

LEASE

STARBUCKS COFFEE
TRADE NAME

STARBUCKS CORPORATION
TENANT

FSU2
PAVILION 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 1ST day of December, 2015, by and between the **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 public 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 **STARBUCKS CORPORATION**, a Washington corporation, whose address is: 2401 Utah Avenue South, Suite 800, Seattle, Washington 98134 ("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-8** 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 Section 1.01(a) of the Lease, shall include the real property shown on Exhibit A-1.

The Premises is described as follows:

Space No.	Level	Description	Approximate Floor Area
FSU2	Site	Restaurant	355 square feet
P-FSU2	Site	Patio	1,054 square feet
S-FSU2	Lower Level 1	Storage Area	204 square feet

RECITALS

A. City and 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 Successor Agency. 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:**

Base Rent: From the Rental Commencement Date and continuing through the end of the Term, Tenant's payment of "Base Rent" per annum shall be as follows:

Rental Commencement Date through and continuing thereafter through the end of the twelfth (12th) full calendar month following the Rental Commencement Date:

\$92,300.00;

Beginning with the thirteenth (13th) full calendar month following the Rental Commencement Date and continuing thereafter through the end of the twenty-fourth (24th) full calendar month following the Rental Commencement Date:

\$95,069.00;

Beginning with the twenty-fifth (25th) full calendar month following the Rental Commencement Date and continuing thereafter through the end of the thirty-sixth (36th) full calendar month following the Rental Commencement Date:

\$97,921.07;

Beginning with the thirty-seventh (37th) full calendar month following the Rental Commencement Date and continuing thereafter through the end of the forty-eighth (48th) full calendar month following the Rental Commencement Date:

\$106,500.00;

Beginning with the forty-ninth (49th) full calendar month following the Rental Commencement Date and continuing thereafter through the end of the sixtieth (60th) full calendar month following the Rental Commencement Date:

\$109,695.00;

Beginning with the sixty-first (61st) full calendar month following the Rental Commencement Date and continuing thereafter through the end of the seventy-second (72nd) full calendar month following the Rental Commencement Date:

\$112,984.85;

Beginning with the seventy-third (73rd) full calendar month following the Rental Commencement Date and continuing thereafter through the end of the eighty-fourth (84th) full calendar month following the Rental Commencement Date:

\$116,376.10;

Beginning with the eighty-fifth (85th) full calendar month following the Rental Commencement Date and continuing thereafter through the end of the ninety-sixth (96th) full calendar month following the Rental Commencement Date:

\$115,375.00;

Beginning with the ninety-seventh (97th) full calendar month following the Rental Commencement Date and continuing thereafter through the end of the one hundred eighth (108th) full calendar month following the Rental Commencement Date:
and

\$118,836.25;

Beginning with the one hundred ninth (109th) full calendar month following the Rental Commencement Date and continuing thereafter through the end of the Term: \$122,400.45.

Indexed Rent: From the Rental Commencement Date through the end of the Term, Tenant shall pay in addition to Base Rent set forth herein, an "Indexed Rent" equal to \$71,355.00.

Base Rent and Indexed Rent shall collectively constitute "Minimum Annual Rental" under this Lease.

(3) **Section 2.02: Percentage Rental:**

Percentage Rental Rate: Six percent (6%) of Gross Sales in excess of the Annual Breakpoint(s) as follows:

Rental Commencement Date through and continuing thereafter through the end of the twelfth (12th) full calendar month following the Rental Commencement Date:

\$1,200,000.00;

Beginning with the thirteenth (13th) full calendar month following the Rental Commencement Date and continuing thereafter through the end of the twenty-fourth (24th) full calendar month following the Rental Commencement Date:

\$1,236,000.00;

Beginning with the twenty-fifth (25th) full calendar month following the Rental Commencement Date and continuing thereafter through the end of the thirty-sixth (36th) full calendar month following the Rental Commencement Date: \$1,273,080.00;

Beginning with the thirty-seventh (37th) full calendar month following the Rental Commencement Date and continuing thereafter through the end of the forty-eighth (48th) full calendar month following the Rental Commencement Date: \$1,775,000.00;

Beginning with the forty-ninth (49th) full calendar month following the Rental Commencement Date and continuing thereafter through the end of the sixtieth (60th) full calendar month following the Rental Commencement Date: \$1,828,265.00;

Beginning with the sixty-first (61st) full calendar month following the Rental Commencement Date and continuing thereafter through the end of the seventy-second (72nd) full calendar month following the Rental Commencement Date: \$1,883,098.00;

Beginning with the seventy-third (73rd) full calendar month following the Rental Commencement Date and continuing thereafter through the end of the eighty-fourth (84th) full calendar month following the Rental Commencement Date: \$1,939,590.00;

Beginning with the eighty-fifth (85th) full calendar month following the Rental Commencement Date and continuing thereafter through the end of the ninety-sixth (96th) full calendar month following the Rental Commencement Date: \$1,922,916.00;

Beginning with the ninety-seventh (97th) full calendar month following the Rental Commencement Date and continuing thereafter through the end of the one hundred eighth (108th) full calendar month following the Rental Commencement Date: \$1,980,603.00;
and

Beginning with the one hundred ninth (109th) full calendar month following the Rental Commencement Date and continuing thereafter through the end of the Term: \$2,040,022.00.

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

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

Payee: Horton Plaza LLC
Address: P.O. Box 55708, Los Angeles, California 90074-5708

(6) **Section 3.02: Reports By Tenant:** Tenant's monthly and annual statements of Gross Sales should be submitted electronically to: sales_horton@us.westfield.com

(7) **Section 7.01: Permitted Use:** Tenant may use the Premises as a coffee shop including, at Tenant's discretion, the retail sale of: (a) whole and ground coffee beans; (b) pre-packaged coffee; (c) coffee by the cup; (d) blended beverages and espresso/coffee/tea-based drinks; (e) teas and spices; (f) espresso/coffee/tea related equipment, supplies and accessories; (g) seasonal, promotional and Tenant's branded merchandise; (h) assorted food items including, but not limited to, baked goods, desserts, frozen desserts, salads, sandwiches, juices, candies, and novelties; (i) books, magazines, and newspapers; (j) music merchandise and digital media content, and (k) non-food items or other items that Tenant or its successors make available for sale in the ordinary course of business not presently restricted by the written exclusive use rights of other tenants in the Shopping Center. The items listed in subsections (a) through (h) of this paragraph shall be "primary". The items listed in subsections (i) through (k) of this paragraph shall be "incidental" and shall not be displayed in more than twenty percent (20%) in the aggregate of the Floor Area of the Premises. The Premises shall be used solely for the use stated above and for no other use or purpose.

(8) **Section 16.01: Trade Name:** STARBUCKS COFFEE

(9) **Section 16.02: Promotional Program:** \$4.00 psf per annum.

Initial Assessment: None

(10) **Section 26.01: Security Deposit:** None

(11) 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
Attn: Contracts Manager

Tenant: To the Premises and:

Starbucks Corporation
P.O. Box 34067
Seattle, Washington 98124-1067
Attention: Property Management
Department
Mailstop S-RE 3

Or by overnight mail to:

Starbucks Corporation
2401 Utah Avenue South, Suite 800
Seattle, Washington 96134
Attention: Property Management
Department
Mailstop S-RE 3

With a duplicate copy sent to the
attention of the Law and Corporate
Affairs Dept. at the same address,
mailstop S-LAI.

Billing Address:

Starbucks Corporation
P.O. Box 34067
Seattle, Washington 98124-1067
Attention: Property Management
Mailstop S-RE3

Or by overnight mail to:

Starbucks Corporation
2401 Utah Avenue South, Suite 800
Seattle, Washington 96134
Attention: Property Management

(12) Addendum to Exhibit B: Reimbursement for Cost of Construction: \$0.00

ATTACHMENTS AND EXHIBITS

The following exhibits and addenda 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":.....EXCLUSIVE USE ZONE
EXHIBIT "A-4":.....PATIO AREA
EXHIBIT "A-5":.....TRASH AREA
EXHIBIT "A-6":.....ACCESS TO PARK/PLAZA DEVELOPMENT AND PREMISES
EXHIBIT "A-7":.....INTENTIONALLY DELETED
EXHIBIT "A-8":.....STORAGE AREA
EXHIBIT "B":.....CONSTRUCTION OF PREMISES
EXHIBIT "B-1":.....BACKGROUND MUSIC NOISE MITIGATION
ADDENDUM TO EXHIBIT "B":.....INTENTIONALLY DELETED
EXHIBIT "C":.....ADDITIONAL INSURED ENTITIES
EXHIBIT "D":.....INTENTIONALLY DELETED
EXHIBIT "E":.....INTENTIONALLY DELETED
EXHIBIT "F":.....SATELLITE DISH RIGHTS
EXHIBIT "G":.....INTENTIONALLY DELETED

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-6** 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-6** 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, Percentage 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 ninety (90) days after the later of: (i) Tenant's acceptance of the Premises with Landlord's Work substantially complete as indicated by a written notice sent by Landlord to Tenant specifying the date of delivery; or, (ii) the date Tenant receives all permits, variances and governmental approvals ("Permits") necessary to construct and operate its business in the Premises (provided Tenant submits for such Permits as soon as possible after execution of this Lease and diligently pursues the obtainment of such Permits). 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 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

1 Date and ending on January 31 next following; after the first lease year, the term "lease year" shall mean
2 a fiscal year of twelve (12) consecutive calendar months ending on January 31 of each calendar year.
3

4 Tenant shall use its best efforts to apply for and obtain a full or partial building permit (the
5 "Permit") in order to allow Tenant's Work to begin as soon as possible after the execution of this Lease
6 and to allow Tenant's Work to be completed by the Latest Rental Commencement Date. Notwithstanding
7 the foregoing, provided Tenant timely applies for the Permit and thereafter uses its best efforts to obtain
8 the same, if Tenant is unable to obtain the Permit in sufficient time for Tenant to complete Tenant's Work
9 by the Latest Rental Commencement Date, then the Latest Rental Commencement Date shall be
10 extended, on a day-for-day basis, for each day after February 1, 2016 that issuance of the Permit is
11 unavoidably delayed. Delays due to incomplete plan submittals, Tenant's failure to comply with the
12 requirements of this Lease, or other failure of Tenant to proceed diligently shall not be deemed
13 unavoidable delays for purposes of this Section.
14

15 **Section 1.03 INTENTIONALLY DELETED.**
16

17 **ARTICLE II**
18

19 **RENTAL**
20

21 **Section 2.01 MINIMUM ANNUAL RENTAL.**

22 (a) From and after the Rental Commencement Date, Tenant shall pay to Landlord as the
23 "Minimum Annual Rental" the sum set forth in the Data Sheet for each lease year during the Term in
24 equal consecutive monthly installments in advance on or before the first day of each month, without prior
25 demand or notice. Minimum Annual Rental, Percentage Rental, Additional Rent and all other sums
26 payable to Landlord pursuant to this Lease shall be paid to Landlord in currency of the United States or
27 other customary commercial manner at the address set forth in the Data Sheet under "Address for Rental
28 Payments," or such other place as Landlord may designate, without any deductions or offsets whatsoever.
29

30 (b) Should the Rental Commencement Date occur on a day other than the first day of a
31 calendar month, then the Minimum Annual Rental for such fractional month shall be one three hundred
32 sixty-fifth (1/365th) of the Minimum Annual Rental multiplied by the number of days remaining in the
33 month. Should any lease year contain less than twelve (12) calendar months, said Minimum Annual
34 Rental shall be prorated.
35

36 **Section 2.02 PERCENTAGE RENTAL.**

37 (a) In addition to the payment of Minimum Annual Rental and Additional Rent, from and
38 after the Rental Commencement Date, Tenant shall pay to Landlord in accordance with the provisions of
39 this Section 2.02, "Percentage Rental" equal to the product of the Percentage Rental Rate specified in the
40 Data Sheet times the amount by which Gross Sales (as defined in Section 2.03) exceed the "Annual
41 Breakpoint" specified in the Data Sheet.
42

43 With respect to each lease year, Percentage Rental shall be due and payable commencing
44 with the calendar month in which the aggregate Gross Sales for such lease year shall first exceed the
45 applicable Annual Breakpoint and thereafter shall be paid monthly on all additional Gross Sales made
46 during the remainder of such lease year. Payments shall be made to Landlord with Tenant's statement of
47 Gross Sales not later than the fifteenth (15th) day following each month for which Percentage Rental is
48 payable and without any prior notice or demand therefor and without any setoff or deduction whatsoever.
49

50 (b) Percentage Rental shall be computed on all Gross Sales made during any lease year in
51 excess of the Annual Breakpoint applicable to such lease year. Should the Rental Commencement Date
52 occur on a day other than the first day of a lease year or should the Term expire on a day other than the
53 end of a full lease year, then the Percentage Rental due for such partial lease year shall equal the product
54 of the Percentage Rental Rate times the amount by which Tenant's Gross Sales exceed the product
55 obtained by multiplying the Annual Breakpoint by a fraction, the numerator of which is the number of
56 calendar days in such partial lease year and the denominator of which is three hundred sixty five (365).
57

58 (c) If, at the end of any lease year, the total amount of Percentage Rental paid by Tenant
59 based upon Gross Sales for such lease year exceeds the total amount of Percentage Rental required to be
60 paid by Tenant for such lease year, Tenant shall receive a credit, equivalent to such excess, against the
61 next monthly payments of Percentage Rental due from Tenant to Landlord under this Lease. If at the end
62 of the final lease year the total amount of Percentage Rental paid by Tenant exceeds the total amount of
63 Percentage Rental required to be paid by Tenant for such lease year, such excess shall be refunded to
64 Tenant after (i) Tenant has vacated the Premises in accordance with the provisions of this Lease and (ii)
65 any Rental due Landlord from Tenant under this Lease has been paid in full or deducted therefrom. If at
66 the end of any lease year, the total amount of Percentage Rental paid by Tenant for such lease year is less

1 than the total amount of Percentage Rental required to be paid by Tenant for such lease year, Tenant shall
2 pay the amount of such deficiency on or before the thirtieth (30th) day after the last day of such lease
3 year. Should any lease year contain less than twelve (12) calendar months, then, the Annual Breakpoint
4 shall be adjusted proportionately for such partial lease year.

5
6 **Section 2.03 GROSS SALES.**

7 (a) The term "Gross Sales" as used herein shall be construed to include the entire amount of
8 the actual sales price (including all finance charges by Tenant or anyone on Tenant's behalf) whether for
9 cash, credit or otherwise, of all sales, rentals, leases, licenses or other transfer of merchandise or services
10 and other receipts whatsoever of all business conducted in or from the Premises, by Tenant, all
11 subtenants, assignees, licensees, concessionaires or otherwise, including, without limitation: mail,
12 catalogue, closed circuit television, computer, other electronic or telephone orders received or filled at the
13 Premises; all deposits not refunded to purchasers; orders taken, although said orders may be filled
14 elsewhere; gross receipts from vending machines, electronic games or similar devices, whether coin-
15 operated or otherwise; and the entire amount of the actual sales price and all other receipts for sales and
16 services by Tenant, any subtenants, assignees, licensees, concessionaires or otherwise in or from the
17 Premises. A "sale" shall be deemed to have been consummated for the purposes of this Lease, and the
18 entire amount of the sales price shall be included in Gross Sales, at such time as (i) the transaction is
19 initially reflected in the books or records of Tenant or any subtenant, assignee, licensee or concessionaire
20 (if a concessionaire makes the sale), or (ii) Tenant or any subtenant, assignee, licensee or concessionaire
21 receives all or any portion of the sales price, or (iii) the applicable goods or services are delivered to the
22 customer, whichever first occurs, irrespective of whether payment is made in installments, the sale is for
23 cash or for credit, or all or any portion of the sales price has actually been paid at the time of inclusion in
24 Gross Sales or at any other time. Subject to Section 2.03(b) below, no deduction shall be allowed for
25 direct or indirect discounts, rebates, credits or other reductions to employees or others, unless such
26 discounts, rebates, credits or other reductions are generally offered to the public on a uniform basis.

27
28 (b) Notwithstanding anything to the contrary contained in Section 2.03(a) above, Gross Sales
29 shall not include the following:

30
31 (1) The portion of the sales price of all merchandise returned by customers and
32 accepted for credit to the extent of the credit;

33
34 (2) Goods returned to sources, including shippers or manufacturers, or transferred to
35 another store or warehouse owned by or affiliated with Tenant (where such exchange of goods or
36 merchandise is made solely for the convenient operation of the business of Tenant and not for purposes of
37 consummating a sale which has theretofore been made in or from the Premises and/or for the purpose of
38 depriving Landlord of the benefit of a sale which otherwise would be made in or from the Premises);

39
40 (3) Alteration workroom charges and delivery charges at Tenant's cost of sales;

41
42 (4) Receipts from public telephones, stamp machines, public toilet locks, or vending
43 machines installed solely for use by Tenant's employees;

44
45 (5) Sales taxes, so-called luxury taxes; consumers' excise taxes, gross receipts taxes
46 and other similar taxes now or hereafter imposed upon the sale of merchandise or services, but only if
47 collected separately from the selling price of goods, merchandise or services and collected from
48 customers;

49
50 (6) Sales of trade fixtures, equipment, or property which are not stock in trade;

51
52 (7) Refunds made to customers in the ordinary course of business on transactions
53 originating at the Premises and otherwise included in Gross Sales;

54
55 (8) Taxes or assessments on rent or other charges, if any paid by Tenant (gross receipts
56 taxes levied on Tenant in connection with the operation of its business in the Premises);

57
58 (9) Bulk sales to jobbers made for the purpose of clearing stock of old or obsolete
59 merchandise and not in the ordinary course of business;

60
61 (10) Deposits from its customers and subtenants, if any;

62
63 (11) Bad debts in an amount not to exceed two percent (2%) of Tenant's Gross Sales
64 per annum;

65
66 (12) Delivery charges or any service rendered at cost or approximately at cost for the
convenience of customers;

- (13) Employee purchases (not in excess of two percent (2%) of Gross Sales in any one (1) lease year);
- (14) Promotional offerings and charitable collections;
- (15) Sums and credits received in the settlement of claims for loss of or damage to the merchandise;
- (16) Financial charges on credit card sales (not in excess of two percent (2%) of Gross Sales in any one (1) lease year);
- (17) Insurance proceeds received from the settlement of claims for loss of or damage to goods, fixtures and other personal property of Tenant;
- (18) Service charges payable to Tenant on accounts receivable; and
- (19) Transfers or exchanges of merchandise between stores or warehouses of Tenant.

(c) If Tenant's Gross Sales for the 12-month period commencing with the thirty-seventh (37th) full month following the Rental Commencement Date and ending with the forty-eighth (48th) full month following the Rental Commencement Date ("Measuring Period") are less than \$800,000.00, then Tenant shall have the right to terminate this Lease. The right to terminate this Lease shall be exercised by written notice Landlord within ninety (60) days following the Measuring Period, accompanied by Tenant's statement of Gross Sales for the Measuring Period. The termination of the Lease shall be effective three hundred sixty five (365) days after receipt by Landlord of such notice. The right herein granted to Tenant shall be null and void if Tenant is in default under the terms and conditions of this Lease at the date of Tenant's notice, or if Tenant has not been open and operating in accordance with this Lease during the Measuring Period. Notwithstanding anything in Section 4.02 to the contrary, Landlord shall have the right to audit Tenant's Records to verify Tenant's Gross Sales for the Measuring Period. If such audit determines that Tenant's Gross Sales are equal to or greater than the threshold stated herein, then Tenant's right to terminate this Lease shall be null and void and the Lease shall continue in effect for the remainder of the Term.

Section 2.04 INTENTIONALLY DELETED.

Section 2.05 TRASH REMOVAL CHARGE.

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

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

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

If Landlord elects that Tenant pay the solid waste disposal contractors directly, then Landlord shall instruct such contractor to bill its charges directly to Tenant, and Tenant shall pay such charges directly to the contractor, and no separate Trash Removal Charge shall be payable hereunder.

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

Section 2.06 ADDITIONAL RENT.

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

Section 2.07 LATE CHARGE.

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

Section 2.08 TENANT'S PAYMENT OBLIGATIONS.

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

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

ARTICLE III

RECORDS AND BOOKS OF ACCOUNT

Section 3.01 TENANT'S RECORDS.

Tenant shall prepare and keep full, complete and proper books and source documents, in accordance with Generally Accepted Accounting Principles, of the Gross Sales, whether for cash, credit or otherwise, of each separate department at any time operated within the Premises and of the operations of each subtenant, concessionaire, licensee and/or assignee, and shall require and cause all such parties to prepare and keep books, source documents, records and accounts sufficient to substantiate those kept by Tenant ("Records"). The Records to be kept by Tenant shall include, without limitation, true copies of all state and local sales and use tax returns and reports, records of inventories and receipts of merchandise,

1 records of bank deposits of the entire receipts from transactions at the Premises, daily receipts from all
2 sales (including those from mail or telephone orders), and other pertinent original sales records and
3 records of any other transactions conducted in or from the Premises by Tenant and any other persons
4 conducting business from the Premises. Pertinent original sales records shall include, without limitation, a
5 point of sale system of record keeping and such other reasonable documentation which would normally
6 be examined by an independent accountant pursuant to Generally Accepted Auditing Standards in
7 performing an audit of Tenant's sales sufficient to provide determination and verification of Gross Sales
8 and the exclusions and deductions therefrom. Tenant's Records shall be preserved by Tenant at Tenant's
9 principal business office in the United States for at least three (3) years after expiration of each lease year
10 or partial lease year. All of books, source documents, records and documentation maintained pursuant
11 hereto shall at all reasonable times be open to the inspection of, and may be copied or extracted from, in
12 whole or in part, by Landlord or Landlord's authorized representative or agent for a period of at least four
13 (4) years after the expiration of each lease year.

