diego contracts. For work associated with this
33 Lease and to the extent legally possible, Tenant shall use its best efforts to solicit applications for
34 employment and bids and proposals for contracts from local residents and firms as opportunities occur.
35 Tenant shall use its best efforts to hire qualified local residents and firms whenever practicable.

36
37 **Section 27.37 WATER QUALITY – BEST MANAGEMENT PRACTICES.**

38 The Owner, Landlord and Tenant are committed to the implementation of controls (best
39 management practices, or BMPs) to manage activities on the premises in a manner which aids in the
40 protection of the City of San Diego's precious water resources. It is the Tenant's responsibility to identify
41 and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain
42 system in violation of Section 43.03, Stormwater Ordinance.

43
44 Therefore, Tenant shall, at a minimum, implement and comply, as applicable, with the BMPs for
45 industrial and commercial facilities adopted under the San Diego Municipal Code Section 43.0307 (a).

46
47 It is ultimately the Tenant's responsibility to prevent pollutant discharges to the storm drain system.
48 Therefore, the Tenant will identify and implement any additional BMPs that may be required to avoid the
49 discharge of pollutants to the storm drain system.

50
51 Any conflict resulting from the requirements as set forth in this Lease section and the requirements
52 as set forth in the applicable San Diego Municipal Code section(s) shall be resolved in favor of the
53 requirements as set forth in the applicable San Diego Municipal Code section(s).

54
55 **Section 27.38 NONDISCRIMINATION.**

56 This Lease is made and accepted upon and subject to the covenant and condition, which shall run
57 with the land, that Tenant or any person claiming under or through Tenant shall not establish or allow any
58 discrimination against or segregation of any person or group of persons on account of race, color, religion,
59 gender, disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of
60 income in the possession, use and occupancy of the Premises or in the selection, location, number, use or
61 occupancy of tenants, subtenants or vendees in the Premises.

1 **Section 27.39 STANDARD OF EMPLOYEES.**

2 Tenant and its employees shall at all times conduct themselves and the operations on the Premises
3 in a reputable manner, as determined by Landlord in its sole reasonable discretion.
4

5 **Section 27.40 CONSENT.**

6 Except as set forth in Sections 1.01(b), 9.01, 20.06, 20.08, and 27.02, in the event that in this Lease
7 it is provided that the exercise of any right by Tenant or the performance of any obligation of Tenant shall
8 be subject to the consent or approval of Landlord and/or Owner, Landlord is deemed the agent of Owner
9 for said consent or approval. Any such consent or approval shall be: (a) in accordance with Section 27.04;
10 and (b) sent to Landlord at the address set forth in the Data Sheet.
11

12 **Section 27.41 SUCCESSOR AGENCY'S ROLE.**

13 The parties acknowledge that the Successor Agency currently owns the Sales Parcel (which
14 includes the Premises or a portion thereof), but will convey ownership of the Sales Parcel to the City upon
15 the Successor Agency's imminent completion of improvements on the Park Property consistent with the
16 Cooperation Agreement described in Recital B above (expected to occur by early 2016). Given the
17 temporary nature of the Successor Agency's continued ownership of the Sales Parcel, the Successor Agency
18 is included as a party to this Lease only to provide Tenant with access to the Premises for Tenant's
19 construction of improvements to the Premises in accordance with Article V of the Lease. The Successor
20 Agency undertakes no obligations in connection with this Lease other than to provide physical access to
21 the Premises for Tenant's construction of the improvements to the Premises. Upon the City's acquisition
22 of the Sales Parcel from the Successor Agency, the definition of "Owner" under this Lease shall be modified
23 automatically, without the need for any further documentation, to include only the City and not the
24 Successor Agency.

IN WITNESS WHEREOF, Landlord and Tenant, personally or by their duly authorized agents,
have executed this Lease as of the day and year first above written.

**SAN DIEGO PERFORMING ARTS
LEAGUE**, a 501(C)(3) non-profit corporation


D. Candis

By: Paule
Digitally signed by D. Candis Paule
DN: cn=D. Candis Paule, o, ou,
email=cpaule@innoflight.com,
c=US
Date: 2016.03.29 12:31:31 -0700

Print Name: D. Candis Paule

Its Board President

TENANT

CITY OF SAN DIEGO,

a California municipal corporation, by and
through its agent **HORTON PLAZA
SERVICES, INC.**, a Delaware corporation

By: _____

Print Name: _____

Its: _____

LANDLORD

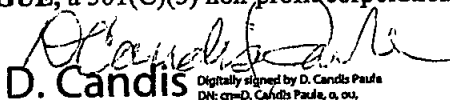
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**SAN DIEGO PERFORMING ARTS
LEAGUE, a 501(C)(3) non-profit corporation**

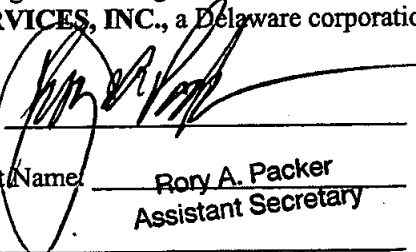
By: 
D. Candis Paule
Digitally signed by D. Candis Paule
DN: cn=D. Candis Paule, o, ou,
email=cpaule@innoflight.com,
c=US
Date: 2016.03.29 12:31:31 -0700

Print Name: D. Candis Paule

Its Board President

TENANT

CITY OF SAN DIEGO,
a California municipal corporation, by and
through its agent **HORTON PLAZA
SERVICES, INC.,** a Delaware corporation

By: 
Print Name: Rory A. Packer
Assistant Secretary

Its: _____

LANDLORD

EXHIBIT A-1

SITE PLAN

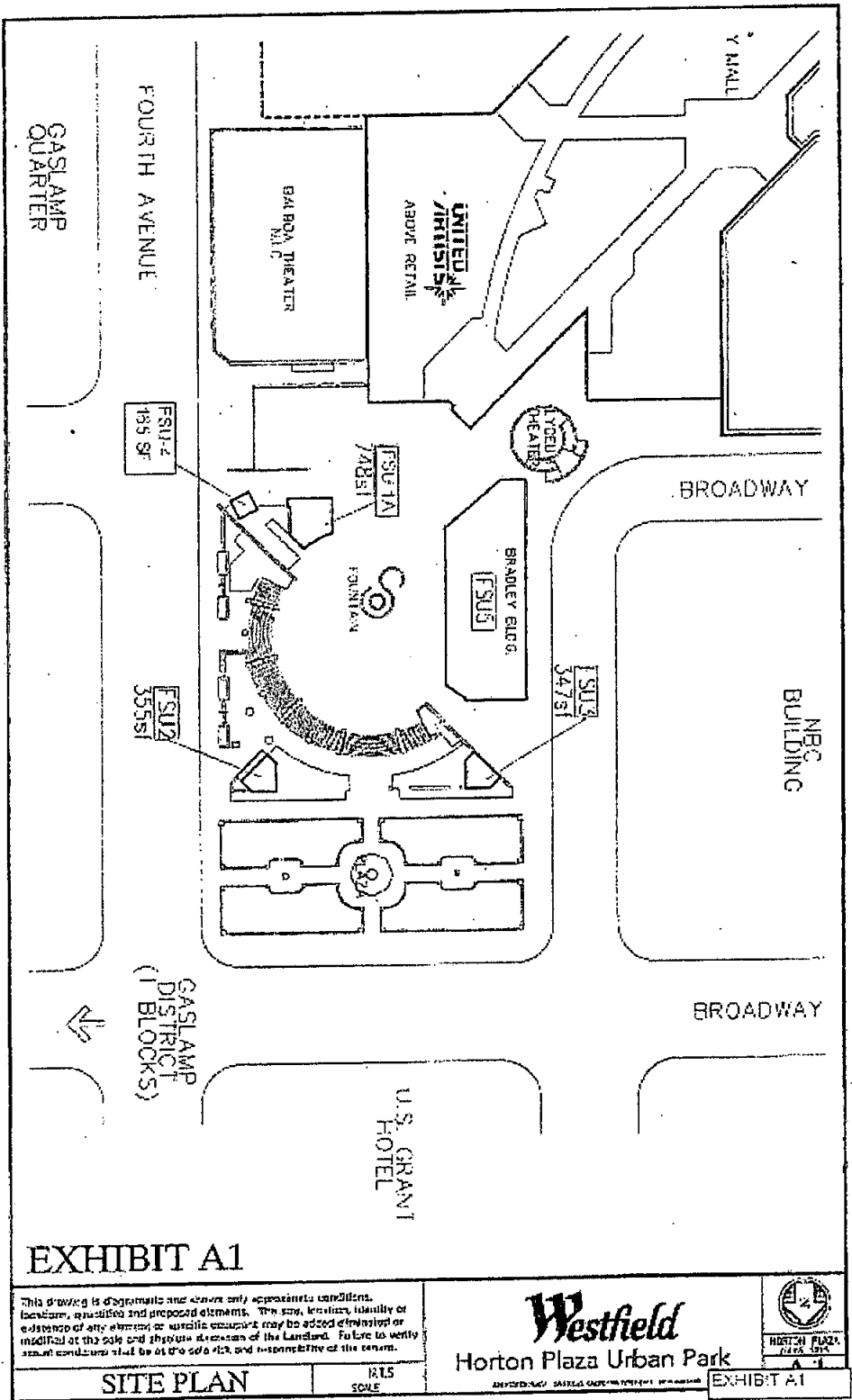


EXHIBIT A-2

PREMISES FLOOR PLAN

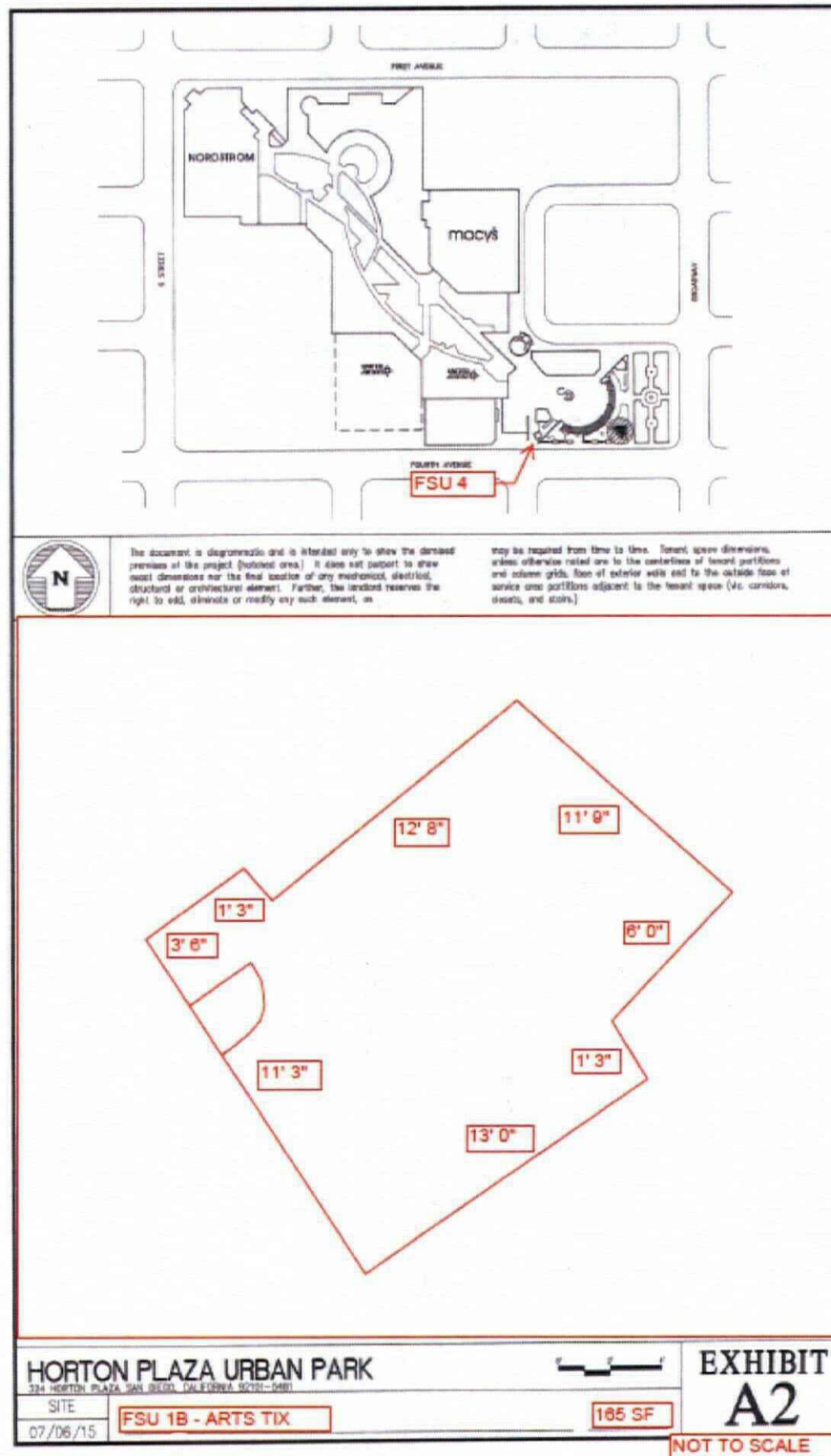


EXHIBIT A-3

LEGAL DESCRIPTION

All that certain real property designated as the "Plaza" on the map of Horton's Addition made by L.L. Lockling, filed in the Office of the County Recorder of San Diego County on June 21, 1871 in Book 13, Page 522 of Deeds.

Together with the Northerly 27 feet of Plaza Street, lying contiguous to said Plaza and closed to public use by City of San Diego Council Resolution 257247 recorded on October 11, 1982 File/Page 82-311788 and as shown on Map 18604-D.

Parcel 2 of Parcel Map No. 21100, in the City of San Diego, County of San Diego, State of California, according to map thereof filed in the office of the County Recorder of San Diego County, December 11, 2013 as File No. 2013-0715890 of Official Records.