14
15 **Section 3.02 REPORTS BY TENANT.**

16 On or before the fifteenth (15th) day of each month, Tenant shall submit to Landlord, at the
17 address specified in this Lease, a written statement certified by Tenant showing Tenant's Gross Sales for
18 the preceding calendar month (the "Monthly Gross Sales Statement"). Within sixty (60) days after the
19 end of each lease year, Tenant shall deliver to Landlord a written statement signed by a certified public
20 accountant, or an officer of Tenant, setting forth the amount of Tenant's Gross Sales for such lease year
21 (the "Annual Gross Sales Statement"). In the event that Tenant fails to furnish to Landlord any Monthly
22 or Annual Gross Sales Statement when due, Landlord, in addition to any other rights and remedies that
23 Landlord may have under this Lease, or at law or in equity, shall be entitled to assess an administrative
24 charge of \$250.00 for each such delinquent Gross Sales Statement to help defray additional expenses.

25
26 **ARTICLE IV**

27
28 **AUDIT**

29
30 **Section 4.01 RIGHT TO EXAMINE BOOKS.**

31 Notwithstanding the acceptance by Landlord of payments of Minimum Annual Rental or
32 Percentage Rental or installments thereof, Landlord shall have the right to audit all rentals and other
33 charges actually due hereunder. Within ten (10) days following Landlord's request, Tenant shall make
34 available to Landlord at the Premises or at Tenant's principal business office in the United States for
35 examination, extracting and/or copying all books, source documents, accounts, records and sales tax
36 reports of Tenant and any subtenants, concessionaires, licensees and/or assignees, including Tenant's
37 state and federal income tax returns, in order to verify the amount of Gross Sales made in and from the
38 Premises.

39
40 **Section 4.02 AUDIT.**

41 (a) At its option, Landlord may at any time upon ten (10) days' prior written notice to
42 Tenant, cause a complete audit (including a physical inventory) to be made by an auditor selected by
43 Landlord of the entire records and operations of Tenant and/or any subtenants, concessionaires, licensees
44 and/or assignees relating to the Premises for the period covered by any statement issued or required to be
45 issued by Tenant or a concessionaire as above set forth in Article III. Tenant shall make available to
46 Landlord's auditor at the Premises or at Tenant's principal business office in the United States, within ten
47 (10) days following Landlord's notice requiring such audit, all of the books, source documents, accounts,
48 records and sales tax reports of Tenant and any of its concessionaires which such auditor deems necessary
49 or desirable for the purpose of making such audit, including Tenant's state and federal income tax returns
50 to the extent such tax returns are required to be kept under Section 3.01. If such audit discloses that
51 Tenant's Gross Sales as previously reported for the period audited were understated, Tenant shall
52 immediately pay to Landlord the additional percentage rental due for the period audited. Further, if such
53 understatement was in excess of two percent (2%) of Tenant's actual Gross Sales as disclosed by such
54 audit, Tenant shall immediately pay to Landlord the cost of such audit.

55
56 (b) If Tenant subleases, licenses, or in any manner allows the Premises to be used by another
57 party (the "Subtenant"), Tenant is responsible for ensuring that the Subtenant's Records conform to the
58 requirements of this Lease. The failure of Subtenant to maintain its Records as required under this Lease,
59 or to correctly report Gross Sales, will be deemed a failure on the part of Tenant to conform to the
60 requirements of this Lease and shall subject Tenant to the remedies set forth in Section 4.02.

ARTICLE V

CONSTRUCTION OF PREMISES

Section 5.01 CONSTRUCTION OF PREMISES.

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

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

Section 5.02 CERTIFICATE OF OCCUPANCY.

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

Section 5.03 CONDITION OF PREMISES.

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

Section 5.04 ULTIMATE RENTAL COMMENCEMENT DATE.

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

1 **Section 5.05 REQUIRED IMPROVEMENTS.**

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

9
10 **ARTICLE VI**

11 **ALTERATIONS, CHANGES AND ADDITIONS**

12
13
14 **Section 6.01 ALTERATIONS BY TENANT.**

15 Tenant shall not make or cause to be made any alterations, additions or improvements to the
16 Premises without the prior written approval of Landlord and Owner (for example, but without limiting the
17 generality of the foregoing, Tenant shall not install or cause to be installed any signs, floor covering,
18 interior or exterior lighting, plumbing fixtures, shades, canopies, awnings, electronic detection devices,
19 antennas, mechanical, electrical or sprinkler systems, or make any changes to the storefront). However,
20 Tenant may make such alterations, additions and improvements to the interior of the Premises as do not in
21 the aggregate exceed in any lease year the amount set forth in the Data Sheet, provided (a) the same are
22 cosmetic and not structural in nature, do not affect a utility system, the storefront or storefront sign and are
23 not inconsistent with the final Plans and Specifications approved by Landlord and Owner; (b) that Tenant
24 complies with the provisions concerning contractors, labor relations, compliance with law, reporting of costs
25 and insurance and bonds and the provisions of **Exhibit B**; and (c) that Tenant shall submit to Landlord and
26 Owner fifteen (15) days written notice prior to undertaking any of the foregoing. Tenant shall present to
27 Landlord and Owner Plans and Specifications for any other alterations, additions or improvements at the
28 time approval is sought, in accordance with criteria and procedures as provided in **Exhibit B**. Tenant's
29 Plans and Specifications shall be submitted to Landlord and Owner for Landlord's and Owner's approval,
30 which approval shall not be unreasonably conditioned, withheld or delayed. Any approved Plans and
31 Specifications shall take precedence over and supersede any construction requirements contained in the
32 Lease, to the extent of any item expressly set forth on such approved plan.

33
34 **Section 6.02 REMOVAL BY TENANT.**

35 Upon the expiration or earlier termination of this Lease, Tenant shall peaceably and quietly quit
36 and surrender the Premises, together with all alterations, additions and improvements which are then part
37 of the realty, broom clean, in good order and condition, reasonable wear and tear excepted.
38 Notwithstanding the foregoing to the contrary, all trade fixtures, lighting fixtures, furniture, furnishings,
39 signs, equipment, carpeting, cash registers, inventory and any and all items of personal property furnished
40 or installed by Tenant, its subtenants or licensees ("Property"), on, in or upon the Premises, regardless of
41 the manner or mode of attachment, including, but not limited to, display cases, counters, shelves, racks,
42 and general store fixtures, shall be and remain the property of Tenant and may be removed by Tenant at
43 any time during the Term or within the period of thirty (30) days after the expiration or sooner
44 termination of this Lease. In addition, Tenant shall, at its expense, remove from the Premises all items and
45 structural characteristics that are indicative of Tenant's business, and otherwise to "de-identify" the
46 Premises, as Tenant reasonably believes necessary or appropriate for the protection of Tenant's interest in
47 Tenant's trademarks, trade names, or copyrights, provided Tenant shall repair any damage to the Premises
48 caused by the removal of same. When Tenant vacates the Premises, Tenant shall not remove from the
49 Premises the then existing HVAC equipment, heaters in the trellises, plumbing fixtures, lighting fixtures
50 (except for decorative lighting fixtures which Tenant may remove), hydraulic lifts or any other items
51 (other than trade fixtures) deemed to be real estate by reason of affixation to improvements, except as
52 Landlord and Tenant may mutually agree. Tenant shall promptly repair all damage (reasonable wear and
53 tear excepted) to the Premises and/or any part of the Park/Plaza Development caused by removal of any
54 such decorative lighting and trade fixtures by Tenant or its subtenants or licensees. Any such decorative
55 lighting and trade fixtures remaining in the Premises after the expiration of such thirty (30) day period
56 shall be deemed abandoned and shall become the property of Owner without payment therefor, unless
57 Landlord shall have required removal by Tenant by notice given to Tenant not less than thirty (30) days
58 prior to the expiration date. The obligations contained in this Section 6.02 shall survive the expiration or
59 earlier termination of this Lease.

60
61 **Section 6.03 CHANGES AND ADDITIONS.**

62 (a) Owner and/or Landlord reserves the right at any time, and from time to time, to construct
63 other buildings and improvements in the Park/Plaza Development, including any modifications of the
64 Common Areas in connection therewith, to enlarge or reduce the Park/Plaza Development, and to lease
65 any part of the land comprising the Park/Plaza Development, as shown on **Exhibit A-1**. Landlord also
66 reserves the right at any time, and from time to time, to change, modify, or abolish any temporary off-site

1 utility serving the Park/Plaza Development. The purpose of Exhibit A-1 is to show the approximate
2 location of the Park/Plaza Development while the purpose of Exhibit A-2 is to show the approximate
3 location of the Premises within the Park/Plaza Development.

4
5 (b) Intentionally Deleted.

6
7 **Section 6.04 INTENTIONALLY DELETED.**

8
9 **ARTICLE VII**

10
11 **CONDUCT OF BUSINESS BY TENANT**

12
13 **Section 7.01 PERMITTED USE.**

14 (a) Tenant shall use the Premises only for the purpose of conducting the business specifically
15 set forth in the Data Sheet and for no other use or purpose. If any governmental license or permit shall be
16 required for the proper and lawful conduct of Tenant's business or other activity conducted in the
17 Premises, or if a failure to procure such a license or permit might or would in any way adversely affect
18 Owner, Landlord, the Park/Plaza Development, then Tenant, at Tenant's expense, shall duly procure and
19 thereafter maintain such license or permit and submit the same for inspection by Landlord. Tenant, at
20 Tenant's expense, shall at all times comply with the requirements of each such license or permit.

21
22 (b) *For this Lease at Horton Plaza Urban Park only and not to be used for any other deal*
23 *between a Landlord affiliate and Tenant:* Owner and Landlord shall not enter into a lease with a retail
24 tenant, in the area cross-hatched on Exhibit A-3 ("Exclusive Use Zone"), whose lease specifically permits
25 the primary sale of (i) whole or ground coffee beans, (ii) espresso, espresso-based drinks or coffee-based
26 drinks, (iii) tea or tea-based drinks, and/or (iv) espresso-based blended beverages ("Competing Use").
27 Landlord specifically agrees not to enter into a lease within the Exclusive Use Zone with another coffee
28 operator similar to Tenant such as Peet's Coffee, Coffee Bean & Tea Leaf or Pannikin. Notwithstanding
29 anything contained herein to the contrary, another tenant in the Park/Plaza Development shall have the
30 right, on an ancillary basis, to sell, whether brand identified or not, brewed coffee or brewed tea, espresso,
31 espresso-based drinks and coffee-based drinks, as well as pre-bottled tea or pre-bottled tea-based drinks;
32 provided however, such tenants may not advertise the sale of non-affiliated third party coffee or espresso
33 beverages such as, but not limited to, licensing or subtenant sales by another branded coffee or espresso
34 company. In the event another Tenant is operating in violation of the Competing Use, then Tenant shall give
35 Landlord notice of such violation and Landlord shall have thirty (30) days to cure such violation ("Notice
36 Period"). In the event such other tenant is operating in violation of the Competing Use at the end of the
37 Notice Period then, in lieu of Minimum Annual Rental, Percentage Rental and Additional Rent, Tenant may
38 thereafter pay four percent (4%) of Gross Sales ("Alternate Rent"), beginning on the first day following
39 the Notice Period and continuing until such other Tenant discontinues the Competing Use ("Reduction
40 Period"). Upon the expiration of the Reduction Period, Tenant shall resume payment of Minimum Annual
41 Rental, Percentage Rental and Additional Rent in the amounts provided for under this Lease.
42 Notwithstanding anything to the contrary contained herein, Tenant shall not be entitled to pay Alternate
43 Rent under the provisions of this paragraph pursuant to any of the following: (i) any other retailer whose
44 primary use is other than the sale of (w) whole or ground coffee beans, (x) espresso, espresso-based drinks
45 or coffee-based drinks, (y) tea or tea-based drinks, and/or (z) espresso-based blended beverages, (ii) any
46 other store violating the Competing Use which has a signed lease for space in the Park/Plaza Development
47 as of the date of this Lease, (iii) during any period when Tenant is in default under this Lease beyond the
48 applicable cure period, (iv) if Tenant's use has changed so that Tenant's use does not primarily include the
49 Competing Use, (v) after there has been a Transfer of this Lease which required the consent of Landlord, or
50 (vi) the violation of the Competing Use by a full service, sit-down restaurant. The remedies set forth in this
51 Section 7.01(b) shall be Tenant's sole remedies for a violation of this Section 7.01(b).

52
53 Tenant covenants and agrees to indemnify and hold Owner and Landlord harmless from
54 any claims, actions, damages, loss, costs or expenses (including reasonable attorneys' fees), arising from
55 any claim or action brought by any third party asserting that the foregoing exclusive use provision violates
56 any local, state or federal law; provided, however, that Tenant may, at Tenant's option, waive such
57 exclusive use provision in order to avoid such obligation to indemnify Owner and Landlord. Owner and
58 Landlord shall be deemed in compliance with the foregoing exclusive use provision if Landlord demands
59 cessation of the violating use in writing and, if necessary, then commences and diligently pursues an action
60 for specific performance, declaratory relief or other appropriate legal action in order to cause such violation
61 to cease.

62
63 **Section 7.02 OPERATION OF BUSINESS.**

64 (a) Tenant agrees to be open for business and to operate in all of the Premises during the
65 entire Term following the Rental Commencement Date, and to actively and diligently conduct its business
66 at all times in a first class and reputable manner, maintaining at all times a full staff of employees and a

1 complete stock of current season merchandise. Tenant shall install and maintain at all times a display of
2 merchandise in the display windows, if any, of the Premises and shall keep the same well lighted. Tenant
3 shall be obligated to be open for business and to operate continuously during all hours established by
4 Landlord as Park/Plaza Development business hours. In the event Landlord has approved Tenant to
5 remain open for business before or after Tenant's normal business hours, then such approval shall be
6 conditioned upon Tenant paying, as Additional Rent, all reasonable additional costs incurred by Landlord
7 and Owner solely as a result thereof. Tenant's obligation to be open for business shall include, but not be
8 limited to, opening for business not more than fifteen (15) minutes late, closing for business not more
9 than fifteen (15) minutes early, and closing for business for not more than fifteen (15) minutes during
10 Park/Plaza Development business hours. If Tenant fails to comply with any of the provisions of this
11 Section 7.02(a), then Tenant shall pay within ten (10) days of demand therefor by Landlord Additional
12 Rent in the amount of \$300.00 per day until such time as Tenant is in compliance with this Section
13 7.02(a). This remedy shall be in addition to any and all other remedies provided in this Lease or by law to
14 Landlord. Failure by Tenant to be open for business and to operate shall entitle Landlord, in addition to
15 other remedies provided in this Section 7.02, this Lease or by law, to mandatory injunctive relief.
16 Without limiting the generality of the foregoing, in the event the hours during which the Park/Plaza
17 Development is legally permitted to be open to the public are regulated by any lawful authority, then
18 Landlord shall be the sole judge of which hours and days shall be Park/Plaza Development business
19 hours. Landlord shall provide Tenant three (3) business day advance written notice of any change in the
20 Park/Plaza Development business hours.

21
22 Notwithstanding anything to the contrary in this Section 7.02, provided Tenant is not in
23 default under the Lease and provided Tenant keeps the interior lights on in the Premises during all
24 Park/Plaza Development business hours, Tenant shall be permitted to maintain the following business
25 hours: Monday through Sunday 5:00 A.M. – 9:00 P.M. or as amended in the future as mutually agreed
26 upon by the parties hereto. In the event Tenant desires to change such hours of operation, Tenant agrees
27 to deliver prior written notice setting forth such request to the Park/Plaza Development manager.

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

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

61
62 (c) If Tenant is permitted pursuant to this Lease to engage in the sale of food and/or
63 beverages from the Premises, whether in the area designated as a dining area or otherwise, the same shall
64 be offered only pursuant to a menu approved in writing by the Landlord and attached as an exhibit to this
65 Lease which shall not be changed without Landlord's prior written consent, which consent shall not be
66 unreasonably withheld; provided that Tenant may change its menu items without Landlord's consent as

1 long as same is consistent with (i) the Permitted Use set forth on the Data Sheet and (ii) menu items in
2 Tenant's other stores in Southern California. Further, in such event, Tenant shall provide to Landlord
3 upon demand proof satisfactory to Landlord that monthly cleaning and maintenance of all grease traps,
4 pans and hood ventilators located in the Premises has been performed by a suitable contractor. A suitable
5 contractor shall be one who is bondable and capable of performing Tenant's obligations hereunder. If
6 Tenant is permitted to engage in the sale of food and/or beverages from the Premises and the Premises is
7 not located within a dining area, Tenant shall be solely responsible for prompt collection of all trash and
8 debris within the area depicted on Exhibit A-5 attached hereto and incorporated herein by this reference.
9 Tenant shall further be solely responsible for prompt disposal within the Premises or in such areas as may
10 be provided for such disposal by Landlord of all such trash and debris. If Tenant fails to effect such
11 prompt collection and disposal, Landlord may provide for such collection and disposal and, in such event,
12 Tenant shall pay to Landlord the cost of such collection and disposal plus a ten percent (10%)
13 administrative fee to Landlord within ten (10) days after receipt of a written statement setting forth such
14 cost.

15
16 (d) Tenant acknowledges that the Premises is located in the Park/Plaza Development and that
17 Owner and Landlord shall have the rights to utilize the Park/Plaza Development for: (i) non-programmed
18 passive and active public park recreational purposes ("Park Uses"); (ii) temporary pre-scheduled events
19 (either with or without an admission fee) including, but not limited to: (A) arts and entertainment
20 programs and events; (B) promotional programs and events; (C) concert and performance programs and
21 events; (D) educational programs and events; (E) fairs, festivals, and market programs and events; (F)
22 awareness and fundraising programs and events; (G) athletic, recreational and health programs and
23 events; (H) holiday special programs and events; (I) exhibits and shows; and (J) private events. Tenant
24 acknowledges and agrees that from time to time, the Park/Plaza Development may be used for a private
25 Park Use or other private temporary pre-scheduled event that would require Tenant or event operator to
26 erect a shielding so as to partially enclose the Premises and block visibility of said private Park Use or
27 private temporary pre-scheduled event Tenant further acknowledges and agrees that if the Park/Plaza
28 Development is used for a private Park Use or private temporary pre-scheduled event, Landlord reserves
29 the right to cause the Premises to be closed for no more than twenty-four (24) hours at any one time and
30 no more than seven (7) times per annum (which may not be consecutive) and Landlord shall pay Tenant
31 an amount of \$2,000.00 per closure, except that if during October 31 and December 31 of any year, such
32 amount shall be increased to \$3,500.00 per closure. Furthermore, Landlord may not require Tenant to
33 close the Premises from Thursday through Sunday of what is known in the industry as Black Friday
34 weekend. Tenant shall have the right to close the Premises without being subject to any penalties as set
35 forth in this Section. The remedy set forth in this subsection 7.02(d) shall be Tenant's sole remedy for a
36 closure of the Premises under this Section 7.02(d). In the event that Landlord requires Tenant to close its
37 business to the public in accordance with this paragraph, and there is any residual trash or debris in the
38 Trash Area (as shown on Exhibit A-5), then, after any such store closure, Landlord shall be responsible to
39 remove any trash or debris from the Trash Area.

40
41 (e) Exhibit F attached hereto and made a part hereof contains certain additional rights and
42 obligations of Tenant concerning satellite dish equipment.

43 44 **Section 7.03 HAZARDOUS MATERIALS.**

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

63
64 (b) Tenant hereby represents and warrants to Landlord that it will ensure that (i) no
65 Hazardous Material will be generated, manufactured, sold, transported or located at, on, in, under or about
66 the Premises; (ii) no Hazardous Material will be generated, manufactured, sold, transported or located at,

1 in, on, under or about the Premises in a manner which violates any Environmental Requirement, or which
2 requires cleanup or corrective action of any kind under any Environmental Requirement and (iii) no
3 Hazardous Material will be transported, released, emitted, sold, discharged, leached, dumped or disposed
4 of from the Premises onto or into any other property. However, the above prohibition concerning
5 Hazardous Materials shall not prevent Tenant from selling regular consumer products which contain
6 small, safe amounts of such Hazardous Materials or maintaining small, safe amounts of cleaning solutions
7 at the Premises.

8
9 (c) Tenant shall comply and shall cause any other person on or about the Premises,
10 including, without limitation, employees, invitees, contractors, subcontractors, licensees, subtenants or
11 agents, to comply in all respects with all Environmental Requirements, and shall cause itself and its
12 employees, invitees, contractors, subcontractors, licensees, subtenants or agents not to generate, store,
13 handle, manufacture, process, sell, dispose of, transport or otherwise use Hazardous Materials at, in, on,
14 under or about the Premises in a manner that could lead or potentially lead to the imposition on Landlord
15 or the Park/Plaza Development of any liability or lien of any nature whatsoever.