EXHIBIT A-4

ACCESS TO PARK/PLAZA DEVELOPMENT AND PREMISES

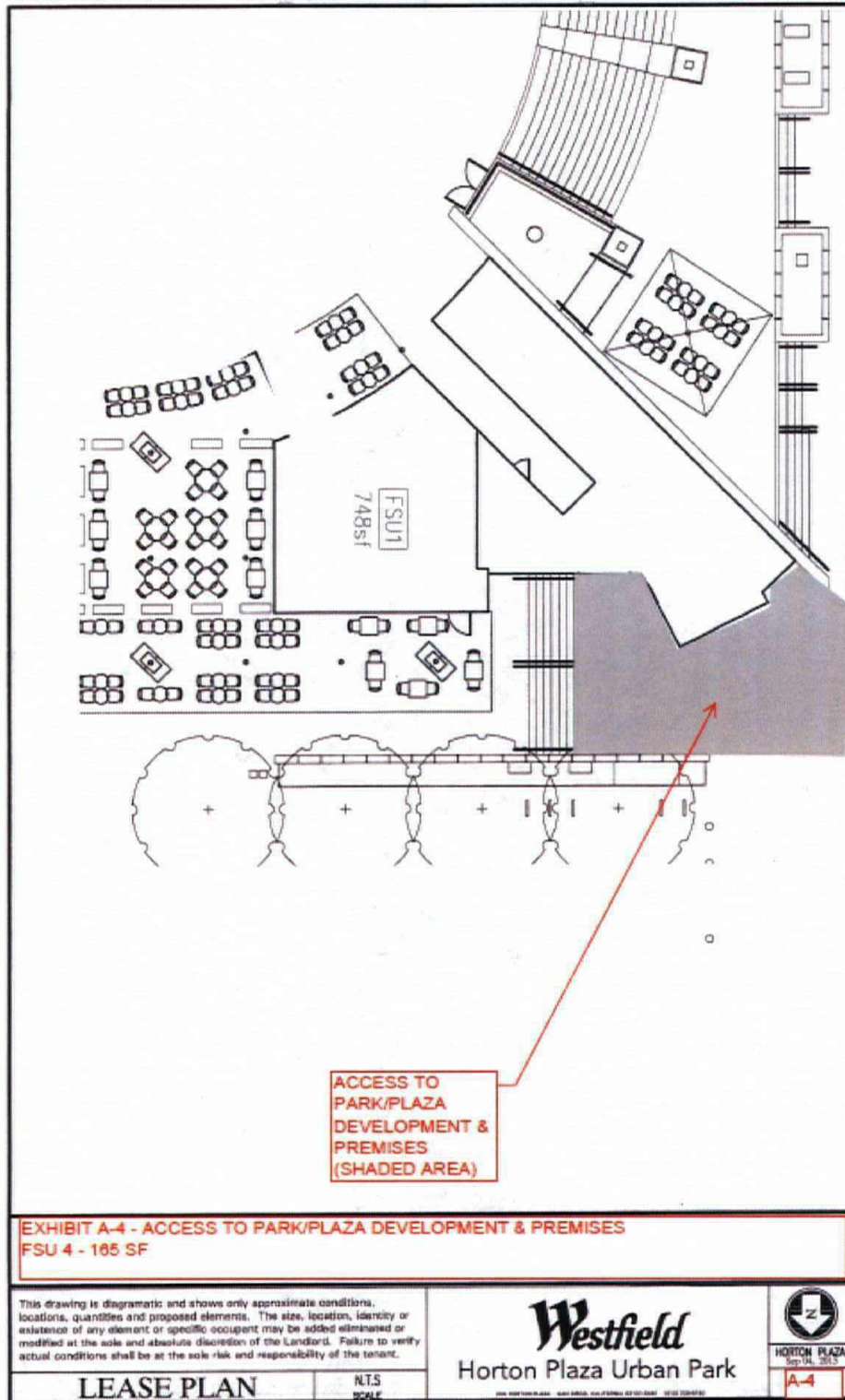


EXHIBIT A-5

TRASH AREA

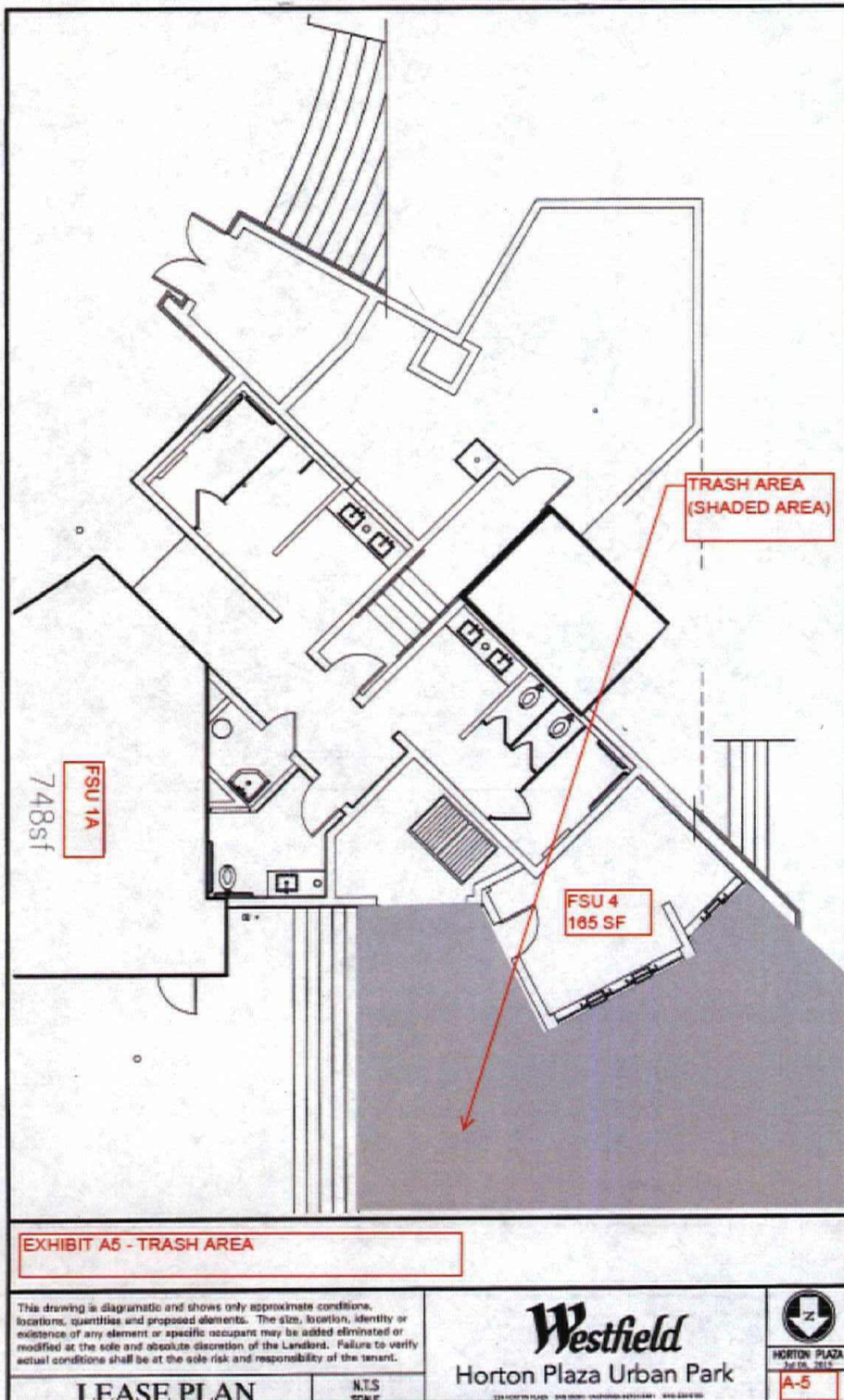


EXHIBIT A-6
INTENTIONALLY DELETED

EXHIBIT B

DESIGN AND CONSTRUCTION OF THE BUILDING AND THE PREMISES

This Exhibit B, including any attachment hereto, is hereby made 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 Retail building ("Building") which is 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 determined 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 Development (the "Tenant Design Criteria Package"). All details and information contained in the Tenant Design Criteria Package, whether appearing on Tenant's Plans or not, shall be considered a part of Tenant's Plans and Specifications and Construction Requirements. By this reference, the Tenant Design Criteria Package and Landlord's Base Building Drawings and specifications ("Base Building Drawings") are incorporated herein and made a part of this Lease. This Exhibit, Landlord's Base Building Drawings, and the Tenant Design Criteria Package 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 (collectively, the "Standards"):
 - 1. This Exhibit B;
 - 2. Tenant Design Criteria Package;
 - 3. Landlord's Base Building Drawings;
 - 4. Construction Manual and Construction Rules and Regulations for the Development;
 - 5. Tenant's Final Working Drawings, as approved by Landlord;
 - 6. All applicable laws, ordinances, codes, regulations and the requirements of all jurisdictional authorities; and
 - 7. 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), the Acoustical Society of America, National Council of Acoustical Consultants or such other locally recognized organization selected by Landlord experienced in establishing noise guidelines, 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 the Standards and all other requirements set forth in this Exhibit B and the most current edition of the Tenant Design Criteria Package.

III. LANDLORD'S WORK AT LANDLORD'S EXPENSE

- A. Landlord's Work shall be limited to the following:
The shell construction consists of approximately 180 SF water tight unit with masonry/concrete walls, concrete roof, and a glass storefront. The shell construction includes an electrical panel labeled "ARTX", seven duplex outlets, interior fluorescent lighting suspended from the ceiling, one split system heat pump with the heat pump installed on the roof of the South Kiosk and the ductless fan coil installed inside the shell, data and communication conduit with pull rope, exterior lighting, three (3) transaction windows, glass store front system, a concrete floor slab, a canopy over the transaction windows with infrastructure for sign installation, and a branch piped fire sprinkler system within the Premises (for FSU-1 only) in accordance with the requirements of the local fire marshal, all governing building codes, applicable NFPA standards, the Standards, and the Tenant Design Criteria Package and Landlord's Base Building Drawings.

IV. TENANT'S WORK AT TENANT'S EXPENSE

- A. All of Tenant's Work shall be in compliance with the Standards as defined in Article II(B) above.