16
17 (d) Tenant shall (i) notify Landlord promptly in the event of any spill or other release of any
18 Hazardous Material at, in, on, under or about the Premises which is required to be reported to a
19 Governmental Authority under any Environmental Requirement; (ii) promptly forward to Landlord copies
20 of any notices received by Tenant relating to the alleged violations of any Environmental Requirement;
21 and (iii) promptly pay when due any fine or assessment against Tenant, Owner, Landlord or the
22 Park/Plaza Development relating to any Environmental Requirement or the existence of Hazardous
23 Materials at the Premises.

24
25 (e) If, at any time, it is determined that the operation or use of the Premises violates any
26 applicable Environmental Requirement, or that there are Hazardous Materials located at, in, on, under or
27 about the Premises which require special handling in collection, storage, treatment or disposal, or any
28 other form of cleanup or corrective action, Tenant shall within ten (10) days after receipt of notice thereof
29 from any Governmental Authority or from Landlord take, at its sole cost and expense, such actions as
30 may be necessary to fully comply in all respects with all Environmental Requirements; provided,
31 however, that if such compliance cannot reasonably be completed within such ten (10) day period, Tenant
32 shall commence such necessary action within such ten (10) day period and shall thereafter diligently and
33 expeditiously proceed to fully comply in all respects and in a timely fashion with all Environmental
34 Requirements. If Tenant fails to timely take, or to diligently and expeditiously proceed to complete in a
35 timely fashion, any such action, Landlord may, in its sole and absolute discretion, make advances or
36 payments towards the performance or satisfaction of the same, but shall in no event be under any
37 obligation to do so. All sums so advanced or paid by Landlord (including, without limitation, counsel and
38 consultant fees and expenses, investigation and laboratory fees and expenses, and fines or other penalty
39 payments) and all sums advanced or paid in connection with any judicial or administrative investigation
40 or proceeding relating thereto, will immediately, upon demand, become due and payable from Tenant. If
41 Tenant fails to make such payment within ten (10) days of such demand, Tenant shall be in default under
42 this Lease and Landlord may, without any further notice to Tenant terminate this Lease or resort to any
43 other of its rights upon default set forth in Article XIX. Tenant will execute and deliver, promptly upon
44 request, such instruments as Landlord may deem useful or necessary to permit Landlord to take such
45 action, and such notes, mortgages, or other security as Landlord may require to secure all sums to be
46 advanced or paid by Landlord.

47
48 (f) If a lien is filed against the Premises or the Park/Plaza Development by any
49 Governmental Authority resulting from the need to expend or the actual expending of monies arising
50 from an Environmental Requirement, or a liability regarding Hazardous Materials related to an action or
51 omission, whether intentional or unintentional, of Tenant or for which Tenant is responsible, then Tenant
52 shall, within ten (10) days from the date that the Tenant is first given notice that such lien has been placed
53 (or within such shorter period of time as may be specified by Landlord if such Governmental Authority
54 has commenced steps to cause the property to be sold pursuant to such lien) either (i) immediately pay the
55 claim and remove the lien, or (ii) immediately furnish a cash deposit, bond, or such other security with
56 respect thereto as is satisfactory in all respects to Landlord and is sufficient to effect a complete discharge
57 of such lien.

58
59 (g) If Landlord reasonably believes that (i) Tenant has permitted a Hazardous Material at the
60 Premises, or (ii) that any other condition violates or threatens to violate any Environmental Requirement,
61 Landlord may, at its option, cause an environmental site assessment of the Premises or portions thereof to
62 be conducted to confirm Tenant's compliance with the provisions of this Section, and Tenant shall
63 cooperate in all reasonable ways with Landlord in connection with any such environmental site
64 assessment and shall pay all costs and expenses incurred in connection therewith.

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

24
25 This indemnification shall, notwithstanding any exculpatory or other provision of any
26 nature whatsoever to the contrary set forth in the Lease, or any other document or instrument now or
27 hereafter executed between Owner, Landlord and Tenant, constitute the personal recourse undertaking,
28 obligation and liability of the Tenant and any guarantor. The obligations set forth in this Section 7.03
29 shall survive the termination of the Lease.

30
31 (i) If the Lease is assigned to, or assumed by another party, or in the event of a sublease, it
32 shall be a condition of such assignment, assumption or sublease that the assignee, party assuming or
33 sublessee shall assume the obligations of this Section 7.03 in addition to such obligations of Tenant
34 continuing after and surviving such sublease, assignment or assumption. The obligations and liabilities of
35 Tenant under this Section 7.03 shall survive and continue in full force and effect and shall not be
36 terminated, discharged or released, in whole or in part, irrespective of any assignment, sublease, or
37 assumption and irrespective of any other fact or circumstance of any nature whatsoever.

38
39 (j) Tenant shall surrender the Premises to Landlord upon the expiration or earlier termination
40 of the Lease free of Hazardous Materials and free of any violation of any Environmental Requirement.
41 Upon surrender, Tenant shall provide Landlord with a report by experts acceptable to Landlord showing
42 the Premises free of Hazardous Materials.

43
44 (k) Notwithstanding anything to the contrary set forth in this Lease, in the event that, during
45 the Term, any Hazardous Materials are discovered under the Premises and such Hazardous Materials
46 were present prior to the date that Landlord delivered possession of the Premises to Tenant, Landlord
47 shall take all steps necessary to remove, abate or manage in place such Hazardous Materials in
48 accordance with all Environmental Requirements, at no cost or expense to Tenant.

49
50 (l) Owner agrees to indemnify, defend and hold Tenant harmless from any claims,
51 judgments, damages, costs, liabilities or loss including reasonable attorneys' fees, consultant fees and
52 expert fees which arise during the Term in connection with the presence of Hazardous Materials in the
53 soil, ground water, or soil vapor on or under the Park/Plaza Development unless such Hazardous
54 Materials are present as a result of the negligence or willful misconduct of Tenant, or as a result of a
55 violation of an Environmental Requirement by Tenant, its officers, partners, employees, agents or anyone
56 else under Tenant's control. If at any time Hazardous Materials are determined to be present in the
57 Park/Plaza Development, Owner, or Tenant if Tenant is responsible for the presence of the Hazardous
58 Materials, shall take all steps necessary to promptly remove, otherwise abate or manage in place all such
59 Hazardous Materials in accordance with all rules, regulations and laws. Owner, unless Tenant is
60 responsible for the presence of the Hazardous Materials, shall use diligent efforts not to materially
61 interfere with the conduct of Tenant's business during any such removal or abatement process. If
62 removal, abatement or other work results in any damage to the Premises or to Owner's or Tenant's
63 improvements or personal property therein, Owner, unless Tenant is responsible for the presence of the
64 Hazardous Materials, shall repair any such damage at no cost or expense to Tenant. Further, if such
65 removal, abatement or other work results in Tenant's inability to conduct its business from the Premises
66 and such interruption continues for a period in excess of forty eight (48) hours, and Tenant is forced to

1 close the Premises for business, then Tenant's payment of Minimum Annual Rental only shall abate until
2 such time as said work has been completed or Tenant is able to reopen the Premises for business,
3 whichever shall first occur. If such interruption continues for a period of one hundred eighty (180) days or
4 more, then Tenant may terminate this Lease by giving written notice of such termination to Owner and
5 Landlord, such termination to be effective sixty (60) days thereafter unless prior to the end of such sixty
6 (60) day period said work has been completed and Tenant is able to reopen the Premises for business. If
7 Tenant is responsible for the presence of the Hazardous Materials, Tenant shall not be entitled to any rent
8 abatement or any right to terminate this Lease.

9
10 **Section 7.04 INTENTIONALLY DELETED.**

11
12 **ARTICLE VIII**

13
14 **COMMON AREAS**

15
16 **Section 8.01 OPERATION AND MAINTENANCE OF COMMON AREAS.**

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

21
22 **Section 8.02 USE OF COMMON AREAS.**

23 The term "Common Area(s)", as used in this Lease, shall mean, to the extent provided by
24 Landlord, all improved and unimproved areas within the Park/Plaza Development including, without
25 limitation: (i) traffic control and traffic information signs and equipment, roadways, pedestrian
26 sidewalks, curbs, driveways, a monorail system, if any, public transportation loading and unloading
27 facilities not devoted to a single tenant, truckways, delivery areas, landscaped areas, roofs, skylights,
28 beams, stairs and ramps not contained within any Floor Area, public restrooms and comfort stations,
29 service areas, service and fire exit corridors, passageways and other areas, amenities, facilities and
30 improvements provided by Landlord, and (ii) those areas within the Park/Plaza Development and areas
31 adjacent to the Park/Plaza Development containing signs, pylons or structures advertising the Park/Plaza
32 Development. The use and occupancy by Tenant of the Premises shall include the non-exclusive use of
33 the Common Areas in common with Landlord and with all others for whose convenience and use the
34 Common Areas have been or may hereafter be provided by Landlord or by the owners of Common Areas
35 not within the Park/Plaza Development as specified in the preceding sentence, subject, however, to such
36 rules and regulations for the use thereof as may be prescribed from time to time by Landlord or the owner
37 of such Common Areas. In no event, however, shall Tenant, its agents or employees, use the Common
38 Areas for the display or sale of merchandise.

39
40 Landlord shall have the right, but not the obligation, from time to time, to modify the Common
41 Areas, remove portions of the Common Areas from common use, to permit entertainment events,
42 advertising displays, educational displays and other displays in the Common Areas that in Landlord's
43 judgment tend to attract the public, to erect buildings or other improvements on the Common Areas, to
44 lease kiosks and to establish, modify and enforce reasonable rules and regulations with respect to all
45 Common Areas. Tenant shall not be entitled to any credit for income earned by Landlord with respect to
46 the Common Area.

47
48 Except for any kiosk or other installation currently existing as of the Commencement Date,
49 Landlord agrees that there shall be no kiosk or other installation located within twenty-five feet (25')
50 directly in front of the front leaseline of the Premises throughout the Term of this Lease.

51
52 Owner or Landlord may at any time close all or any portion of the Common Area to make repairs
53 or changes, to prevent the acquisition of public rights, and may do such other acts in and to the Common
54 Areas as in its reasonable judgment may be desirable.

55
56 **Section 8.03 INTENTIONALLY DELETED.**

57
58 **ARTICLE IX**

59
60 **SIGNS**

61
62 **Section 9.01 TENANT'S SIGNS.**

63 Tenant shall affix a sign to the exterior surface of the storefront of the Premises located inside the
64 Park/Plaza Development. Tenant shall pay all costs of fabricating, constructing, operating, and
65 maintaining such sign including, without limitation, all charges for electricity. Tenant shall keep said
66 sign well lighted during such hours as Landlord shall designate and shall maintain said sign in good

condition and repair during the entire Term of this Lease. Said sign shall conform to the criteria for signs contained in Exhibit B, and the size, content, design and location thereof shall be subject to the prior written approval of Landlord. Except as hereinabove mentioned, Tenant shall not place or cause to be placed, erected or maintained on any exterior door, wall, window or the roof of the Premises, or on the interior or exterior surface of the glass of any window or door of the Premises, or on any sidewalk or other location outside the Premises, or on or within any display window space in the Premises, whether or not there is display window space in the Premises, or within any entrance to the Premises, any sign (flashing, moving, hanging, handwritten, or otherwise), decal, placard, decoration, flashing, moving or hanging lights, lettering, or any other advertising matter of any kind or description; provided, however, that subject to the prior written approval of Landlord with respect to design and placement, Tenant may place decals for safety purposes on glass storefronts where warranted. No symbol, design, name, mark, or insignia adopted by Owner or Landlord for the Park/Plaza Development shall be used without the prior written consent of Landlord. No illuminated sign located in the interior of the Premises and visible from outside the Premises shall be permitted without the prior written approval of Landlord. All signs located in the interior of the Premises shall be in good taste so as not to detract from the general appearance of the Premises or the Park/Plaza Development.

Tenant, at its cost, shall have the right to install or place signs, or other advertising materials in or about the Premises to the maximum extent permitted by law and in accordance with Landlord's sign criteria. Landlord shall not unreasonably withhold, condition or delay its consent. Landlord consents in advance to Tenant's trademarked colors, letters, and logo in Tenant's signage. All signs shall be in compliance with all applicable laws, regulations and rules. Notwithstanding anything contained herein to the contrary, Tenant shall not be required to obtain Landlord's consent for any promotional or advertising signs or displays within the interior of the Premises.

ARTICLE X

MAINTENANCE OF PREMISES

Section 10.01 INTENTIONALLY DELETED.

Section 10.02 TENANT'S OBLIGATIONS FOR MAINTENANCE.

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

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

1 reasonable opportunity to file and post a notice of non-responsibility for Tenant's work.

2
3 (c) In the event Tenant fails, refuses or neglects to maintain the Premises as required
4 hereunder or to commence and complete repairs promptly and adequately, to remove or bond against any
5 lien, to pay any cost or expense, to reimburse Landlord, or otherwise to perform any act or fulfill any
6 obligation required of Tenant pursuant to this Section 10.02, Landlord may, but shall not be required to,
7 perform such maintenance or to make or complete any such repairs, remove or bond against such lien,
8 pay such cost or perform such act or the like without prior notice to, but at the sole cost and expense of
9 Tenant. Tenant shall reimburse Landlord, as Additional Rent, for all cost and expense of Landlord
10 thereby incurred within ten (10) days after receipt by Tenant from Landlord of a statement setting forth
11 the amount of such cost and expense.
12

13 ARTICLE XI

14 INSURANCE AND INDEMNITY

15 Section 11.01 TENANT'S INSURANCE.

16
17 (a) Tenant, at its sole cost and expense, shall maintain during the Lease Term, property
18 insurance against loss by fire and all other risks and perils included under a Special Form (formerly
19 known as "all risk") coverage, as such term is known on the Commencement Date of this Lease,
20 including a demolition cost endorsement and in Builder's Risk form when appropriate, in an amount not
21 less than one hundred percent (100%) of the actual replacement cost of the leasehold improvements (as
22 defined in Exhibit B) and Tenant's Personal Property, at the time in question (excluding cost of
23 excavations, foundations, footings, underground pipes, conduits, flues and drains) and on an agreed value
24 basis, without diminution of such cost for depreciation or obsolescence or changes in Legal
25 Requirements, with responsible insurance companies (who are qualified to write insurance and conduct
26 business in the State and has (have) at a minimum a rating of A-/VIII in Bests Rating Guide
27 ("Responsible Insurance Companies"). In addition, Tenant, at its sole cost and expense, shall, during the
28 entire Term hereof, procure and keep in force: (i) Commercial General Liability Insurance with respect to
29 the Premises and the operations of Tenant in, on or about the Premises, in which the limits shall be not
30 less than \$3,000,000.00 per occurrence combined single limit, and general aggregate limit of not less than
31 \$5,000,000.00 and additional coverage under umbrella policies of at least \$5,000,000.00, broad
32 form/extended bodily injury, death and property damage, and business automobile liability insurance
33 covering all owned, non-owned and hired or borrowed vehicles of Tenant used in connection with the
34 operation of its business from the Premises, in which the limits shall be not less than \$1,000,000.00 per
35 occurrence combined single limit, insuring for bodily injury, death and property damage; (ii) plate glass
36 insurance, at full replacement value; (iii) insurance against fire, extended coverage, vandalism, malicious
37 mischief, water damage which does not exclude backup from sewers or drains and/or sprinkler leakage,
38 and such other additional perils including earthquake and flood as now are or hereafter may be included
39 in a standard extended coverage endorsement from time to time in general use in the county in which the
40 Park/Plaza Development is located, insuring Tenant's merchandise, trade fixtures, furnishings, equipment
41 and all other items of personal property of Tenant located on or in the Premises, including steam boiler
42 insurance, if applicable, in an amount equal to the full replacement cost thereof; (iv) workers'
43 compensation coverage as required by law and including Employer's Liability Insurance in the amount of
44 \$2,000,000.00 each accident, \$2,000,000.00 each employee, by disease, \$2,000,000.00 policy aggregate
45 by disease; (v) with respect to alterations, improvements and the like required or permitted to be made by
46 Tenant under this Lease, contingent liability and builders' risk insurance, in an amount satisfactory to
47 Owner and Landlord; (vi) the insurance required under Exhibit B, and (vii) product liability coverage
48 (including, without limitation, if this Lease covers Premises in which food and/or beverages are sold
49 and/or consumed, liquor liability coverage for acts arising out of the serving and/or consumption of food
50 and/or alcoholic beverages on or obtained at the Premises, to the extent obtainable), for not less than
51 \$3,000,000.00 combined single limit, bodily injury, death and property damage. In addition, if Owner or
52 Landlord deems it necessary to increase the amounts or limits of insurance required to be carried by
53 Tenant hereunder, Landlord may reasonably increase said amounts or limits, and Tenant shall so increase
54 the amounts or limits of the insurance required to be carried by Tenant hereunder and shall provide
55 Landlord with policies or certificates indicating the increased amounts or limits as provided in this
56 Section 11.01.
57

58
59 (b) All policies of insurance required to be carried by Tenant pursuant to this Section 11.01
60 shall be written by insurance companies of adequate financial capacity satisfactory to Owner and
61 Landlord with a Best's rating and Financial Size Category of not less than A-/VII and authorized to do
62 business in the state in which the Park/Plaza Development is located. Any such insurance required of
63 Tenant hereunder may be furnished by Tenant under any blanket policy carried by it or under a separate
64 policy therefor. Tenant will provide Landlord access to an Internet website that certifies Tenant's current
65 insurance coverage and provides further information about Tenant's insurance. As often as any such
66 policy shall expire or terminate, renewal or additional policies shall be procured and maintained by

1 Tenant in like manner and to like extent. Landlord may, at any time, and from time to time, inspect and
2 copy any and all insurance policies required to be procured by Tenant hereunder.

3
4 (c) Each policy evidencing insurance required to be carried by Tenant pursuant to this
5 Section 11.01 shall contain the following clauses and provisions: (i) a provision that such policy and the
6 coverage evidenced thereby shall be primary and non-contributing with respect to any policies carried by
7 Owner and Landlord and that any coverage carried by Owner and Landlord be excess insurance; (ii) a
8 provision including Landlord and the parties set forth on **Exhibit C** of this Lease and any other parties
9 designated by Landlord from time to time as additional insured entities; (iii) a waiver by the insurer of
10 any right to subrogation against Owner and Landlord and other additional insured entities (as set forth on
11 **Exhibit C**), its agents, employees and representatives which arises or might arise by reason of any
12 payment under such policy or by reason of any act or omission of Owner, Landlord, their agents,
13 employees or representatives; (iv) a severability of interest clause or endorsement; (v) a provision that the
14 insurer will not cancel or change the coverage provided by such policy without giving Landlord thirty
15 (30) days' prior written notice; and (vi) such policy shall be an "occurrence form" policy. Any policy of
16 insurance required to be carried by Tenant that names the parties set forth in this Section 11.01 (c) (ii) as
17 additional insured entities shall not be subject to a deductible or self-insured retention, it being the intent
18 of the parties that such insurance shall fully and completely insure such additional insured entities for all
19 loss or expense.

20
21 (d) In the event that Tenant fails to procure or to maintain, at the times and for the duration
22 specified in this Section 11.01, any insurance required by this Section 11.01, or fails to carry insurance
23 required by law or governmental regulation, Landlord may (but shall not be required to) at any time or
24 from time to time, and without notice to Tenant, procure such insurance and pay the premiums therefor,
25 and the cost of same, plus a fifteen percent (15%) administrative fee shall be deemed Additional Rent and
26 shall be payable upon Landlord's demand.

27
28 (e) Tenant will not do or suffer to be done, or keep or suffer to be kept, anything in, upon or
29 about the Premises which will violate Owner's and Landlord's policies of hazard or liability insurance or
30 which will prevent Landlord from procuring such policies in companies acceptable to Owner and
31 Landlord. If anything done, omitted to be done or suffered by Tenant to be kept in, upon or about the
32 Premises shall cause the rate of fire or other insurance on the Premises or on other property of Landlord
33 or of others within the Park/Plaza Development to be increased beyond the minimum rate from time to
34 time applicable to the Premises or to any property for the use or uses made thereof, Tenant will pay, as
35 Additional Rent, the amount of any such increase upon Landlord's demand.

36
37 Notwithstanding the requirements of any other sections of this Lease, Tenant shall have the
38 right, at its sole election, to self-insure with respect to some or all of the required insurance coverage
39 provided, that Tenant shall have such right only as long as Tenant maintains a net worth in excess of
40 \$25,000,000.00. At Landlord's request, but no more than twice annually, Tenant will provide Landlord
41 with reasonably satisfactory evidence establishing that Tenant has maintained its net worth in excess of
42 \$25,000,000.00.