The TI consists of any interior improvements of the shell including but not limited to wall treatments, floor treatments, interior lighting adjustments, duplex outlet adjustments, pulling data & communication cables from the communication backboard located in the Electronic Equipment Room under the Northwest Kiosk, millwork, and exterior sign fabrication and installation. Responsibilities also include design of TI, management of TI, repair and replacement of any existing improvements in the kiosk shell or to the surrounding public plaza improvements

- A. Signage. Design, fabrication, and installation of Tenant's sign(s) and menu boards (if applicable) shall be subject to the prior approval of Landlord, and where applicable, the prior approval of all jurisdictional authorities, and any other party that Landlord may deem appropriate. Tenant shall submit all required plans, details and specifications to Landlord for Landlord's approval prior to the fabrication and installation of Tenant's sign(s), including menu boards. Tenant's sign(s) and menu boards shall be designed and constructed to comply with the standard tenant sign criteria established by Owner and Landlord for the Park/Plaza Development.

- B. Utility Services and Facilities. The installation, connection to the utility facilities provided by Landlord, and completion of utility services for the Premises shall be a part of Tenant's Work. In the event Landlord shall elect to perform any of Tenant's Work required pursuant to this Section V(C), then Tenant shall reimburse Landlord for such work. All such work shall be performed in accordance with the Standards and the provisions of the Tenant Design Criteria Package, Landlord's Base Building Drawings and the following:

- 1. Tenant's main electrical service shall be of a type and capacity set forth in the Tenant Design Criteria Package and Landlord's Base Building Drawings. 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. Based upon the electrical service sizing criteria set forth in the Tenant Design Criteria Package, provide a main electrical service disconnect switch, located within the Premises.
 - c. As may be required, provide all required conduit and conductor installations to complete Tenant's main electrical service within the Premises.
 - d. Provide all required electrical system installations within the Premises in accordance with the Tenant Design Criteria Package and the regulations and requirements of all jurisdictional authorities.
2. Tenant's telephone service will be available from the main terminal board located outside the Premises. Tenant shall provide telephone service cable, from the applicable telephone service terminal board, from which Tenant's main telephone service will be available, to the Premises. Tenant's telephone service shall be provided by the telephone company providing service to the Development. Tenant shall apply for telephone service and provide system wiring to and within the Premises as required by the serving telephone company and comply with all their requirements and regulations.
 3. If required, Tenant shall install a smoke evacuation system within the Premises. Such 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.

In the event Landlord shall elect to perform any of Tenant's Work required pursuant to this Section V(C), Tenant shall reimburse Landlord for such work.

- C. 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, including but not limited to capacity and/or impact fees 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.
- D. 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.
- E. Tenant may be required to provide additional items of work or services as a part of Tenant's Work. If applicable, any such work or services shall be provided in accordance with the Standards or the provisions of the Tenant Design Criteria Package.

V. 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 Design Criteria Package, one (1) electronic copy of Landlord's Base Building Drawings, and one (1) lease outline drawing (Exhibit A-2).

- B. 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 and Engineers.
- C. At a date as may be required by 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, preliminary design drawings, final plans and sign shop drawings (collectively, "Tenant's Plans"). The plan submission process and requirements can be referenced in the Tenant Design Criteria Package. Tenant's submittal shall include, but not be limited to, the following:
1. One (1) sample board of Tenant's interior materials and colors;
 2. One (1) digital rendering of Tenant's final storefront design; and
 3. One (1) complete set of PDF formatted computer files printed at full size of drawings for Tenant's Work, containing all applicable architectural, details and specifications, in accordance with the Tenant Design Criteria Package and instructions by Landlord.
- D. Tenant's Plans must be designed to accommodate and provide access to any ducts, pipes, or conduits installed within the Premises that serve the Development or any part thereof, including, but not limited to, the premises of any other tenant. 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.
- E. Tenant's Plans as approved by Landlord are referred as the "Final Working Drawings." After Landlord's approval of the Final Working Drawings, no changes shall be made to 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 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.

VI. 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 at all times be subject to Landlord's approval. 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 in the state where the Premises is located, 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 Work;
4. Copies of insurance certificates required by Article IX below; and
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:

1. Tenant and Tenant's General Contractor participating in Tenant's Work shall comply with the following:
 - a. At all times during construction, Tenant's General Contractor shall have available on-site one (1) full set of Final Working Drawings, endorsed with Landlord's approval, 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 Work or other evidence that the Tenant has received building department approval.
 - b. Provide a full-time supervisor or representative, representing either Tenant's General Contractor or Tenant, who will be present in the Premises 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 Development. 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, use 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 remove any and all trash, debris and rubbish on a daily basis as directed by Landlord.

Upon completion of Tenant's Work, Tenant shall remove all temporary structures, surplus materials, debris and rubbish of whatever kind remaining in the Premises, or the Development. No debris shall be deposited in the Common Areas or service corridors except as directed by Landlord.

- f. Properly protect Tenant's Work and secure all parts of Tenant's Work against accident, storm and any other hazard. Tenant's Work must be performed entirely within the Premises.
 - g. Tenant or Tenant's General Contractor is responsible for initiating, maintaining, supervising, and enforcing all safety precautions and programs as required by applicable federal, state and local laws, codes and regulations in connection with the performance of Tenant's Work as set forth in the Contractor Safety Rules provided by Landlord to Tenant's General Contractor. Tenant's General Contractor is solely responsible for the on-site safety of its employees and subcontractors performing work for the benefit of Landlord and the Development, as well as the safety of the general public and other contractor employees impacted by Tenant's Work.
2. Tenant's Work shall be coordinated with all work being performed or to be performed by Landlord and other occupants of the Development so 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 Landlord's Work or any other construction within the Development, 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 Landlord's Work and all other construction within the Development.

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 Park/Plaza Development 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, including the removal of any subcontractor causing or involved in such dispute. 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. Prior to Tenant's commencement of Tenant's Work 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 Landlord, the City of San Diego and Tenant, and shall be issued in the names of Landlord, the City of San Diego 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:

HORTON PLAZA SERVICES, INC.
2049 Century Park East, 41st Floor,
Los Angeles, California 90067
Attention: Tenant Coordination

With a copy to:

City of San Diego
1200 Third Street, Suite 1700
San Diego, California 92101

Attention: Contracts Manager

- 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 Tenant's 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 access pathways identified by Landlord at Landlord's sole discretion..
 3. Tenant shall protect all of Landlord's Work that may be affected by Tenant's Work. 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 and comply with all construction rules and regulations of the Development, copies of which will be obtained by Tenant or Tenant's General Contractor prior to the commencement of Tenant's Work, and to make certain deposits with and/or payments to Landlord in accordance with such requirements. 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 any required deposits or payments.

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 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.

VII. 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:
1. At least five (5) days prior to the opening of the Premises for business, Tenant shall have delivered to Landlord: (a) insurance certificates required by Article XI of the Lease; (b) copies of local business licenses and any other licenses required to operate in the Premises; (c) a certificate of occupancy or its equivalent; and (d) all evidence typically required in the jurisdiction where the Park/Plaza Development is located to provide evidence of compliance with all applicable building and fire codes and all other government requirements;
 2. 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 or Tenant's General Contractor shall have paid Landlord all outstanding amounts for work completed by Landlord on behalf of Tenant to include, but not be limited to, the work and services itemized in this Exhibit B; and
 4. Tenant shall have paid to 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. 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. Within fifteen (5) business days after completion of Tenant's Work, Tenant shall deliver to Landlord the following:
 - 1. 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.
 - 2. A final notarized original, unconditional waiver of lien with respect to the Premises executed by Tenant's General Contractor and 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 waivers of lien documents must contain, in every circumstance, a totally unconditional release.
- C. After Landlord's inspection of Tenant's Work in the Premises, Landlord shall issue a punch list indicating those items not in compliance with the Standards. Within fifteen (15) business days of receipt of said punch list, Tenant or Tenant's General Contractor shall perform such work and notify Landlord of its completion.

VIII. 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 Tenant's 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 Coverage's 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, Landlord, the City of San Diego, City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego and Civic San Diego, 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.

END

EXHIBIT C

ADDITIONAL INSURED ENTITIES

1. The City of San Diego, a California municipal corporation, and
2. The City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic, and
3. Civic San Diego, a nonprofit public benefit corporation, and
4. Horton Plaza LLC, Westfield America, Inc., Westfield America Limited Partnership, Westfield Property Management LLC, and

All of the above entities' respective elected officials, representatives, employees, agents, officers, directors, shareholders, members, advisers, trustees, fiduciaries, affiliates, parent corporations, subsidiaries, partners, members, management companies, successors and assigns, together with any mortgagee from time to time of Horton Plaza LLC, Westfield America, Inc., Westfield America Limited Partnership, Westfield Property Management LLC, are all named as additional insured, as their interests may appear.

EXHIBIT D

HORTON PLAZA URBAN PARK

SATELLITE DISH RIGHTS

A. SCOPE OF RIGHTS.

Subject to the terms and conditions of this Lease and so long as Tenant is not in default under the Lease beyond any applicable notice and cure period provided for in the Lease, Landlord hereby grants Tenant the non-exclusive right to install, maintain and operate during the Term radio antennae or satellite dishes and related equipment (collectively, the "SATELLITE DISH EQUIPMENT") for the sole purpose (a) of allowing Tenant to have its point of sale system in the Premises be communicated to its corporate office and (b) for other business applications that Tenant may require within the Premises on portions of the roof of the Premises in the exact location reasonably specified by Landlord, after giving good faith consideration to any location requested by Tenant ("the SITE"), provided, the Satellite Dish Equipment (i) does not adversely affect in any material manner the structure of the Premises, the roof of the Premises, the warranty for the roof of the Premises, or the safety of the Premises; (ii) does not adversely affect in any material manner the electrical, mechanical, or any other systems of the Premises or the functioning thereof; (iii) does not adversely interfere with the operation of the Premises or the provision of services or utilities to other current or future tenants in the Premises; and (iv) is otherwise approved by Landlord in writing (which approval shall not be unreasonably, withheld, conditioned or delayed).

B. COMPLIANCE WITH LAW.

Tenant shall install, maintain and operate the Satellite Dish Equipment in compliance with all present and future rules and regulations of any local, State or Federal authority having jurisdiction with respect thereto, including, without limitation, the rules and regulations of the Federal Communications Commission ("FCC"), the Federal Aviation Administration ("FAA"), any other laws, rules and regulations of any other governmental and quasi-governmental authorities having appropriate jurisdiction over the Park/Plaza Development or Tenant's use of the Satellite Dish Equipment. Tenant shall deliver to Landlord written proof of compliance within twenty (20) days of Landlord's written request. Tenant shall, with Landlord's good faith, diligent cooperation, obtain all permits, licenses, variances, authorizations and approvals that may be required in order to install the Satellite Dish Equipment.

C. INSTALLATION PROCEDURES.

(i) Prior to installation of the Satellite Dish Equipment and any modifications or changes thereto, Tenant shall submit in writing all plans for Landlord's approval to Landlord, and shall commence work only after having obtained Landlord's written approval, which shall not be unreasonably withheld, conditioned, or delayed. The style, color, materials, exact location, and method of installation of the Satellite Dish Equipment are subject to the prior written approval of Landlord, which shall not be unreasonably withheld, conditioned, or delayed.

(ii) All of such installations, modifications or changes shall conform to Landlord's reasonable technical requirements, including but not limited to, design and installation specifications, interference control devices, below the screening for equipment on the roof, and weight and wind load requirements.

(iii) The Satellite Dish Equipment shall be clearly marked to show Tenant's name, address, telephone number, the name of the person to contact in case of emergency, FCC call sign, frequency and location; the transmissions lines shall be identified at the bottom and top of each line.

(iv) In the event Tenant requires an electric power supply and/or usage different from that currently provided by Landlord, Tenant shall, at its sole cost and expense, obtain such power supply. Any work performed in connection therewith shall comply with the provisions of the Lease including Exhibit B. Any power lines installed by Tenant shall run within Landlord's current easements. Any deviation from such easement rights shall be corrected at Tenant's expense, payable as an additional fee hereunder within ten (10) days of Tenant's receipt of an invoice therefor.

(v) In the event a zoning variance is required in connection with the installation or modification of the Satellite Dish Equipment, Tenant may, with Landlord's good faith, diligent cooperation, seek to obtain such variance at Tenant's sole cost and expense, provided however, that such variance and/or the conditions under which such variance would be granted shall in no way impair or affect the zoning otherwise affecting the Park/Plaza Development or any part thereof, including without limitation the land on which the Premises is located.

(vi) In all matters where Landlord's approval is required and where Landlord's engineer makes a reasonable determination that interference or other disruption with the business of Landlord or other existing licensees is likely to result from Tenant's contemplated action, Landlord shall have the right to withhold such approval by written notice to Tenant, setting forth in reasonable detail the basis for Landlord's disapproval.