43 44 **Section 11.02 OWNER'S/LANDLORD'S INSURANCE.**

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

54 55 **Section 11.03 COVENANT TO HOLD HARMLESS.**

56 Tenant covenants to defend and indemnify Landlord, the City of San Diego, a California
57 municipal corporation, the City of San Diego, solely in its capacity as the designated successor agency to
58 the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic and
59 Civic San Diego, a nonprofit public benefit corporation, and all of their affiliates, parent corporation,
60 subsidiaries, partners, members, management company, successors, and assigns, and elected officials, the
61 employees, agents, officers, directors, shareholders, members, advisers, trustees and fiduciaries of any of
62 them (collectively referred to as the "**Indemnified Parties**"), save them harmless (except to the extent of
63 loss or damage resulting from the intentional or willful acts or omissions or the gross negligence of the
64 Indemnified Parties not required to be insured against by Tenant pursuant to this Article XI) from and
65 against any and all claims, actions, demands, judgments, awards, fines, mechanics' liens or other liens,
66 losses, damages, liability and expense, including attorneys' fees and court costs, in connection with all

1 losses, including loss of life, personal injury and/or damage to property, arising from or out of any
2 occurrence (or arising from or out of Tenant's failure to comply with any provision of this Lease) caused
3 wholly or in part by any act or omission of Tenant, its concessionaires, agents, contractors, suppliers,
4 employees, servants, customers or licensees and including any product liability claim or any labor dispute
5 involving Tenant or its contractors and agents. In case Owner or Landlord or any other party so
6 indemnified shall be made a party to any litigation commenced by or against Tenant, then Tenant shall
7 defend, indemnify, protect and save them harmless and shall pay, as the same becomes due and payable,
8 all costs, expenses and reasonable attorneys' fees and court costs incurred or paid by them in connection
9 with such litigation. The Indemnified Parties reserve to themselves, at their sole option, the right to
10 appoint or approve of counsel to defend their separate interests in any action where it or its related entity
11 is a named party.

12
13 Landlord shall defend, indemnify, and hold Tenant and Tenant's agents, officers, directors,
14 employees, and contractors harmless against and from any and all injuries, costs, expenses, liabilities, losses
15 damages, injunctions, suits, actions, fines, penalties, and demands of any kind or nature (including
16 reasonable attorneys' fees) by or on behalf of any person, entity, or governmental authority occasioned by or
17 arising out of (i) injuries occurring in the Common Areas of the Park/Plaza Development; (ii) any
18 intentional act, or negligence of Landlord or Landlord's agents, employees, or independent contractors; (iii)
19 any breach or default in the performance of any obligation on Landlord's part to be performed under this
20 Lease; or (iv) the failure of any representation or warranty made by Landlord herein to be true when made.
21 This indemnity does not include the intentional or negligent acts or omissions of Tenant or its agents,
22 officers, contractors or employees. This indemnity shall survive termination of this Lease only as to claims
23 arising out of events that occur prior to termination of the Lease.

24 25 **Section 11.04 WAIVER OF RIGHT OF RECOVERY.**

26 Except as otherwise provided in this Lease, neither Owner, Landlord nor Tenant shall be liable to
27 the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for
28 any loss or damage to any building, structure or other tangible property, or any resulting loss of income,
29 or losses under worker's compensation laws and benefits, even though such loss or damage might have
30 been occasioned by the negligence of such party, its agents or employees. The provisions of this Section
31 11.04 shall not limit the indemnification for liability to third parties pursuant to Section 11.03.

32 33 **ARTICLE XII**

34 35 **UTILITIES**

36 37 **Section 12.01 UTILITY CHARGES.**

38 (a) Tenant shall be solely responsible for and shall promptly pay for all fees, deposits and
39 charges, including use and/or connection fees, hook-up fees, standby fees, and/or penalties for
40 discontinued or interrupted service, and the like, for water, gas, electricity, HVAC, fire alarm, burglar
41 alarm, telephone, cable television, sewer and sanitation, solid waste disposal and any other service or
42 utility used in or upon or furnished to the Premises, including, without limitation, any services to be
43 supplied by Landlord from a central utility plant or other utility system, as more particularly set forth in
44 the Data Sheet or on **Exhibit D** if applicable, irrespective of whether any of the foregoing are initially
45 paid in advance by Landlord, or otherwise. Landlord, at its sole option, may elect to furnish any or all of
46 such services with a separate charge therefor to Tenant, at a cost in excess of Landlord's cost, such charge
47 to be based upon the services used by Tenant, as reflected by meter, submeter or otherwise. Tenant shall
48 pay such charge, as Additional Rent, at such time and upon such terms as installments of Minimum
49 Annual Rental are due.

50
51 Tenant shall initially pay Landlord the sum of \$360.00 per annum for the cost of
52 providing fire detection services to the Premises, which sums shall be payable as Additional Rent and
53 paid in equal consecutive monthly installments in the same manner as Minimum Annual Rental.

54
55 In addition to the foregoing, Tenant shall be solely responsible for providing and for
56 paying for charges for temporary utilities required by Tenant during the course of Tenant's Work.
57 Landlord shall cooperate with Tenant, at no cost or expense to Owner or Landlord, in arranging for such
58 temporary utilities.

59
60 (b) Except to the extent of Owner's or Landlord's gross negligence, in no event shall Owner
61 or Landlord be liable for damages or otherwise for any interruption, reduction, disruption, curtailment or
62 failure in the supply, quality or character of electricity, services from a central utility plant or any other
63 utility or other service, or if either the quantity, quality or character thereof supplied to or by Landlord is
64 changed or is no longer available for Tenant's requirements, nor shall any such interruption, reduction,
65 disruption, curtailment, failure or change in quantity, quality or character constitute or be deemed to
66 constitute constructive eviction of Tenant, or excuse or relieve Tenant from its obligations under this

1 Lease, including but not limited to the payment of Rental.

2
3 (c) Prior to the commencement of Tenant's occupancy of the Premises and/or at any time
4 thereafter until the expiration of the Term, Landlord may, upon thirty (30) days' prior written notice to
5 Tenant, elect to have Tenant obtain, and/or discontinue furnishing, as applicable, any utility to the
6 Premises (including, without limitation, heating, ventilation and air conditioning services), without
7 thereby affecting this Lease in any manner or otherwise incurring any liability to Tenant, and Landlord
8 shall no longer be obligated to furnish such utility to the Premises. If Landlord shall give Tenant notice
9 of intention to so have Tenant obtain, or for Landlord to cease furnishing, a utility to the Premises, Tenant
10 may contract for and receive such utility directly from the public utility corporation then serving the
11 Park/Plaza Development, and if Tenant does so, Landlord shall permit Tenant, at Tenant's sole cost, to
12 use Landlord's risers, wiring, electric and any other installations then serving the Premises for such
13 purpose, if any, to the extent that the same are available, suitable and may be safely so used, consistent
14 with concurrent and anticipated future use by Landlord and other tenants. If Landlord is the initial
15 provider of a utility service to Tenant, Landlord agrees not to discontinue furnishing any utility to Tenant
16 pursuant hereto until such time as Tenant shall be able to receive said utility service from an alternate
17 source of supply. Tenant agrees to act diligently in connecting to such alternate source as soon as it
18 becomes available. Landlord may from time to time during the Term elect to provide, or resume provision
19 of, any utility to the Premises obtained or provided by Tenant pursuant hereto, and thereafter make an
20 election for Tenant to provide such utility pursuant hereto, and thereafter re-elect again pursuant hereto on
21 an ongoing basis.

22
23 (d) Notwithstanding any other provisions of this Article, to the extent utilities provided by
24 Landlord are utilities which could be supplied to Tenant as a direct customer of a public utility, the value
25 of such utility used by Tenant shall be computed for the purposes of this Article so as not to exceed the
26 rate schedules which would be applicable if Tenant were at the time a direct customer of such public
27 utility corporation.

28
29 (e) Any obligation of Landlord to furnish light, power, and services from a central utility
30 plant shall be conditioned upon the availability of adequate energy sources. Landlord shall have the right
31 to reduce heating, cooling, and lighting within the Premises and the Common Areas as required by any
32 mandatory or voluntary fuel or energy saving allocation, or similar statute, regulation, order or program.

33
34 (f) Tenant shall operate its heating, ventilating, and air conditioning ("HVAC") system(s)
35 serving the Premises so as to maintain comfortable conditions during regular Park/Plaza Development
36 business hours. Tenant's obligation to connect to the services supplied by Landlord, as set forth in this
37 Section 12.01 and Exhibit B, as well as Tenant's installation, operation and maintenance of its HVAC
38 system(s) within the Premises, shall be as set forth herein, in Exhibit B and in any related exhibit(s).

39
40 (g) If Tenant desires to install any equipment which shall exceed the capacity of any utility
41 facilities or which shall require additional utility facilities, Tenant shall not have the right to do so without
42 Landlord's prior written approval of Tenant's Plans and Specifications and specifications therefor. If such
43 installation is approved by Landlord, and if Landlord provides such additional facilities to accommodate
44 Tenant's installation, Tenant agrees to pay Landlord, on demand, the cost of providing such additional
45 utility facilities or utility facilities of greater capacity. Tenant shall in no event use any of the utility
46 facilities in any way which shall overload or overburden the utility systems.

47
48 (h) Landlord reserves the right to cut off and discontinue furnishing any heating, ventilation,
49 air conditioning or other utility services furnished or submetered by Landlord at any time after notice to
50 Tenant of an event of default under this Lease by Tenant. Landlord shall not be liable for any damages
51 resulting from or arising out of such discontinuance of utility services, and such discontinuance shall not
52 constitute a termination of this Lease or an eviction of Tenant. Tenant hereby releases Landlord from any
53 loss, damage, or liability sustained by Tenant as a result of such discontinuance.

54 55 ARTICLE XIII

56 57 ESTOPPEL STATEMENT, ATTORNMENT, AND SUBORDINATION

58 59 Section 13.01 ESTOPPEL STATEMENT.

60 Within twenty (20) days after request therefor by Owner and/or Landlord (which request may not
61 be given more often than one (1) time during any twelve (12) month period, unless requested by
62 Landlord's mortgagee or required in connection with a financing or sale of the Park/Plaza Development),
63 Tenant shall execute, in recordable form, and deliver to Landlord a statement, in writing, certifying (a)
64 that this Lease is in full force and effect, (b) the Commencement Date, the Rental Commencement Date
65 and the expiration date of this Lease, (c) that Rental and all other charges hereunder are paid currently
66 without any offset or defense thereto, (d) the amount of Rental and all other charges hereunder, if any,

1 paid in advance, (e) whether this Lease has been modified and, if so, identifying the modifications, (f) that
2 there are no uncured defaults by Landlord or stating in reasonable detail those claimed by Tenant
3 (provided that, in fact, such details are accurate and ascertainable), and (g) such other matters as may be
4 reasonably requested by Landlord. Tenant's failure or refusal to execute timely such statement shall
5 constitute an acknowledgment by Tenant that the statements contained in such statement are true and
6 correct without exception, and may be relied upon by Owner, Landlord or by any prospective or existing
7 transferee of all or any part of Owner's or Landlord's interest in the Park/Plaza Development or this Lease
8 or by any of Owner's or Landlord's lenders.
9

10 **Section 13.02 ATTORNMENT.**

11 In the event any proceedings are brought for the foreclosure of, or in the event of exercise of the
12 power of sale under any mortgage and/or deed of trust made by Owner or Landlord covering the
13 Premises, or in the event Owner or Landlord sells, conveys or otherwise transfers its interest in the
14 Park/Plaza Development or any portion thereof containing the Premises, this Lease shall remain in full
15 force and effect and Tenant hereby attorns to and covenants and agrees to execute an instrument in
16 writing reasonably satisfactory to the new owner whereby Tenant attorns to such successor in interest and
17 recognizes such successor as the landlord under this Lease.
18

19 **Section 13.03 SUBORDINATION.**

20 Tenant further agrees this Lease shall be subordinate to any mortgages, deeds of trust or any
21 ground lease that may now exist or be placed upon the Premises or the Park/Plaza Development and to
22 any and all advances to be made thereunder, and to the interest thereon, and all renewals, modifications,
23 replacement and extensions thereof. It is the intention of the parties that this provision be self-operative
24 and that no further instruments be required to effect such subordination of this Lease. Tenant agrees that
25 upon the demand of Owner, Landlord, or any mortgagee, beneficiary or ground lessor, Tenant shall,
26 within ten (10) days of the receipt of said demand, execute whatever instruments may be required to carry
27 out the intent of this subsection in the form requested by Owner, Landlord or such mortgagee, beneficiary
28 or ground lessor, including, without limitation, an appropriate recordable subordination agreement.
29

30 **Section 13.04 REMEDIES.**

31 Failure of Tenant to execute any statements or instruments necessary or desirable to effectuate the
32 foregoing provisions of this Section within twenty (20) days after written demand to do so by Landlord
33 shall constitute a breach of this Lease. In the event of such failure, Landlord, in addition to any other
34 rights or remedies it might have, shall have the right by not less than ten (10) days' notice to Tenant to
35 declare this Lease terminated and the Term ended, in which event this Lease shall cease and terminate on
36 the date specified in such notice with the same force and effect as though the date set forth in such notice
37 were the date originally set forth in this Lease and fixed for the expiration of the Term; upon such
38 termination Tenant shall vacate and surrender the Premises, but shall remain liable as provided in this
39 Lease by reason of said breach.
40

41 **ARTICLE XIV**

42 **ASSIGNMENT AND SUBLETTING**

43 **Section 14.01 RESTRICTIONS ON TRANSFER.**

44
45 Tenant shall not assign or sublet the whole or any part of the Premises ("Transfer") without the
46 prior written consent of Landlord, which may be granted or withheld in Landlord's reasonable discretion.
47 Notwithstanding the foregoing, Tenant may, without Landlord's prior written consent but subject to Section
48 14.02, sublet all or any portions of the Premises or assign the Lease to (i) a parent, subsidiary, affiliate,
49 division, corporation or other entity controlling, controlled by or under common control with Tenant, except
50 a franchisee; or (ii) a successor corporation or other entity related to Tenant by merger, consolidation, non-
51 bankruptcy reorganization or government action ("Permitted Transfer"). Any assignment or subletting
52 pursuant to this paragraph shall be subject to all of the following conditions: (a) such assignee or
53 sublessee shall assume all obligations of Tenant under this Lease; (b) no such assignment or subletting
54 shall release Tenant from any obligation under this Lease; (c) any such assignment or subletting shall be
55 subject to all of the terms, covenants and conditions of this Lease including without limitation Section
56 14.01 and the Permitted Use provided pursuant to Section 7. For the purpose of this Lease, any sale or
57 transfer of Tenant's capital stock through any public exchange, or redemption or issuance of additional
58 stock of any class shall not be deemed an assignment, subletting or any other transfer of the Lease or the
59 Premises.
60
61

62 **Section 14.02 PROCEDURE FOR TRANSFER.**

63 Except as otherwise provided herein, should Tenant desire to make a Transfer hereunder, Tenant
64 shall, to the extent Tenant is not barred by law from doing so, in each instance, give written notice of its
65 intention to do so to Landlord at least sixty (60) days before the intended effective date of any such
66 proposed Transfer, specifying in such notice whether Tenant proposes to assign or sublet, or enter into

1 license, franchise or concession agreements, the proposed date thereof, and specifically identifying the
2 proposed transferee, assignee or sublessee ("Transferee"), the net worth and previous business experience
3 of the proposed Transferee, including without limitation copies of the proposed Transferee's last two
4 years' income statement, balance sheet and statement of changes in financial position (with accompanying
5 notes and disclosures of all material changes thereto) in audited form, if available, and certified as
6 accurate by the proposed Transferee. Such notice shall be accompanied, in the case of a proposed
7 assignment, subletting, license, franchise or concession agreement, by a copy of the proposed assignment,
8 sublease, license, franchise or concession agreement or, if same is not available, a letter of commitment or
9 a letter of intent. In the case of a proposed sale of Tenant's business, Tenant shall provide a copy of the
10 proposed sale and financing agreements.

11
12 Notwithstanding the foregoing, as long as Tenant has complied with the provisions of Section
13 14.01 as it relates to a Permitted Transfer, then for any such Permitted Transfer, Tenant shall only be
14 required to provide Landlord with sixty (60) days prior written notice of such Permitted Transfer, which
15 shall, at a minimum, state who the transferee is for such Permitted Transfer.

16
17 Landlord shall, within thirty (30) days after its receipt of such notice of a proposed Transfer, by
18 giving written notice to Tenant of its intention to do so: (a) withhold its consent to the Transfer; (b)
19 consent to the Transfer; or (c) terminate this Lease, such termination to be effective thirty (30) days after
20 receipt of such notice by Tenant; provided, however, Tenant may withdraw its notice of proposed Transfer
21 within ten (10) days after receipt of Landlord's notice under this clause (c), in which event any such right of
22 Landlord to terminate this Lease shall be null and void. Landlord's consent to a proposed Transfer shall
23 only be given if and when Landlord has notified Tenant in writing that Landlord consents to such
24 proposed Transfer.

25
26 If Landlord shall exercise its termination right hereunder, Landlord shall have the right to enter
27 into a lease or other occupancy agreement directly with the proposed Transferee, and Tenant shall have
28 no right to any of the rents or other consideration payable by such proposed Transferee under such other
29 lease or occupancy agreement, even if such rents and other consideration exceed the rent payable under
30 this Lease by Tenant. Landlord shall have the right to lease the Premises to any other tenant, or not lease
31 the Premises, in its sole discretion. Tenant may, however, elect to nullify Landlord's election to terminate
32 this Lease under clause (c) by furnishing Landlord with written notice of Tenant's election to withdraw its
33 proposed Transfer within ten (10) days of Tenant's receipt of Landlord's notice of termination, in which
34 event the Lease shall remain in effect with the existing Tenant. Landlord and Tenant specifically agree
35 that Landlord's election to terminate this Lease under clause (c) may be made in Landlord's sole and
36 absolute discretion and that no test of reasonableness shall be applicable thereto. Failure of Tenant to
37 furnish Landlord notice of Tenant's election to nullify shall be deemed Tenant's election to terminate this
38 Lease without further liability of either party. If Landlord withholds its consent to any proposed Transfer
39 pursuant hereto and if Tenant requests in writing within ten (10) days after Tenant's receipt of Landlord's
40 written notice of such withholding of consent, Landlord shall provide to Tenant a statement of its
41 reason(s) for withholding consent to the proposed Transfer within a reasonable time after Landlord's
42 receipt of Tenant's request therefor. Tenant acknowledges and agrees that each of the rights of Landlord
43 set forth herein in the event of a proposed Transfer is a reasonable restriction on Transfer for purposes of
44 applicable laws. Landlord and Tenant agree that Tenant shall have the burden of proving that Landlord's
45 consent to the proposed Transfer was withheld unreasonably. Landlord shall have no liability to Tenant
46 or to any proposed Transferee in damages if it is adjudicated that Landlord's consent shall have been
47 unreasonably withheld and/or that such unreasonable withholding of consent shall have constituted a
48 breach of this Lease or other duty to Tenant, the proposed Transferee or any other person. In such event,
49 Tenant's sole remedy shall be to have the proposed Transfer declared valid, as if Landlord's consent had
50 been duly and timely given (although Tenant shall be entitled to reasonable attorneys' fees if it is the
51 successful party in such litigation, in accordance with the terms of this Lease).

52 53 ARTICLE XV

54 55 WASTE OR NUISANCE

56 57 Section 15.01 WASTE OR NUISANCE.

58 Tenant shall not commit nor permit any of its employees, invitees, contractors, subcontractors,
59 licensees, subtenants, or agents to commit any waste upon the Premises and shall not place a load upon
60 the floor of the Premises which exceeds the floor load per square foot which such floor was designed to
61 carry. Tenant shall not commit nor permit any of its employees, invitees, contractors, subcontractors,
62 licensees, subtenants or agents to commit any nuisance or other act or thing which may impact Landlord's
63 operation of the Park/Plaza Development or disturb the quiet enjoyment of any other occupant or tenant
64 of the Park/Plaza Development. Tenant shall not use or permit to be used any medium that might
65 constitute a nuisance, such as loudspeakers, sound amplifiers, tape decks, compact disc players, radios,
66 televisions, or any other sound producing or other device which will carry sound or odors outside the

1 Premises and, upon written notice from Landlord, Tenant shall cause any such noise or odors to cease.
2 Landlord acknowledges that Tenant's regular menu items produce odors and such odors are not per se
3 violations of this Lease. Tenant agrees that business machines and mechanical equipment used by Tenant
4 which cause vibration or noise that may be transmitted to the building or buildings comprising the
5 Park/Plaza Development or to the Premises to such a degree as to be reasonably objectionable to Landlord
6 or to any occupant, shall be placed and maintained by Tenant at its expense in a manner sufficient to
7 eliminate such vibrations or noise, such as by cork, rubber or spring-type vibration isolators. Tenant shall
8 not allow any use of the Premises or any other portion of the Park/Plaza Development in a manner which
9 is a source of annoyance, disturbance or embarrassment to Owner, Landlord or to the other tenants of the
10 Park/Plaza Development or which is deemed by Landlord, in its sole discretion, as not in keeping with the
11 character of the Park/Plaza Development. The Premises shall not be used for any unlawful, immoral, or
12 other purpose deemed improper by Landlord.

13 14 ARTICLE XVI

15 16 TRADE NAME; PROMOTIONAL PROGRAM

17 18 Section 16.01 TRADE NAME.

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

23
24 (b) Tenant shall use "Horton Plaza Urban Park" (or such other name as Landlord shall
25 designate during the Term as provided by written notice to Tenant) to describe the location of the
26 Premises for all advertising, promotional and marketing materials which refer to the location of the
27 Premises. This will include all television, radio, print, or collateral materials which are used to promote
28 Tenant's location. However, Tenant shall obtain the approval for the Park/Plaza Development logo or
29 representations from the marketing director of the Park/Plaza Development prior to using such logo or
30 representations, which approval shall not be unreasonably withheld or delayed.

31
32 A change in trade name shall be permitted with a transfer under Section 14.01 and
33 otherwise shall not be unreasonably withheld or delayed. In the event that Landlord refuses to give its
34 consent to a reasonable change in trade name, then Tenant shall have the right to terminate this Lease upon
35 one hundred twenty (120) days' prior written notice to Landlord; provided Tenant pays to Landlord on or
36 before the effective date of such termination, a termination fee equal to: (i) one (1) year's Minimum Annual
37 Rental and (ii) the undepreciated value (based on straight line depreciation over the Term) of the Allowance.

38 39 Section 16.02 PROMOTIONAL PROGRAM.

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

49
50 (b) Tenant shall pay to Landlord, as Tenant's share of the cost of the Promotional Program,
51 an annual promotional charge ("Promotional Charge") which originally shall equal the amount set forth in
52 the Data Sheet. All payments, charges, dues and assessments payable under this Section shall be payable
53 in monthly installments on the first day of each month as Additional Rent.

54 55 ARTICLE XVII

56 57 DAMAGE AND DESTRUCTION

58 59 Section 17.01 RECONSTRUCTION OF DAMAGED PREMISES.

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

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

5
6 **Section 17.02 INTENTIONALLY DELETED.**

7
8 **Section 17.03 TOTAL OR PARTIAL DESTRUCTION OF PREMISES.**

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

13
14 **Section 17.04 CASUALTY DURING LAST LEASE YEAR.**

15 If fifty percent (50%) or more of the replacement cost of the Premises is damaged by fire, the elements or
16 other casualty, during the last lease year of the Term, Tenant, may terminate this Lease as of the date of
17 the damage by written notice to the other party within thirty (30) days after said date.

18
19 **Section 17.05 NOTICE OF CASUALTY.**

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

22
23 **ARTICLE XVIII**

24
25 **EMINENT DOMAIN**

26
27 **Section 18.01 TOTAL CONDEMNATION OF PREMISES.**

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

34
35 **Section 18.02 PARTIAL CONDEMNATION.**

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

42
43 **Section 18.03 ADJUSTMENTS IN MINIMUM ANNUAL RENTAL AND ADDITIONAL**
44 **RENT.**

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

48
49 **Section 18.04 PAYMENT OF PROCEEDS AWARD.**

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

1 affecting the Premises, the party receiving such notice shall promptly notify any other party of the receipt
2 and contents thereof.

3 4 ARTICLE XIX

5 6 DEFAULT

7 8 Section 19.01 RIGHTS UPON DEFAULT.

9 (a) Notwithstanding any provision herein to the contrary and irrespective of whether all or
10 any rights conferred upon Owner and Landlord by this Article XIX are expressly or by implication
11 conferred upon Landlord elsewhere in this Lease, in the event of (i) any failure of Tenant to pay any
12 Minimum Annual Rental, Percentage Rental or Additional Rent or any other charges or sums whatsoever
13 due hereunder (including without limitation, amounts due as reimbursement to Landlord for costs
14 incurred by Landlord in performing obligations of Tenant hereunder upon Tenant's failure so to perform)
15 for more than ten (10) days after written notice from Landlord to Tenant that such rental or any other
16 charges or sums whatsoever due hereunder were not received on the date required for payment pursuant
17 to this Lease, provided that such notice from Landlord shall be in lieu of, and not in addition to, any
18 notice of default required by applicable laws, or (ii) any default or failure by Tenant to perform any other
19 of the terms, conditions, or covenants of this Lease to be observed or performed by Tenant for more than
20 thirty (30) days after written notice from Landlord to Tenant of such default (unless such default cannot
21 be cured within said thirty (30) days in which event Tenant shall not be deemed to be in default hereunder
22 if Tenant shall have commenced to cure said default promptly within thirty (30) days and shall thereafter
23 proceed to prosecute such cure to completion with all reasonable dispatch and diligence), provided that
24 such notice from Landlord shall be in lieu of, and not in addition to, any notice of default required by
25 applicable laws, or (iii) any failure by Tenant for more than thirty (30) days to move into the Premises and
26 to initially open for business on or before the Rental Commencement Date, or (iv) any failure by Tenant
27 to operate continuously in the manner and during the hours established by Landlord pursuant to Section
28 7.02(a) hereof or for the purpose specified in the Data Sheet (the Permitted Use), or (v) Tenant's
29 abandonment of the Premises, or permitting this Lease to be taken under any writ of execution or similar
30 writ or order, then Landlord, in addition to or in lieu of other rights or remedies it may have under this
31 Lease or by law, shall have the following rights: Landlord may at its sole discretion: (A) immediately
32 terminate this Lease and Tenant's right to possession of the Premises by giving Tenant written notice that
33 this Lease is terminated, in which event, upon such termination, Landlord shall have the right to recover
34 from Tenant the sum of (1) the worth at the time of award of the unpaid rental which had been earned at
35 the time of termination; (2) the worth at the time of award of the amount by which the unpaid rental
36 which would have been earned after termination until the time of award exceeds the amount of such rental
37 loss that Tenant affirmatively proves could have been reasonably avoided; (3) the worth at the time of
38 award of the amount by which the unpaid rental for the balance of the Term after the time of award
39 exceeds the amount of such rental loss that Tenant affirmatively proves could be reasonably avoided; (4)
40 any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's
41 failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would
42 be likely to result therefrom; and (5) all such other amounts in addition to or in lieu of the foregoing as
43 may be permitted from time to time under applicable law; or (B) have this Lease continue in effect for so
44 long as Landlord does not terminate this Lease and Tenant's right to possession of the Premises, in which
45 event Landlord shall have the right to enforce all of Owner's and Landlord's rights and remedies under
46 this Lease including the right to recover the Minimum Annual Rental, Percentage Rental, Additional Rent
47 and other charges payable by Tenant under this Lease as they become due under this Lease; or (C)
48 without terminating this Lease, Landlord may pay or discharge any breach or violation hereof which
49 amount so expended shall be added to the next monthly incremental payment of Minimum Annual Rent,
50 Percentage Rental and Additional Rent due and treated in the same manner as Rental hereunder; or (D)
51 without terminating this Lease, make such alterations and repairs as may be necessary in order to relet the
52 Premises, and relet the Premises or any part thereof for such term or terms (which may be for a term
53 extending beyond the Term) at such rental or rentals and upon such other terms and conditions as
54 Landlord in its sole discretion may deem advisable. Notwithstanding any other provision hereof, Landlord
55 shall not be entitled to accelerate rental payable under the Lease so long as Tenant is not in monetary default
56 hereunder; provided, however, for purposes of the preceding clause, a monetary default shall not include a
57 default based on Tenant's failure to pay an amount about which there exists a good faith dispute.

58
59 (b) If Landlord proceeds under Section 19.01(a)(D) above, upon such reletting all Rental and
60 other sums received by Landlord from such reletting shall be applied, first, to the payment of any
61 indebtedness other than Rental due hereunder from Tenant to Landlord; second, to the payment of any
62 reasonable costs and expenses of such reletting, including reasonable brokerage fees and attorney fees and
63 of costs of such repairs; third, to the payment of Rental due and unpaid hereunder; and the residue, if any,
64 shall be held by Landlord and applied in payment of future Minimum Annual Rental and Additional Rent
65 payable by Tenant hereunder, as the same may become due and payable hereunder. If such Minimum
66 Annual Rental, Additional Rent and other sums received from such reletting during any month are less

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

31
32 (c) For purposes of subclauses (1) and (2) of Section 19.01(a), "worth at the time of award"
33 shall be computed by allowing interest at the maximum rate permitted by law (see Section 27.13) and for
34 purposes of subclause (3) of Section 19.01(a), "worth at the time of award" shall be computed by
35 discounting such amount at the discount rate of the Federal Reserve Bank whose jurisdiction includes the
36 Park/Plaza Development at the time of award, plus one percent (1%); the Rental reserved in this Lease
37 shall be deemed to be a monthly rental arrived at (i) by adding to the monthly installment of Minimum
38 Annual Rental one twelfth (1/12th) of the annual average of all Additional Rent payable by Tenant
39 hereunder.

40 41 ARTICLE XX

42 43 BANKRUPTCY OR INSOLVENCY

44 45 Section 20.01 TENANT'S INTEREST NOT TRANSFERABLE.

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

49 50 Section 20.02 TERMINATION.

51 In the event the interest or estate created in Tenant hereby shall be taken in execution or by other
52 process of law, or if Tenant's guarantor, if any, or its executors, administrators, or assigns, if any, shall be
53 adjudicated insolvent or bankrupt pursuant to the provisions of any state act or the Federal Bankruptcy
54 Code or if Tenant is adjudicated insolvent by a court of competent jurisdiction other than the United
55 States Bankruptcy Court, or if a receiver or trustee of the property of Tenant or Tenant's guarantor, if any,
56 shall be appointed by reason of the insolvency or inability of Tenant or Tenant's guarantor, if any, to pay
57 its debts as the same become due or if any assignment shall be made of the property of Tenant or Tenant's
58 guarantor, if any, for the benefit of creditors, then Landlord shall have the right to elect by written notice
59 to Tenant to terminate this Lease and all rights of Tenant hereunder, and Tenant shall vacate and
60 surrender the Premises but shall remain liable as herein provided.

61 62 Section 20.03 TENANT'S OBLIGATION TO AVOID CREDITORS' PROCEEDINGS.

63 Tenant or Tenant's guarantor, if any, shall not cause or give cause for the appointment of a trustee
64 or receiver of the assets of Tenant or Tenant's guarantor, if any, and shall not make any assignment for the
65 benefit of creditors, or become or be adjudicated insolvent. The allowance of any petition under
66 insolvency law except under the Federal Bankruptcy Code or the appointment of a trustee or receiver of

1 Tenant or Tenant's guarantor, if any, or of the assets of either of them, shall be conclusive evidence that
2 Tenant caused, or gave cause therefor, unless such allowance of the petition, or the appointment of a
3 trustee or receiver, is vacated within sixty (60) days after such allowance or appointment. Any act or
4 occurrence described in this Section 20.03 shall be deemed a material breach of Tenant's obligations
5 hereunder, and providing Landlord with the right to elect by written notice to Tenant to terminate this
6 Lease and all rights of Tenant hereunder, and Tenant shall vacate and surrender the Premises but shall
7 remain liable as herein provided. Landlord does, in addition, reserve any and all other remedies provided
8 in this Lease or by law.

9
10 **Section 20.04 ELECTION TO ASSUME LEASE.**

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

14
15 (b) In the event that Tenant becomes a Debtor under Chapter 7, 11 or 13 of the Bankruptcy
16 Code, and the Trustee or Tenant, as Debtor-In-Possession, elects to assume this Lease for the purpose of
17 assignment to a third party or otherwise, such election and assignment, if any, may only be made if all of
18 Landlord's conditions are met. If the Trustee or Tenant, as Debtor-In-Possession, fails to elect to assume
19 or reject this Lease by the sixtieth (60th) day after the entry of the Order for Relief in a case under
20 Chapter 7, 11 and 13 of the Bankruptcy Code, this Lease shall thereafter be deemed rejected and
21 terminated in accordance with Section 365(d)(4) of the Bankruptcy Code. The Trustee or Tenant, as
22 Debtor-In-Possession, shall thereupon immediately surrender possession of the Premises to Landlord and
23 Owner and Landlord shall have no further obligation to Tenant or Trustee under the Lease. The
24 acceptance of rent by Landlord after the sixtieth (60th) day shall not be deemed a waiver of Owner's and
25 Landlord's rights herein and under Section 365(d)(4) of the Bankruptcy Code, and Owner's and
26 Landlord's right to be compensated for damages in such bankruptcy case shall survive.

27
28 **Section 20.05 SUBSEQUENT BANKRUPTCY.**

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

35
36 **Section 20.06 ASSIGNMENT.**

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

43
44 **Section 20.07 OCCUPANCY CHARGES.**

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

49
50 **Section 20.08 CONSENT.**

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

58
59 **Section 20.09 ATTORNEY FEES.**

60 If, in the context of Tenant's bankruptcy case, Owner and Landlord are compelled at any time to
61 incur any expense, including attorneys' fees, in enforcing or attempting to enforce the terms of this Lease
62 or to enforce or attempt to enforce any actions required under the Bankruptcy Code to be taken by the
63 Trustee or by Tenant, as Debtor-In-Possession, then the sum so paid by Owner and Landlord shall be
64 awarded to Owner and Landlord by the Bankruptcy Court and shall be immediately due and payable by
65 the Trustee or by Tenant's bankruptcy estate to Owner and Landlord in accordance with the terms of the
66 order of the Bankruptcy Court.

1
2 **Section 20.10 OTHER LAWS.**

3 The provisions of this Article XX concerning the rights of Landlord, and the obligations of
4 Trustee, Tenant, Debtor, Receiver, Debtor-In-Possession and assignee are in addition to such rights and
5 obligations provided by law, including those applicable provisions of the Bankruptcy Code. Nothing
6 contained in this Article XX shall limit or reduce in any manner whatsoever such rights and obligations
7 which are otherwise provided by law.
8

9 **ARTICLE XXI**

10 **ACCESS BY LANDLORD**

11
12
13 **Section 21.01 RIGHT OF ENTRY.**

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

28 Notwithstanding anything contained herein to the contrary, Landlord, its agents, employees or
29 contractors' entry onto the Premises, or any repair or work performed thereon, shall not in any way
30 materially or unreasonably affect or interrupt Tenant's use, business or operations on the Premises or
31 materially or unreasonably obstruct the visibility or ingress and egress of the Premises (including, without
32 limitation, Tenant's exterior signage). In the event of such substantial and material interference, Landlord
33 shall first obtain the written consent of Tenant, which consent shall not be unreasonably withheld,
34 conditioned or delayed and the Minimum Annual Rental shall be abated in proportion to such interference.
35 Landlord shall be liable for any damage or injury to persons or property caused by any negligent, willful, or
36 wanton act or omission of Landlord, its agents, employees, invitees, guests or contractors resulting from its
37 and/or their entry onto the Premises or the repair or any other work performed thereon. Landlord shall give
38 Tenant no less than seventy-two (72) hours' notice before any entry hereunder, unless an emergency
39 requires shorter notice.
40

41 **ARTICLE XXII**

42 **TENANT'S PROPERTY**

43
44 **Section 22.01 TAXES ON TENANT'S PROPERTY.**

45 (a) Tenant shall be responsible for, and agrees to pay prior to delinquency, any and all Taxes
46 or other taxes, assessments, levies, fees and other governmental charges and impositions of every kind or
47 nature, regular or special, direct or indirect, presently foreseen or unforeseen or known or unknown,
48 levied or assessed by municipal, county, state, federal or other governmental taxing or assessing authority,
49 upon, against or with respect to (i) Tenant's leasehold interest in the Premises, (ii) all furniture, fixtures,
50 equipment, inventory and any other personal property of any kind owned by, or placed, installed or
51 located in, within, upon or about the Premises by Tenant, any concessionaire or any previous tenant or
52 occupant, and (iii) all alterations, additions, or improvements of whatsoever kind or nature, if any, made
53 to the Premises, by Tenant, any concessionaire or any previous tenant or occupant, irrespective of whether
54 any such tax is assessed, real or personal, and irrespective of whether any such tax is assessed to or
55 against Landlord or Tenant (collectively, "Tenant's Taxes"). Tenant shall provide Landlord with evidence
56 of Tenant's timely payment of such Tenant's Taxes upon Landlord's request. If at any time any of such
57 Tenant's Taxes are not levied and assessed separately and directly to Tenant (for example, if the same are
58 levied or assessed to Landlord, or upon or against the building containing the Premises and/or the land
59 underlying said building), Tenant shall pay to Landlord Tenant's share thereof as determined and billed by
60 Landlord.
61

62 (b) Tenant acknowledges that this Lease may create a possessory interest subject to property
63 taxation and that Tenant may be subject to the payment of taxes levied on that possessory interest; that
64 Tenant's payment of taxes, fees, and assessments shall not reduce any Rental due under this Lease; and
65 that Owner shall not assume any responsibility for any taxes whatsoever resulting from Tenant's
66

1 possession, use, or occupancy of the Premises. In the event Tenant is obligated to render a payment for
2 taxes levied on that possessory interest, then Landlord shall reimburse Tenant for such taxes levied on
3 that possessory interest as set forth herein within thirty (30) days after receipt by Landlord from Tenant of
4 a statement setting forth the amount of such taxes levied on that possessory interest and accompanied by
5 reasonable back-up documents, including proof of Tenant's payment of such tax.

6
7 **Section 22.02 LOSS AND DAMAGE.**

8 Landlord shall not be responsible or liable to Tenant for any loss or damage that may be
9 occasioned by or through the acts or omissions of persons occupying premises or any part of the premises
10 adjacent to or connected with the Premises or any part of the building of which the Premises are a part, or
11 any other area in the Park/Plaza Development, or for any loss or damage resulting to Tenant or its
12 property from bursting, stoppage or leaking of water, gas, sewer or steam pipes, or (without limiting the
13 foregoing) for any damage or loss of property within the Premises from any cause whatsoever.

14
15 **Section 22.03 NOTICE BY TENANT.**

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

19
20 **ARTICLE XXIII**

21
22 **HOLDING OVER**

23
24 **Section 23.01 HOLDING OVER.**

25 If possession of the Premises is not surrendered to Landlord on the Expiration Date or earlier
26 termination date of this Lease, then Tenant shall pay to Landlord on account of use and occupancy of the
27 Premises, for each month (or any portion thereof) during which Tenant (or a Person claiming by, through
28 or under Tenant) holds over in the Premises after the Expiration Date, an amount equal to one hundred
29 fifty percent (150%) of the Minimum Annual Rental required to be paid by Tenant for the last full lease
30 year of the Term of this Lease, together with an amount estimated by Landlord for the monthly Additional
31 Rent payable pursuant to this Lease. Landlord's right to collect such amount from Tenant for use and
32 occupancy shall be in addition to any other rights or remedies that Landlord may have hereunder or at law
33 or in equity. Nothing contained in this Section 23.01 shall permit Tenant to retain possession of the
34 Premises after the Expiration Date, or earlier termination date, or limit in any manner Landlord's right to
35 regain possession of the Premises, through summary proceedings or otherwise. Landlord's acceptance of
36 any payments from Tenant after the Expiration Date, or earlier termination date, shall be deemed to be on
37 account of the amount to be paid by Tenant in accordance with the provisions of this Section 23.01.
38 Tenant shall indemnify, defend and hold harmless Owner and Landlord from and against any and all loss,
39 claims, demands, liabilities, damages (including, without limitation, consequential damages), costs and/or
40 expenses (including, without limitation, attorneys' fees and expenses) resulting from any failure by Tenant
41 to surrender the Premises in the manner and condition required by this Lease upon the expiration of the
42 Term or earlier termination of this Lease, including, without limitation, any claims made by any proposed
43 new tenant founded upon such failure.

44
45 **Section 23.02 SUCCESSORS.**

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

52
53 **ARTICLE XXIV**

54
55 **RULES AND REGULATIONS**

56
57 **Section 24.01 RULES AND REGULATIONS.**

58 Tenant agrees to comply with and observe all reasonable, non-discriminatory rules and
59 regulations established by Landlord, which may from time to time be revised, provided the same shall
60 apply uniformly to all tenants of the Park/Plaza Development. Tenant's failure to keep and observe said
61 rules and regulations shall constitute a breach of the terms of this Lease in the same manner as if the rules
62 and regulations were contained herein as covenants. In the case of any conflict between said rules and
63 regulations and this Lease, this Lease shall be controlling. The rules and regulations imposed by Landlord
64 under this Section shall not materially impair or diminish Tenant's rights or materially increase Tenant's
65 obligations set forth in this Lease to the extent it does not conflict with the Owner's regulations,
66 ordinances and policies.

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ARTICLE XXV

QUIET ENJOYMENT

Section 25.01 LANDLORD'S COVENANT.

Upon payment by Tenant of Rental herein provided and other charges payable by Tenant under this Lease, and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term hereby demised without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under Landlord, subject nevertheless to the terms and conditions of this Lease, any mortgage and/or deed of trust to which this Lease is subordinated and any reciprocal easement agreement made between Landlord and tenants or others occupying the Department Stores.

ARTICLE XXVI

INTENTIONALLY DELETED

ARTICLE XXVII

MISCELLANEOUS

Section 27.01 WAIVER; ELECTION OF REMEDIES.

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

Section 27.02 ENTIRE AGREEMENT.