(vii) All work performed at the Premises in connection with the installation and modification of the Satellite Dish Equipment shall be performed at Tenant's expense by Tenant's employees or by contractors reasonably approved by Landlord.

(viii) Landlord shall provide to Tenant sufficient access to the Site and affected areas of the base Premises for the maintenance and operation of the Satellite Dish Equipment. Access to the Site or other areas of the Premises will be available by telephoning the property manager for the Park/Plaza Development, the number for which property manager shall be provided to Tenant upon request from time to time. Tenant shall reimburse Landlord for all costs and expenses incurred by Landlord as a result of access outside of the normal business hours of the Park/Plaza Development. All access to the Site or other areas of the Park/Plaza Development shall be subject to the continuing control of, and reasonable security and safety procedures established by, Landlord.

(ix) Tenant shall install any screen or other covering (or utilize a mechanical screen provided by Owner and/or Landlord) for the Satellite Dish Equipment that Landlord in its reasonable discretion may require (the size, type and style of which shall be subject to Landlord's prior written approval) in order to camouflage or conceal the Satellite Dish Equipment. Landlord shall make reasonable effort to ensure that any screen or other covering requested by Landlord to camouflage or conceal the Satellite Dish Equipment, does not interfere with the operation of the Satellite Dish Equipment.

(x) The Satellite Dish Equipment shall not be more than forty-eight inches (48") in height and not more than the weight that Landlord shall determine is appropriate for the roof (which Landlord shall specify to Tenant upon Tenant's written request).

D. INTERFERENCE.

(i) The installation, maintenance and operation of the Satellite Dish Equipment shall not interfere electronically or otherwise, with (a) the equipment, facilities, site use and marketability or operations of Landlord, or (b) the equipment, facilities or operations of Landlord's present licensees or tenants at the Park/Plaza Development. If any such interference is caused by the installation, maintenance and operation of the Satellite Dish Equipment, Tenant shall, upon written or oral request, suspend its operations until such time as the interference has been eliminated, except for intermittent testing after performing such repair, modification, replacement or other action for the purpose of correcting the interference. If Tenant is unable to rectify the interference, then upon Landlord's request, Tenant shall (at Tenant's cost) remove the Satellite Dish Equipment from the Premises (and restore the Site and the Premises area affected to the condition existing prior to installation of the Satellite Dish Equipment) and comply with the provisions of Section E hereof governing removal of the Satellite Dish Equipment. All transmitters and/or repeater systems at the Site shall be equipped with, at a minimum, a single stage isolator and a bandpass filter or bandpass/reject type duplexer. No notch type duplexers will be allowed. Complete technical characteristics for required equipment (including response curves) shall be furnished to Landlord and approved for use prior to Tenant's installation of the Satellite Dish Equipment. Landlord shall use commercially reasonable efforts to ensure that any equipment installed or placed on the roof after the Installation of the Satellite Dish Equipment will be located in an area that is not likely to materially interfere electronically or otherwise with the Satellite Dish Equipment installed by or on behalf of Tenant.

(ii) Tenant waives any and all claims against Landlord for any interference caused to or with Tenant's Satellite Dish Equipment by the present or future equipment or facilities of Landlord or any of its tenants or licensees. However, Landlord shall make all reasonable effort to avoid any modifications or installation of any equipment or fixture, and to avoid allowing any other tenant to make any modification or install any equipment or fixture, that will interfere with the operation of the Satellite Dish Equipment.

E. MAINTENANCE AND REMOVAL OF THE SATELLITE DISH EQUIPMENT.

(i) Tenant shall, at its sole cost and expense, be responsible for the maintenance of the Satellite Dish Equipment in accordance with all applicable laws and regulations and this Lease. All maintenance work shall be performed by Tenant's employees or by certified contractors, previously approved in writing by Landlord, such approval not to be unreasonably withheld, conditioned or delayed.

(ii) At the expiration or earlier termination of this Lease, Tenant shall remove the Satellite Dish Equipment from the Premises (and restore the Site and the Premises areas affected to the condition existing

prior to installation of the Satellite Dish Equipment) at Tenant's sole cost and expense. The removal shall be performed by a certified contractor previously approved in writing by Landlord (such approval not to be unreasonably withheld, conditioned or delayed), in a workmanlike manner in accordance with a previously approved removal plan (such approval not to be unreasonably withheld, conditioned or delayed) and without causing any interference or damage to the structures, equipment, or operations of Landlord or any of its licensees or tenants at the Park/Plaza Development. Should any interference, damage or destruction occur, it shall be immediately remedied by Tenant at Tenant's sole cost and expense. If Tenant fails to eliminate any such interference or to make any such repair within seven (7) business days of receiving written notice of the occurrence of interference or damage, Landlord may perform the necessary work at Tenant's cost and expense and such amount shall be paid by Tenant, as additional Rent hereunder, within thirty (30) days of Tenant's receipt of an invoice therefor.

F. INDEMNIFICATION.

(i) Tenant covenants to indemnify Landlord, its partners, shareholders, representatives, agents and employees, and save them harmless (except to the extent of loss or damage resulting from the negligence of Landlord, its employees, agents, invitees, licensees and contractors, and not required to be insured against by Tenant pursuant to Article XI of the Lease) from and against any all claims, actions, damages, liability and expense, including attorney's fees, in connection with all losses, including loss of life, personal injury and/or damage to property, arising from, or out of, the installation, use, maintenance, existence, and/or removal of the Satellite Dish Equipment.

(ii) Tenant covenants and agrees that the installation, operation and removal of the Satellite Dish Equipment will be at its sole risk. Landlord shall not be liable to Tenant for any loss, damage or expense arising from any damage to the Satellite Dish Equipment that may be occasioned by, through, or in connection with any acts or omissions of Landlord or Landlord's agents or employees. Tenant agrees to indemnify and hold Landlord and all other persons or entities having facilities located at the Site harmless, from all costs of any damage done to Landlord's or other persons facilities or equipment located at the Park/Plaza Development, that occur as a result of the installation, operation or maintenance of Tenant's Satellite Dish Equipment. Tenant hereby assumes the risk of the inability to operate Tenant's Satellite Dish Equipment as a result of any structural or power failure at the Premises or failure of Tenant's Satellite Dish Equipment for any reason whatsoever and agrees to indemnify and hold Landlord harmless from all damages and costs of defending any claim or suit for damages of any kind including business interruption (and reasonable attorney's' fees) asserted against Landlord by reason of such failure.