The Data Sheet and all attachments, exhibits and/or addendum(s), and/or rider(s), if any, attached to this Lease are hereby made a part of this Lease, with full force and effect as if set forth herein. This Lease supersedes all prior agreements between the parties and sets forth all the covenants, promises, agreements and conditions, and understandings between Owner, Landlord and Tenant concerning the Premises and there are no actual or implied covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are set forth herein and none thereof shall be used to interpret, construe, supplement or contradict this Lease. Owner and Landlord have made no representations or warranties regarding the profitability of the Premises or the Park/Plaza Development, and Tenant has not entered into this Lease in reliance on any such representations, warranties or financial projections prepared or furnished to Tenant by Owner or Landlord. Although the printed provisions of this Lease were drawn by Owner and Landlord, the parties hereto agree that this circumstance alone shall not create any presumption, canon of construction or implication favoring the position of Owner, Landlord or Tenant. The parties agree that any deletion of language from this Lease prior to its mutual execution by Owner, Landlord and Tenant shall not be construed to have any particular meaning or to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse, obverse or opposite of the deleted language. No alteration, amendment, change, or addition to this Lease shall be binding upon Owner, Landlord or Tenant unless reduced to writing and signed by each party. Tenant shall pay all of Owner's and Landlord's costs, expenses and reasonable fees of its attorney(s) in connection with any assignment of this Lease, subletting of the Premises or amendment, change or addition to this Lease made at the request of or to accommodate Tenant, not to exceed \$500.00 in each instance.

Section 27.03 INTERPRETATION; USE OF PRONOUNS; AUTHORITY.

Except as specifically set forth in this Lease, nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint ventures between the parties hereto, it being understood and agreed that neither the method of computation of Rental, nor any other provision contained herein, nor any acts of the parties herein, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant. Whenever herein the singular number is used the same shall include

1 the plural, and the masculine gender shall include the feminine and neuter genders. If this Lease is signed
2 on behalf of a corporation, partnership or other entity, such entity is authorized to enter into and the signer
3 is duly authorized to execute this Lease on behalf of such corporation, partnership, or entity.

4
5 **Section 27.04 DELAYS; FORCE MAJEURE.**

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

30
31 **Section 27.05 NOTICES.**

32 Notwithstanding the fact that certain descriptions elsewhere in this Lease of notices required to be
33 given by one party to the other may omit to state that such notices shall be in writing, any notice, demand,
34 request or other instrument which may be or is required to be given under this Lease shall be in writing
35 and sent by (i) United States certified mail, return receipt requested, postage prepaid, (ii) United States
36 express mail, (iii) air courier (such as Federal Express), (iv) personal delivery or (v) any other method
37 creating a receipt, waybill or other indication of delivery, and shall be addressed (a) if to the Landlord, at
38 the address set forth on the Data Sheet, or such other address or addresses as Landlord may designate by
39 written notice, together with copies thereof to such other parties designated by Landlord and, (b) if to
40 Tenant, at the Premises or the address set forth on the Data Sheet, or such other address or addresses as
41 Tenant shall designate by written notice provided that Tenant's address for notices shall be a street
42 address and not a post office box..

43
44 **Section 27.06 CAPTIONS AND SECTION NUMBERS.**

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

48
49 **Section 27.07 BROKER'S COMMISSION.**

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

54
55 **Section 27.08 INTENTIONALLY DELETED.**

56
57 **Section 27.09 FURNISHING OF FINANCIAL STATEMENTS.**

58 Tenant has provided Landlord at or prior to the date of this Lease with statements reflecting its
59 financial condition as of a date within the last twelve (12) months as an inducement to Owner and
60 Landlord to enter into this Lease, and Tenant hereby represents and warrants that its financial condition
61 has not materially changed since the date of those statements. Upon Landlord's written request in
62 connection with a proposed sale, transfer or financing transaction with respect to all or any portion of the
63 Park/Plaza Development, Tenant shall promptly furnish Landlord, from time to time, but not more
64 frequently than once in any lease year, with financial statements reflecting Tenant's then current financial
65 condition and written evidence of ownership of controlling stock interest if Tenant is a corporation or
66 controlling partnership interest if Tenant is a partnership. Landlord shall treat such financial statements

1 and information provided to it pursuant to Articles III and IV of this Lease confidentially, and shall not
2 disclose them except to Landlord's lenders or otherwise as reasonably necessary for the operation of the
3 Park/Plaza Development or administration of Landlord's business or unless disclosure is required by any
4 judicial or administrative order or ruling, to the extent permitted by law.

5
6 **Section 27.10 WAIVER OF COUNTERCLAIM OR DEFENSES IN ACTION FOR**
7 **POSSESSION.**

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

13
14 **Section 27.11 INTENTIONALLY DELETED.**

15
16 **Section 27.12 FLOOR AREA.**

17 (a) "Floor Area" as used in this Lease means with respect to any leasable area (excluding
18 Tenant's Patio Area) in the Park/Plaza Development, the aggregate number of square feet of floor space
19 of all floor levels therein, including any mezzanine space, measured from (i) the outside faces of all
20 perimeter walls thereof other than any demising wall separating such premises from other leasable
21 premises, (ii) the center lines of any such demising wall, (iii) the outside face of any interior wall, and (iv)
22 the building and/or lease line adjacent to any entrance to such premises.

23
24 (b) For the purposes of this Lease, in determining the gross leasable Floor Area or the gross
25 leased and occupied Floor Area of the Park/Plaza Development, there shall be excluded therefrom any
26 premises leased for the operation of a U.S. Government Post Office facility or other governmental
27 facility, a child care center, community room, library, project offices and related rooms, movable retail
28 merchandising units and temporary uses or units located in the Common Areas. No deduction or
29 exclusion from Floor Area shall be made by reason of columns, ducts, stairs, elevators, escalators, shafts
30 or other interior construction or equipment. At the Commencement Date, the gross leased and occupied
31 Floor Area in effect for the whole of any lease year shall be the average gross leased and occupied Floor
32 Area in effect during such lease year. Landlord reserves the right during the Term to change the method
33 of computation to determine Floor Area on a monthly or quarterly "average" basis.

34
35 **Section 27.13 INTEREST ON PAST DUE OBLIGATIONS.**

36 Any amount due from Tenant to Landlord hereunder which is not paid when due (including,
37 without limitation, amounts due as reimbursement to Owner and/or Landlord for costs incurred by Owner
38 and/or Landlord in performing obligations of Tenant hereunder upon Tenant's failure to so perform) shall
39 bear interest at the lesser of (a) the "Prime Rate" as published in Wall Street Journal plus three percent
40 (3%); or (b) the highest rate then allowed under the usury laws of the state where the Park/Plaza
41 Development is located from the date due until paid, unless otherwise specifically provided herein, but
42 the payment of such interest shall not excuse or cure any default by Tenant under this Lease.

43
44 For the first two (2) times in any calendar year that Tenant has failed to pay any such monthly
45 installment of Minimum Annual Rental or Additional Rent, such interest shall not apply unless Tenant has
46 failed to make such payments within ten (10) days of receipt of Landlord's written notice of such
47 delinquency. Landlord shall not be required to give Tenant such notice more than twice in any calendar
48 year prior to assessing such interest.

49
50 **Section 27.14 LIABILITY OF OWNER/LANDLORD.**

51 If Owner or Landlord shall fail to perform any covenant, term or condition of this Lease upon
52 Owner's or Landlord's part to be performed, and if as a consequence of such default Tenant shall recover
53 a money judgment against Owner or Landlord, such judgment shall be (1) if applicable to both Owner and
54 Landlord, first out of rents or other income from such property receivable by Owner or Landlord; (2) if
55 applicable to only Landlord, out of the consideration received by Landlord from the sale or other
56 disposition of all or any part of Landlord's right, title and interest in the Park/Plaza Development subject,
57 nevertheless to the rights of Landlord's mortgagee, and neither Landlord nor any of the partners
58 comprising the partnership which may be the Landlord herein shall be liable for any deficiency; or (3) if
59 applicable to one or both the Owner and Landlord, secondly to other legal funds controlled by Owner or
60 Landlord.

61
62 **Section 27.15 ACCORD AND SATISFACTION.**

63 Payment by Tenant or receipt by Landlord of a lesser amount than the Rental or other charges
64 herein stipulated shall be deemed to be on account of the earliest Rental or other charges due from Tenant
65 to Landlord. No endorsements or statement on any check or any letter accompanying any check or
66 payment as Rental or other charges shall be deemed an accord and satisfaction, and Landlord shall accept

1 such check or payment without prejudice to Landlord's right to recover the balance of any and all Rental
2 or other charges due from Tenant to Landlord or to pursue any other remedy provided in this Lease or by
3 law.
4

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

6 The submission of this Lease to Tenant shall be for examination purposes only, and does not and
7 shall not constitute a reservation of an option for Tenant to lease, or otherwise create any interest by
8 Tenant in the Premises or any other premises in the Park/Plaza Development. Execution of this Lease by
9 Tenant and the return of same to Landlord shall not be binding upon Owner and Landlord,
10 notwithstanding any time interval, until all parties have executed this Lease and delivered an executed
11 copy of this Lease to Tenant.
12

13 **Section 27.17 GOVERNING LAW.**

14 This Lease shall be governed by and construed in accordance with laws of the state where the
15 Premises is situated. If any provision of this Lease or the application thereof to any person or
16 circumstances shall, to any extent be invalid or unenforceable, such provision shall be adjusted rather than
17 voided, if possible, in order to achieve the intent of the parties, to the extent possible; in any event, all
18 other provisions of this Lease shall be deemed valid and enforceable to the full extent.
19

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

21 Landlord shall have the right to obtain specific performance of any and all covenants or
22 obligations of Tenant under this Lease, other than Tenant's obligation to operate in the Premises, and
23 nothing contained in this Lease shall be construed as or shall have the effect of abridging such right.
24

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

26 All obligations of Tenant under this Lease which cannot be ascertained to have been fully
27 performed prior to the expiration or earlier termination of this Lease shall survive the expiration or earlier
28 termination of this Lease.
29

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

31 Time is of the essence in Tenant's performance of this Lease. Notwithstanding the fact that
32 certain references elsewhere in this Lease to acts required to be performed by Tenant hereunder, or to
33 breaches or defaults of this Lease by Tenant, omit to state that such acts shall be performed at Tenant's
34 sole cost and expense, or omit to state that such breaches or defaults by Tenant are material, unless the
35 context clearly implies to the contrary, each and every act to be performed or obligation to be fulfilled by
36 Tenant pursuant to this Lease shall be performed or fulfilled at Tenant's sole cost and expense, and all
37 breaches or defaults by Tenant hereunder shall be deemed material. Tenant shall be fully responsible and
38 liable for the observance and compliance by concessionaires of and with all the terms and conditions of
39 this Lease, which terms and conditions shall be applicable to concessionaires as fully as if they were the
40 Tenant hereunder; and failure by a concessionaire fully to observe and comply with the terms and
41 conditions of this Lease shall constitute a default hereunder by Tenant. Nothing contained in the
42 preceding sentence shall constitute a consent by Owner and/or Landlord to any concession, subletting, or
43 other arrangement proscribed by Article XIV.
44

45 **Section 27.21 CONFIDENTIALITY.**

46 To the extent permitted by law, any and all information contained in this Lease or provided to or
47 by Tenant, Owner and/or Landlord by reason of the covenants and conditions of this Lease, economic or
48 otherwise, shall remain confidential between Owner, Landlord and Tenant and shall not be divulged to
49 third parties; provided, however Owner and Landlord shall be permitted to divulge the contents of
50 statements and reports derived and received in connection with the provisions of Article III and Article IV
51 in connection with any contemplated sales, transfers, assignments, encumbrances or financing
52 arrangements of Owner's and/or Landlord's interest in the Park/Plaza Development or in connection with
53 any administrative or judicial proceedings in which Owner and/or Landlord is involved where Owner
54 and/or Landlord may be required to divulge such information.
55

56 To the extent permitted by law, from and after the date lease negotiations were entered into and
57 throughout the Term of this Lease, the parties shall not disclose any of the terms, covenants, conditions or
58 agreements set forth in this Lease or any amendments hereto, nor provide this Lease, any amendments
59 hereto or any copies of either of the same to any person including, without limitation, any brokers, any
60 other tenants in the Park/Plaza Development or any affiliates, agents or employees of such tenants or
61 brokers except as set forth herein. Landlord hereby acknowledges that the disclosure of any of the terms,
62 covenants, conditions and agreements set forth in this Lease, or any amendment hereto, to any third party
63 would cause material damage to Tenant, and Landlord agrees to indemnify, save and hold Tenant
64 harmless from and against any and all damages suffered by Tenant which are attributable to any
65 disclosure by Landlord in violation of the terms of this provision. Notwithstanding the foregoing,
66 Landlord may disclose the terms of this Lease to any current or potential mortgagee or purchaser of the

1 Property who agrees to be bound by the terms of this Section.

2
3 **Section 27.22 ATTORNEY FEES.**

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

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

26
27 **Section 27.23 INDEX.**

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

38
39 **Section 27.24 WAIVER OF TRIAL BY JURY.**

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

48
49 **Section 27.25 MORTGAGEE CHANGES.**

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

55
56 **Section 27.26 REAL ESTATE INVESTMENT TRUST.**

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

made so as to produce the equivalent (in economic terms) Rent as payable prior to such adjustment.

Section 27.27 EQUAL EMPLOYMENT OPPORTUNITY.

It has been determined that Landlord qualifies as a Federal Contractor. If applicable, during the performance of this Lease, the parties hereto hereby incorporate by reference the provisions set forth in 41 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 A, which provisions apply to all nonexempt contractors and vendors.

Section 27.28 STORAGE AREA.

As part of this Lease, Landlord also leases to Tenant that certain storage space known as Space No. SFSU2 containing approximately 204 square feet of Floor Area and shown on Exhibit "A-8" attached to the Lease, for the storage of Tenant's merchandise and supplies for use in the Premises ("Storage Area"). It is understood that no payment of Minimum Annual Rental, Additional Rent and/or charges are required for the Storage Area. Landlord shall provide electric service to the Premises, at a cost to be determined by Landlord, which amount shall be paid monthly by Tenant as Additional Rent pursuant to this Agreement. Tenant shall also pay for any other utilities, if any, for the Storage Area. Tenant hereby accepts possession of the Storage Area in its then existing "as-is" condition. Tenant, at Tenant's sole cost and expense, shall perform any and all work necessary to prepare the Storage Area for Tenant's use, which work shall be completed in accordance with the provisions of this Lease. The term of Tenant's occupancy of the Storage Area shall at all times coincide with the Term of this Lease. Such Storage Area shall be considered a part of the Premises and shall be subject to all of the terms and conditions of this Lease, including Insurance as set forth in Section 11.01. Further, Landlord shall have the right to relocate the Storage Area to another storage space of equal or greater size and within reasonable distance from the Premises in the Park/Plaza Development upon thirty (30) days written notice to Tenant. Tenant shall have reasonable approval rights to the relocated storage space.

Section 27.29 PATIO AREA.

(a) Subject to the applicable laws, ordinances, codes and regulations of any governmental authorities having jurisdiction over the Premises, Tenant shall also be entitled to utilize, as a part of the Premises, and in a manner set forth below, the area immediately adjacent to the store structure of the Premises for the use and purpose as a patio as shown on Exhibit "A-4," which is attached hereto and incorporated herein by this reference (hereinafter "Patio Area").

(b) Tenant and Landlord agree and acknowledge that: (i) Landlord, as Landlord's Work and at Landlord's sole cost and expense, shall provide a finished stone paving surface area beneath the extents of the trellis structure, matching the stone, style, and pattern in the surrounding stone paving area, level to industry standards, as well as the tile work up until the line of the Premises; (ii) Tenant shall construct any and all other improvements at its sole cost in accordance with the requirements set forth in Exhibit "B" attached hereto and receives Landlord's prior consent to plans and specifications therefor (including furniture and fixtures); (iii) Except as set forth in Section 27.29(d) below, Tenant shall maintain such improvements to a standard consistent with the maintenance required to be performed to the Premises as set forth herein; and (iv) the insurance requirements set forth in the Lease shall also apply to the business operations of Tenant in the Patio Area and Tenant's insurance policy shall specifically cover the Patio Area. Except as set forth above, Landlord shall not be required to perform any other Landlord Work to the Patio Area or ground underneath.

(c) Landlord shall provide, at Tenant's cost and expense, twenty-six (26) tables and fifty-two (52) chairs, and Tenant shall provide, at Tenant's cost and expense, any related furniture and other movable fixtures for use on the Patio Area (collectively the "Facilities"). The Facilities shall require the prior approval of Owner and Landlord, which approval shall not be unreasonably withheld, conditioned, or delayed. Tenant acknowledges and agrees that any destruction, damage, theft, or vandalism of or to, the Facilities shall be the sole responsibility of Tenant and Tenant agrees to promptly repair or replace same immediately following such event. Tenant acknowledges and agrees that it shall lock and/or secure the Facilities when the Premises is closed for business to the public. Upon the Expiration Date, or earlier termination of this Lease, all tables and chairs located on the Patio Area shall become the property of Landlord.

Tenant shall make a check payable to an affiliate of Landlord, Westfield Development, Inc., for the cost of the tables and chairs provided by Landlord and send such check to 2049 Century Park East, 41st Floor, Los Angeles, CA 90067, Attention: Kim Brewer.

(d) As part of Landlord's cleaning of the Common Area, Landlord shall clean the stone paving surface area beneath the extents of the trellis structure of the Patio Area in a neat and clean condition; such maintenance to be performed during all hours when the Park/Plaza Development is open to the public.

1 (e) The Patio Area shall not be included as part of the Floor Area of the Premises for the
2 purposes of the calculation of Minimum Annual Rental, or Additional Rent. Further, the Patio Area shall
3 be subject to all other terms and conditions of the Lease including, without limitation, Article X, Article
4 XI and Article XIX.

5
6 (f) Except as otherwise provided hereinabove, the Patio Area shall be considered as a part of
7 the Premises for all purposes under the Lease, including without limitation the provisions of Article
8 XVIII of this Lease. Notwithstanding anything to the contrary contained in Article XIV of the Lease, the
9 right to use the Patio Area is personal to Tenant and may not be assigned in connection with any
10 assignment of this Lease requiring the consent of Landlord.

11
12 **Section 27.30 TENANT'S RIGHT TO EARLY TERMINATION.**

13 Tenant shall have the right to terminate this Lease at any time on or after the last day of the forty-
14 eighth (48th) full calendar month following the Rental Commencement Date, upon providing Landlord
15 with no less than ninety (90) days prior written notice. Said termination shall be effective at the end of
16 such 90-day notice period.

17
18 **Section 27.31 EQUAL OPPORTUNITY AND CONTRACTING.**

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

32
33 Any conflict resulting from the requirements as set forth in this Lease section and the requirements
34 as set forth in the applicable San Diego Municipal Code section(s) shall be resolved in favor of the
35 requirements as set forth in the applicable San Diego Municipal Code section(s).

36
37 **Section 27.32 EQUAL BENEFITS.**

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

43
44 Any conflict resulting from the requirements as set forth in this Lease section and the requirements
45 as set forth in the applicable San Diego Municipal Code section(s) shall be resolved in favor of the
46 requirements as set forth in the applicable San Diego Municipal Code section(s).

47
48 **Section 27.33 DISABLED ACCESS COMPLIANCE.**

49 Tenant shall, as applicable to the Premises and Tenant's possession, use and occupancy thereof,
50 comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of
51 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable
52 state and federal laws and regulations hereafter enacted protecting the rights of people with
53 disabilities. Tenant's compliance shall include but not necessarily be limited to the following:

54
55 (a) Tenant shall not discriminate against qualified persons with disabilities in any aspects of
56 employment, including recruitment, hiring, promotions, conditions and privileges of employment,
57 training, compensation, benefits, discipline, layoffs, and termination of employment.

58
59 (b) No qualified individual with a disability may be excluded on the basis of disability from
60 participation in, or be denied the benefits of, services, programs, or activities of Tenant.

61
62 (c) Tenant shall post a statement addressing the requirements of the ADA in a prominent
63 place at the work site.

64 (d) Where required by law, any improvements made to the Premises by Tenant shall comply
65 with municipal disabled access requirements by bringing up to code and making accessible any areas of

1 the Premises which deny access to disabled persons. All improvements and alterations shall be at the sole
2 cost of Tenant.

3
4 (e) Tenant shall include language in each sublease agreement which indicates the sublessee's
5 agreement to abide by the foregoing provisions. Tenant and sublessees shall be individually responsible
6 for their own ADA employment programs.

7
8 (f) Tenant understands that failure to comply with the above requirements and/or submitting
9 false information in response to these requirements shall constitute a default under this Lease.

10
11 **Section 27.34 ACCESSABILITY ASSESSMENT.**

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

14
15 **Section 27.35 DRUG-FREE WORKPLACE.**

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

18
19 (a) Publish a statement notifying employees that the unlawful manufacture, distribution,
20 dispensation, possession, or use of controlled substances are prohibited on the Permit Area and specifying
21 the actions that will be taken against employees for violations of the prohibition; and.

22
23 (b) Establish a drug-free awareness program to inform employees about all of the following:

24
25 (i) The dangers of drug abuse in the workplace;

26
27 (ii) Tenant's policy of maintaining a drug-free workplace;

28
29 (iii) Any available drug counseling, rehabilitation, and employee assistance programs;
30 and

31
32 (iv) The penalties that may be imposed upon employees for drug abuse violations.

33
34 (c) Tenant shall include in each of its sublicenses and contracts related to this Permit
35 language obligating each sublicensee and contractor to comply with the provisions of this section to
36 maintain a drug-free workplace. Tenant, and each of its sub-licensees and contractors, shall be
37 individually responsible for their own drug-free workplace program.

38
39 **Section 27.36 INTENTIONALLY DELETED.**

40
41 **Section 27.37 LOCAL BUSINESS AND EMPLOYMENT.**

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

47
48 **Section 27.38 WATER QUALITY – BEST MANAGEMENT PRACTICES.**

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

54
55 Therefore, Tenant shall, at a minimum, implement and comply, as applicable, with the BMPs for
56 industrial and commercial facilities adopted under the San Diego Municipal Code Section 43.0307 (a).

57
58 It is ultimately the Tenant's responsibility to prevent pollutant discharges to the storm drain system.
59 Therefore, the Tenant will identify and implement any additional BMPs that may be required to avoid the
60 discharge of pollutants to the storm drain system."

61
62 Any conflict resulting from the requirements as set forth in this Lease section and the requirements
63 as set forth in the applicable San Diego Municipal Code section(s) shall be resolved in favor of the
64 requirements as set forth in the applicable San Diego Municipal Code section(s).

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

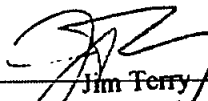
Section 27.41 CONSENT.

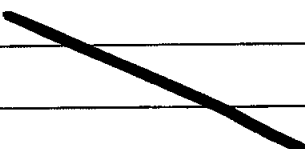
Section 27.41 SUCCESSOR AGENCY'S ROLE.

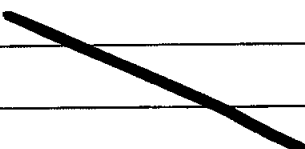
(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES FOLLOW ON NEXT PAGE)

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..

STARBUCKS CORPORATION,
a Washington corporation

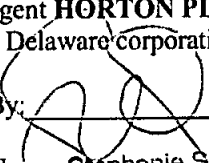
By:  Jim Terry
Its: vp, Store Development
Real Estate & Facilities
Starbucks Corporation

By: 

Its: 

TENANT

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

By: 
Name: Stephanie Shieh
Assistant Secretary

Title:

LANDLORD

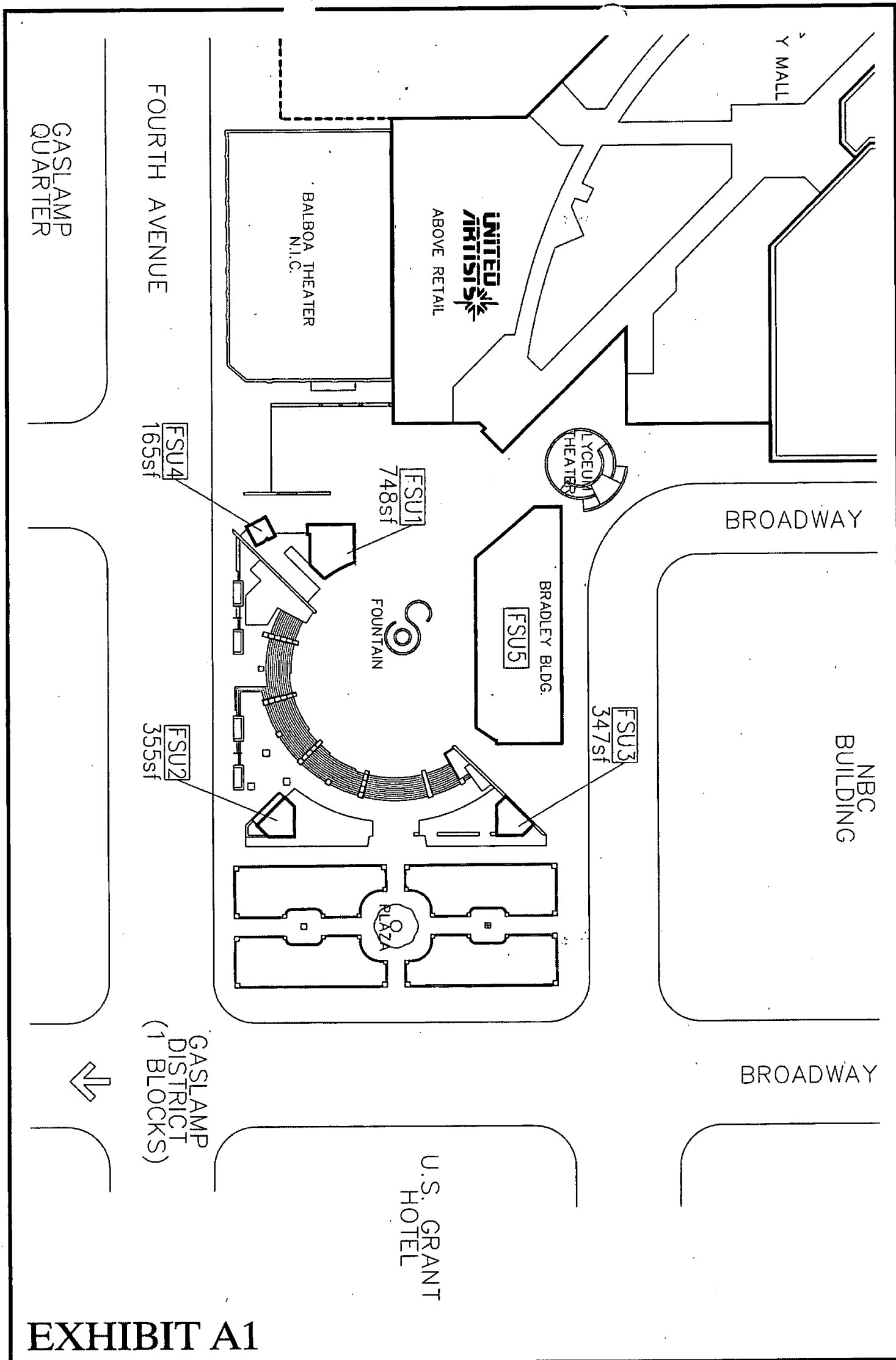


EXHIBIT A1

This drawing is diagrammatic and shows only approximate conditions, locations, quantities and proposed elements. The size, location, identity or existence of any element or specific occupant may be added eliminated or modified at the sole and absolute discretion of the Landlord. Failure to verify actual conditions shall be at the sole risk and responsibility of the tenant.

SITE PLAN

N.T.S
SCALE

Westfield
Horton Plaza Urban Park

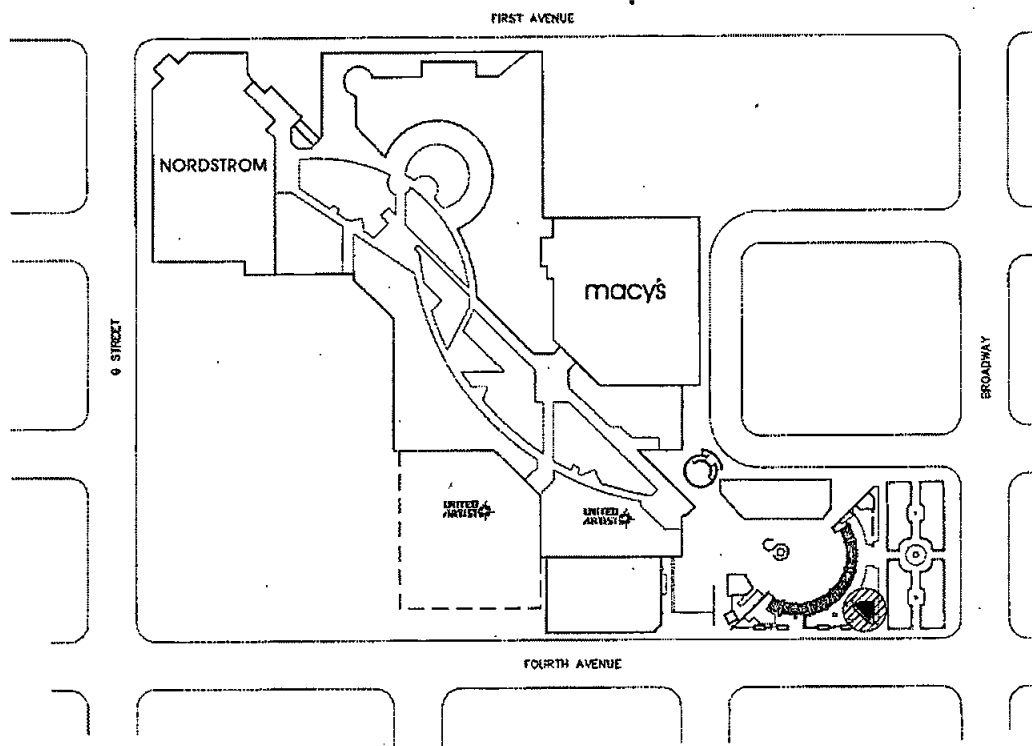
324 HORTON PLAZA SAN DIEGO, CALIFORNIA 92101-6481 619 239-8180



HORTON PLAZA
Jul 06, 2015

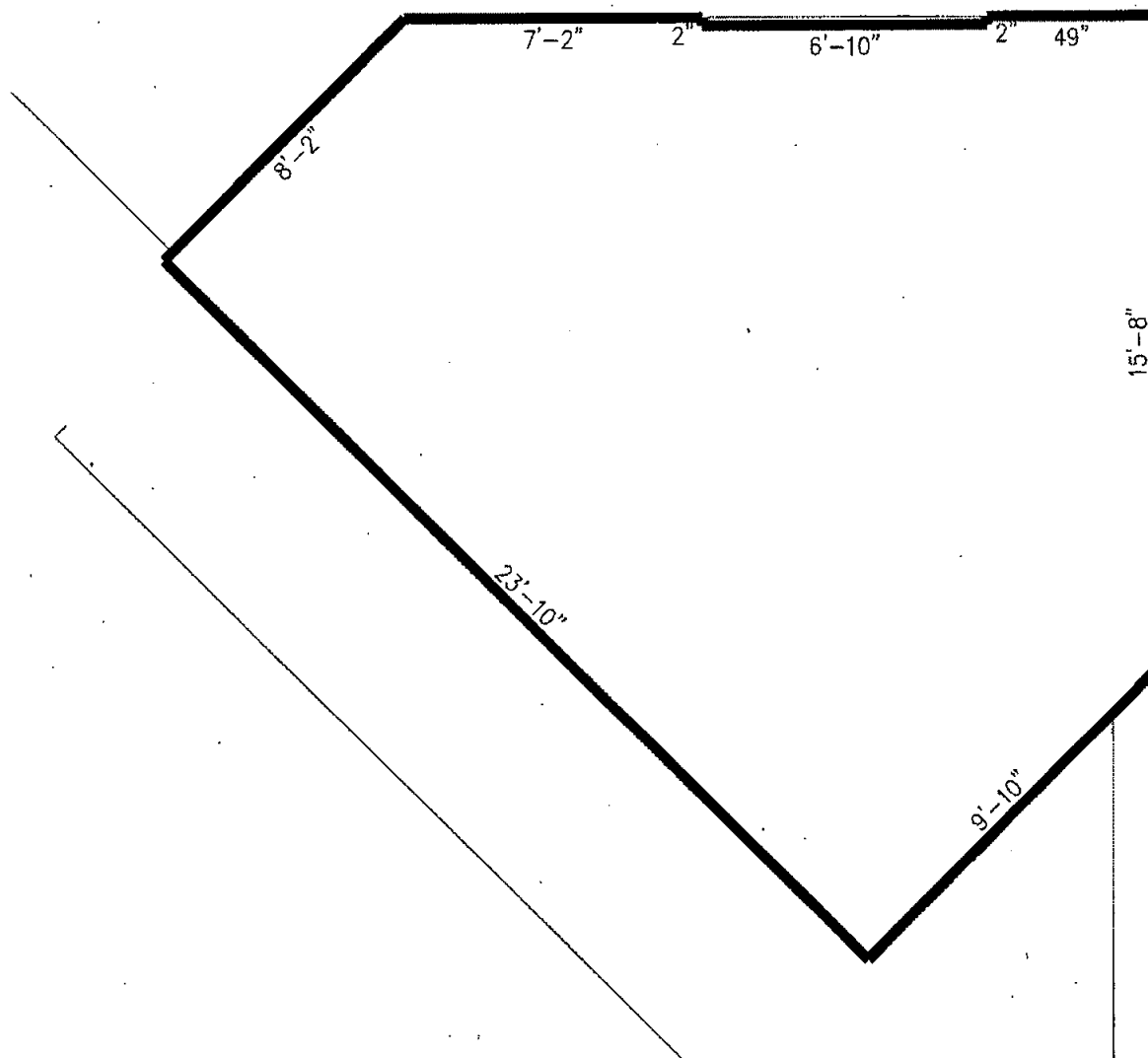
A1

STARBUCKS



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

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



HORTON PLAZA URBAN PARK

324 HORTON PLAZA SAN DIEGO, CALIFORNIA 92101-5481

SITE

07/06/15

FSU2

STARBUCKS COFFEE



355 S.F.

EXHIBIT
A2

STARBUCKS

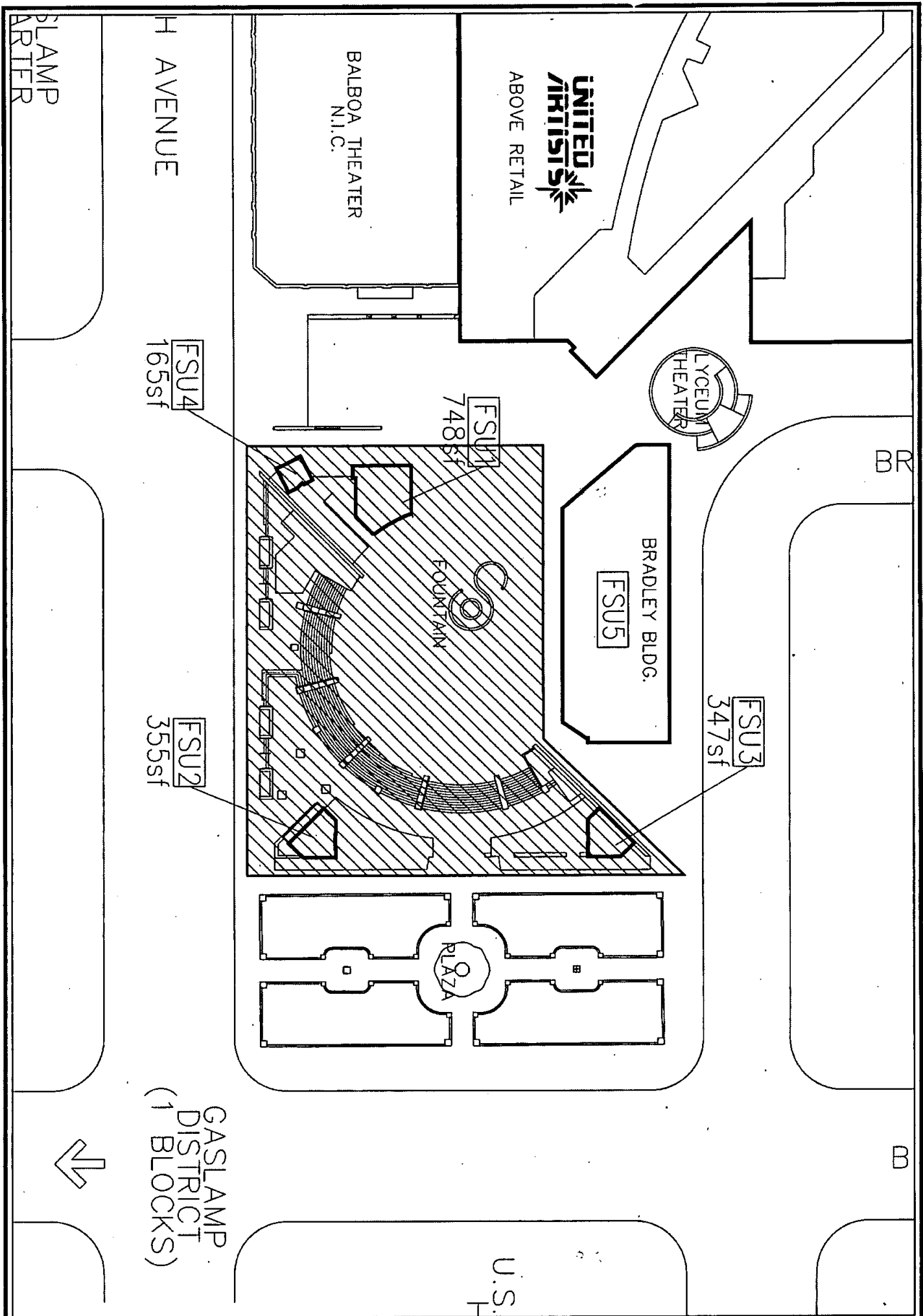


EXHIBIT A3 - EXCLUSIVE USE ZONE

SPACE: FSU2
STARBUCKS COFFEE

This drawing is diagrammatic and shows only approximate conditions, locations, quantities and proposed elements. The size, location, identity or existence of any element or specific occupant may be added eliminated or modified at the sole and absolute discretion of the Landlord. Failure to verify actual conditions shall be at the sole risk and responsibility of the tenant.

LEASE PLAN

N.T.S
SCALE

Westfield
Horton Plaza Urban Park

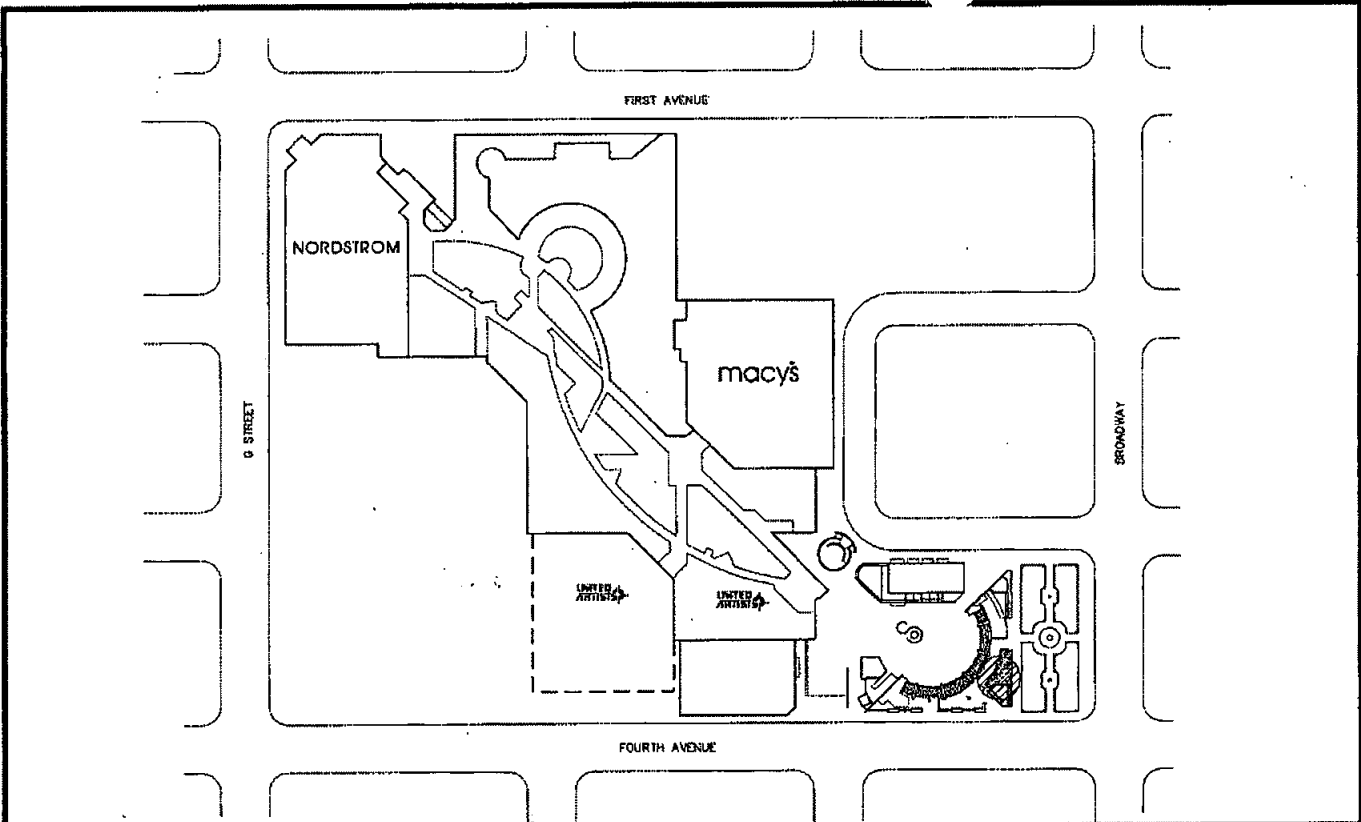
324 HORTON PLAZA SAN DIEGO, CALIFORNIA 92101-8481 (619) 232-8190