G. TAXES.

Tenant hereby acknowledges that the existence of the Satellite Dish Equipment and Tenant's other improvements may result in an increase in the assessed valuation of the Premises. Upon receipt of documentation specifically showing that the Satellite Dish Equipment or Tenant's other improvements directly and solely caused such increase Tenant shall reimburse Landlord for any increase in the real estate taxes payable by Landlord as a consequence of the increase in assessed valuations, subject to Tenant's right to obtain an exemption therefor on Landlord's behalf. Landlord shall, at Tenant's sole cost and expense, cooperate with Tenant to obtain an abatement of any such increase assessment. In the event any sales, use or other tax shall be payable by Landlord in connection with this Lease, Tenant shall reimburse Landlord on demand for such payments or shall furnish necessary documentation to the appropriate government authorities to show that fee payments hereunder are exempt from such sales, use or other tax.

GUARANTY

THIS GUARANTY (the "Guaranty") is made this 29 day of March, 2015~~6~~ by the undersigned ("Guarantor") to and for the benefit of **HORTON PLAZA SERVICES, INC.** ("Landlord").

WHEREAS, Landlord and SDPAL, a 501(c)3 corporation / limited liability company ("Tenant") have entered into that certain Lease dated the _____ of _____, 201____ (the "Lease") for Premises located in **HORTON PLAZA URBAN PARK**, City of San Diego, State of California as more fully described in the Lease; and

WHEREAS, it is a condition precedent to all the obligations of Landlord pursuant to the Lease that Guarantor shall have executed and delivered this Guaranty.

NOW, THEREFORE in consideration of and an inducement to the execution of this Lease by Landlord, the Guarantor hereby covenants and agrees as follows:

A. The Guarantor hereby guarantees the full, faithful and timely payment and performance by Tenant of all the payments, covenants and other obligations of Tenant under or pursuant to the Lease. If Tenant shall default at any time in the payment of any Minimum Annual Rental, Additional Rent or any other sums, costs or charges whatsoever, or in the performance of any of the other covenants and obligations of Tenant, under or pursuant to the Lease, then the Guarantor, at its expense, shall on demand of Landlord fully and promptly pay all Minimum Annual Rental, Additional Rent, sums, costs and charges to be paid by Tenant, under or pursuant to the Lease, and in addition shall, upon Landlord's demand therefor, pay to Landlord any and all sums due to Landlord, including (without limitation) all interest on past due obligations of Tenant, costs advanced by Landlord, and any and all damages and expenses, which may arise as a consequence of Tenant's default. The Guarantor hereby waives all requirements of notice of the acceptance of this Guaranty and all requirements of notice of breach or nonperformance by Tenant.

B. The obligations of the Guarantor hereunder are independent of, and may exceed, the obligations of Tenant. A separate action or actions may, at Landlord's option, be brought and prosecuted against the Guarantor, whether or not any action is first or subsequently brought against Tenant, or whether or not Tenant is joined in any such action, and the Guarantor may be joined in any action or proceeding commenced by Landlord against Tenant arising out of, in connection with or based upon the Lease. The Guarantor waives any right to require Landlord to proceed against Tenant or pursue any other remedy in Landlord's power whatsoever, any right to complain of delay in the enforcement of Landlord's rights under the Lease, and any demand by Landlord and/or prior action by Landlord of any nature whatsoever against Tenant, or otherwise.

C. This Guaranty shall remain and continue in full force and effect and shall not be discharged in whole or in part notwithstanding (whether prior to or subsequent to the execution hereof) any alteration, renewal, extension, modification, amendment or assignment of, or subletting, concession, franchising, licensing or permitting under, the Lease. The Guarantor hereby waives all requirements of notice of all of the foregoing, and agrees that the liability of the Guarantor hereunder shall be based upon the obligations of Tenant set forth in the Lease as the same may be altered, renewed, extended, modified, amended or assigned. For the purpose of this Guaranty and the obligations and liabilities of the Guarantor hereunder, "Tenant" shall be deemed to include any and all concessionaires, licensees, franchisees, department operators, assignees, subtenants, permittees or others directly or indirectly operating or conducting a business in or from the Premises, as fully as if any of the same were the named Tenant under the Lease.

D. The Guarantor's obligations hereunder shall remain fully binding although Landlord may have waived one or more defaults by Tenant, extended the time of performance by Tenant, released, returned or misapplied other collateral at any time given as security for Tenant's obligations (including other guaranties) and/or released Tenant from the performance of its obligations under the Lease.

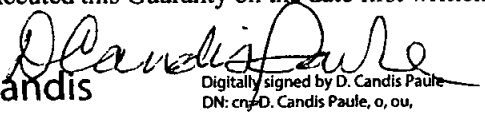
E. This Guaranty shall remain in full force and effect notwithstanding the institution by or against Tenant of bankruptcy, reorganization, readjustment, receivership or insolvency proceedings of any nature, or the disaffirmance of the Lease in any such proceedings or otherwise.

F. If this Guaranty is signed by more than one party, their obligations shall be joint and several, and the release of one of such guarantors shall not release any other of such guarantors. If this Guaranty is signed on behalf of a corporation, partnership or other entity, the signer is duly authorized to execute this obligation on behalf of such corporation, partnership or other entity.

G. This Guaranty shall be applicable to and binding upon the heirs, executors, administrators, representatives, successors and assigns of Landlord, Tenant and the Guarantor. Landlord may, without notice, assign this Guaranty in whole or in part.

H. The execution of this Guaranty prior to execution of the Lease shall not invalidate this Guaranty or lessen the obligations of the Guarantor(s) hereunder.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on the date first written above.


D. Candis
Paule
Digitally signed by D. Candis Paule
DN: cn=D. Candis Paule, o, ou,
email=cpaule@innoflight.com, c=US
Date: 2016.03.29 12:32:43 -07'00'

SAN DIEGO PERFORMING ARTS LEAGUE

Home Address*:

28 Horton Plaza

San Diego CA 92101

*or principal place of business, if corporate guarantor