HORTON PLAZA
Jul 06, 2015

A3
Site

STARBUCKS



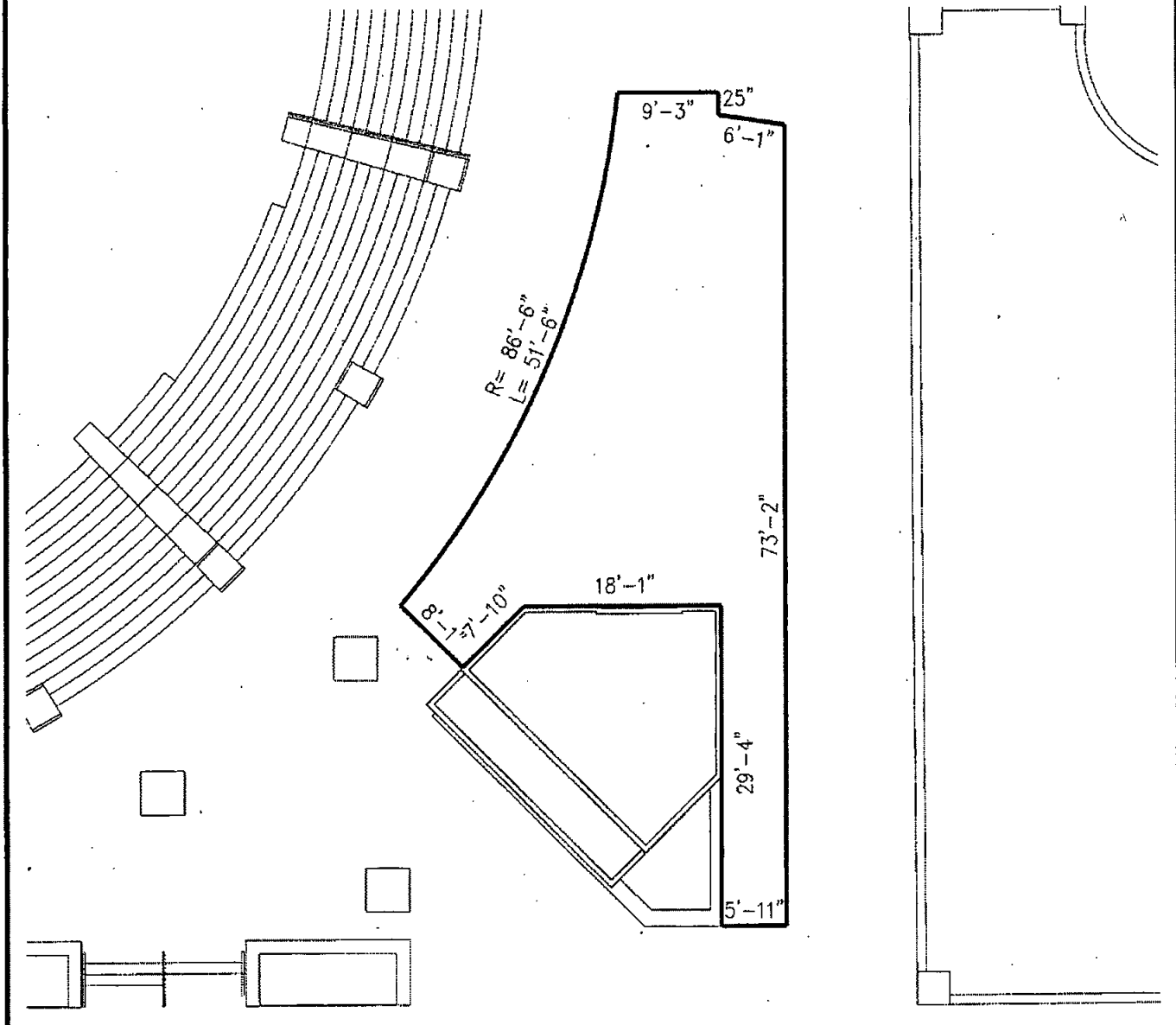
This LOD was produced prior to 100% CD phase and/or during development of an expansion. Layout/GLA subject to change per Base Building updates.



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

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

VERSION B



HORTON PLAZA URBAN PARK

324 HORTON PLAZA SAN DIEGO, CALIFORNIA 92101-5481

SITE

02/13/15

PFSU2

STARBUCKS COFFEE - PATIO AREA

1,243 S.F.

EXHIBIT

A4

STARBUCKS

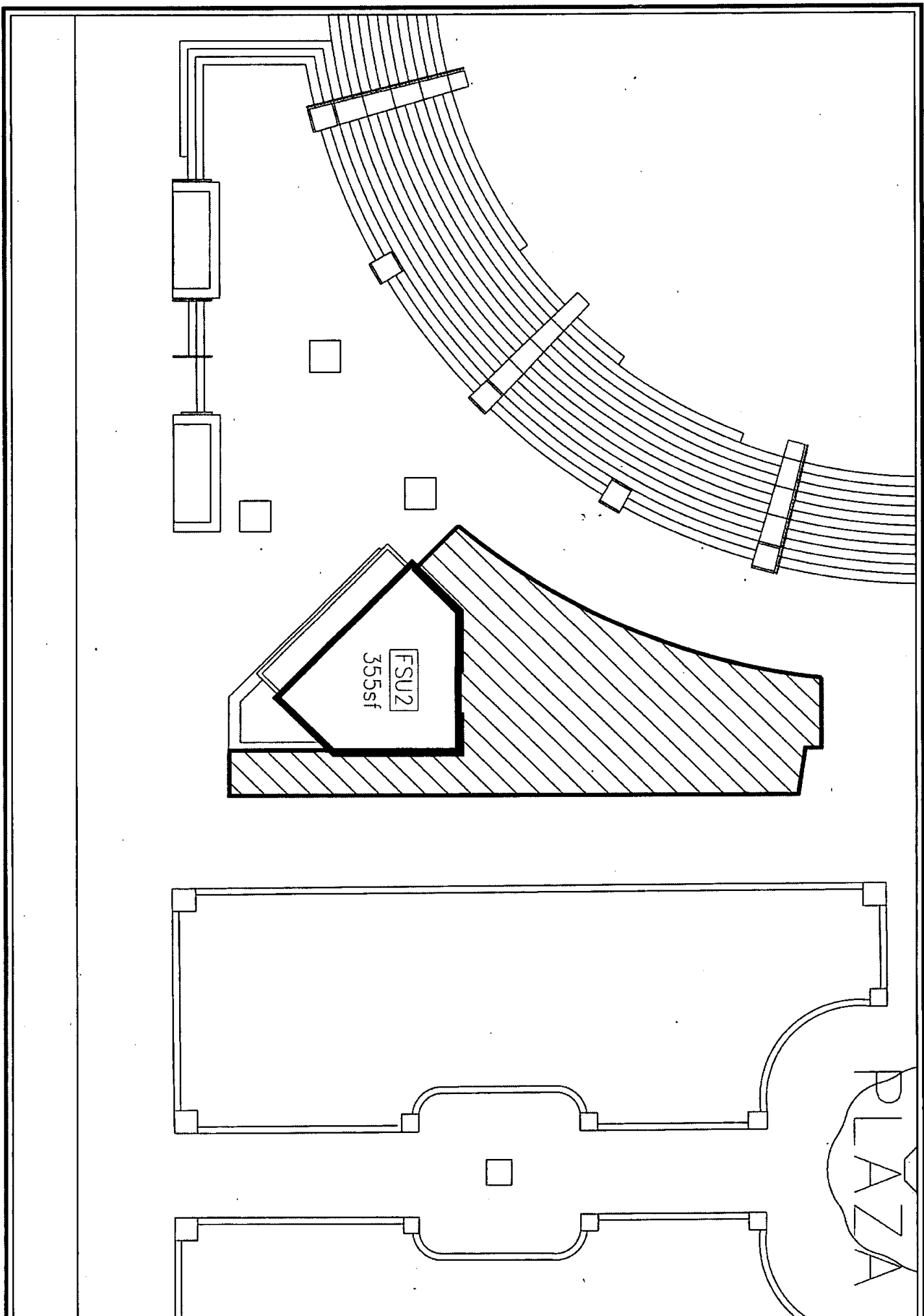


EXHIBIT A5 - TRASH AREA

SPACE: FSU2
STARBUCKS COFFEE

This drawing is diagrammatic and shows only approximate conditions, locations, quantities and proposed elements. The size, location, identity or existence of any element or specific occupant may be added eliminated or modified at the sole and absolute discretion of the Landlord. Failure to verify actual conditions shall be at the sole risk and responsibility of the tenant.

LEASE PLAN

N.T.S
SCALE

Westfield

Horton Plaza Urban Park

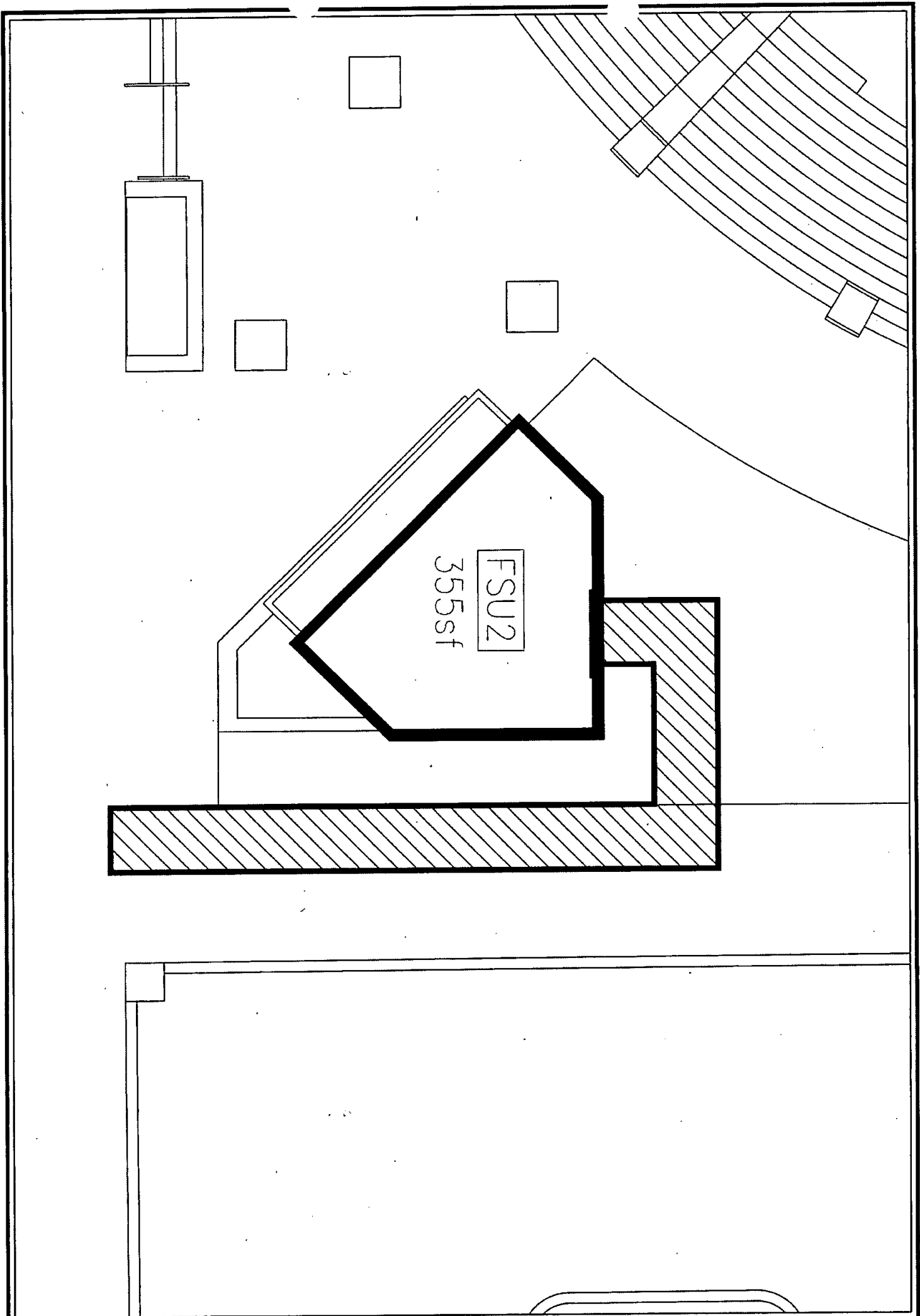
334 HORTON PLAZA SAN DIEGO, CALIFORNIA 92101-6481 (619) 239-8180



HORTON PLAZA
Jul 06, 2015

A5
Site

STARBUCKS



**EXHIBIT A6 - ACCESS TO PARK /
PLAZA DEVELOPMENT & PREMISES**

**SPACE: FSU2
STARBUCKS COFFEE**

This drawing is diagrammatic and shows only approximate conditions, locations, quantities and proposed elements. The size, location, identity or existence of any element or specific occupant may be added eliminated or modified at the sole and absolute discretion of the Landlord. Failure to verify actual conditions shall be at the sole risk and responsibility of the tenant.

LEASE PLAN

**N.T.S
SCALE**

Westfield
Horton Plaza Urban Park

324 HORTON PLAZA SAN DIEGO, CALIFORNIA 92101-5491 (619) 235-8182



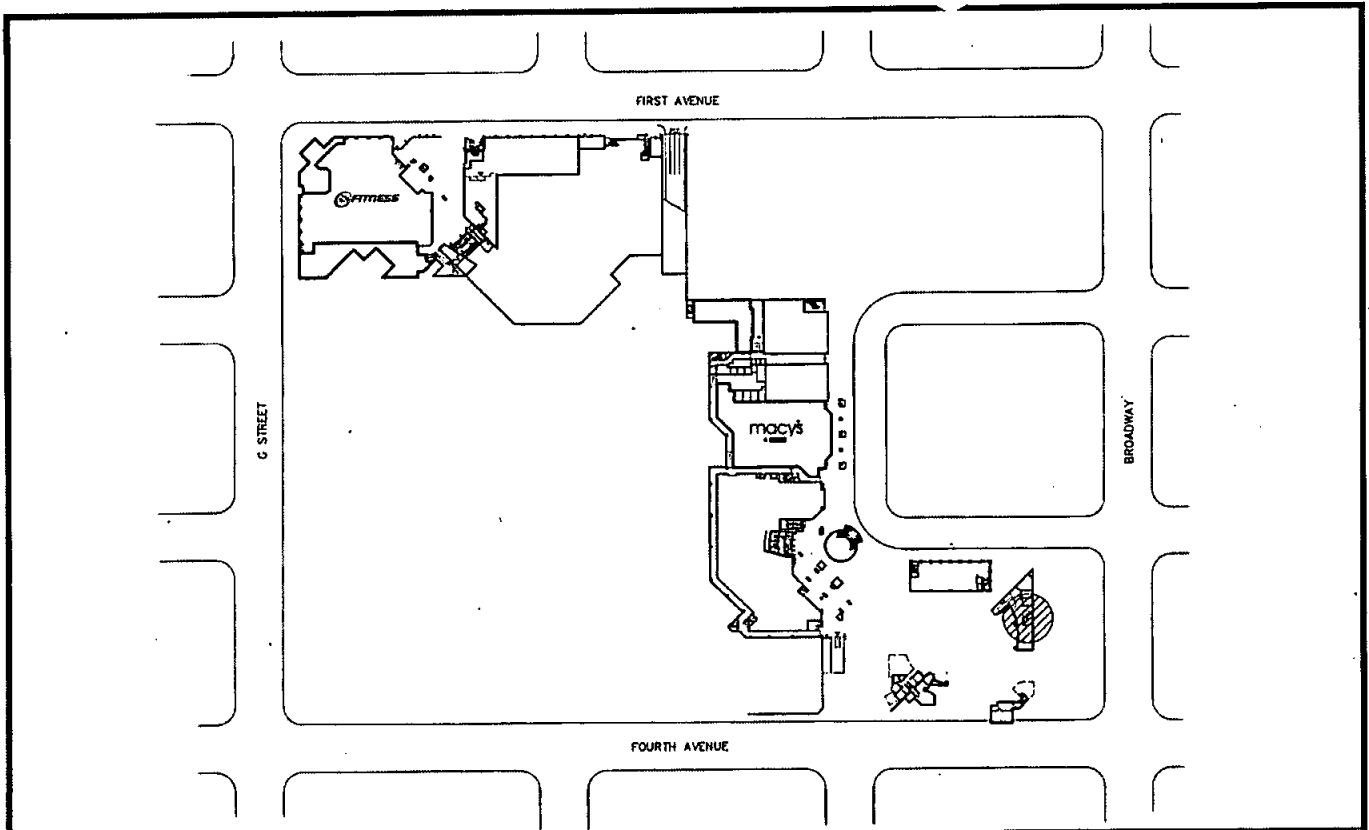
HORTON PLAZA

Jul 06, 2015

STARBUCKS

EXHIBIT A-7

INTENTIONALLY DELETED



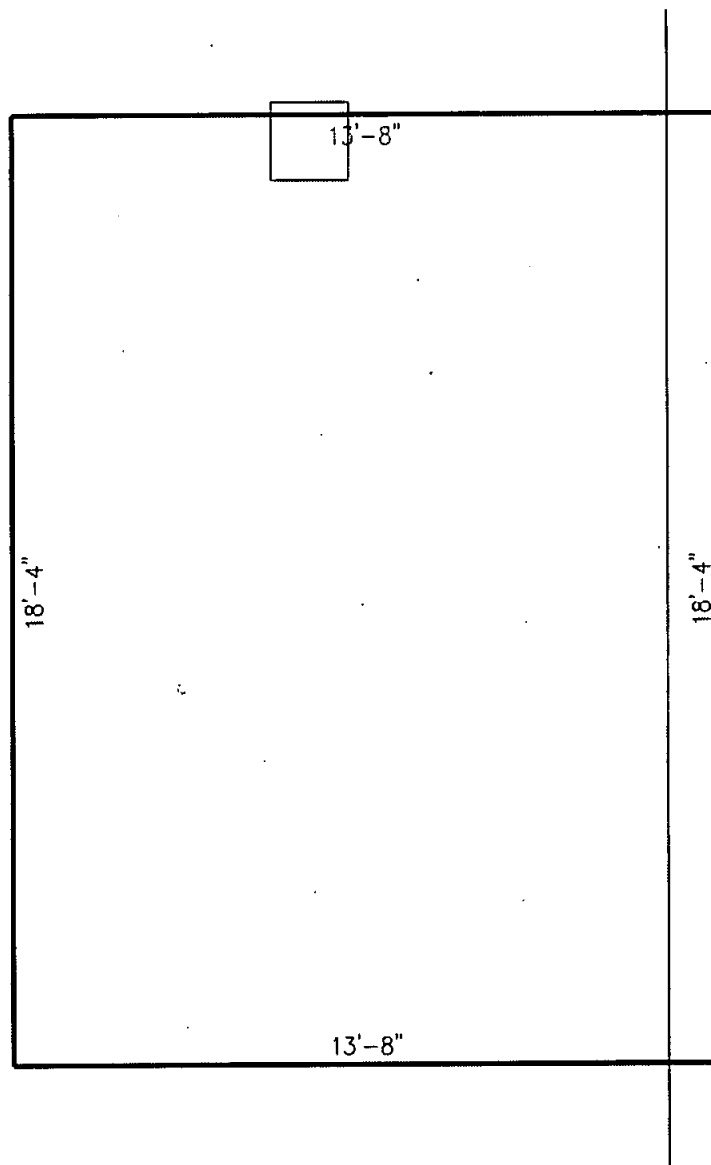
This LOD was produced prior to 100% CD phase and/or during development of an expansion. Layout/GLA subject to change per Base Building updates.



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

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

VERSION D



HORTON PLAZA URBAN PARK

324 HORTON PLAZA SAN DIEGO, CALIFORNIA 92101-5481

Lower Lvl 1

03/03/15

SFSU2 STARBUCKS COFFEE-STORAGE AREA

250 S.F.

EXHIBIT

A8

STARBUCKS

EXHIBIT B - DEVELOPMENT

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:

1. A building structure, the pavilion, with finished Common Areas, constructed of such materials as are permitted by the governing codes.
2. Tenant area will be provided with compacted fill and concrete-ready floor slab to be installed by Tenant in accordance with Article V of this Exhibit B. In all areas where the concrete floor slab is not provided within the Premises, Tenant shall be required at Tenant's expense to furnish and install the concrete floor slab in accordance with Tenant's Drawings.
3. As may be required of Landlord by any jurisdictional authority, Landlord shall provide, at all common corridor demising walls, partition enclosure of the Premises with five-eighth inch (5/8") fire code gypsum board or other approved material on the corridor side only.
4. All building finishes outside of the Premises which are not specifically made the responsibility of Tenant or another tenant of the Development.
5. A main electrical service distribution system of a type and capacity set forth in the Tenant Design Criteria Package and Landlord's Base Building Drawings and consisting of the following facilities:
 - a. A remote electrical meter service area outside the Premises.
 - b. Main electrical service distribution equipment within the remote electrical service area, from which Tenant's main electrical service will be available.
 - c. Intentionally Deleted.
 - d. Electrical service distribution panel with electrical conductors within Tenant's premises. Service panel location and service size and capacity is located as-is, as identified in Landlord's Base Building Drawings.
6. A main telephone service terminal board located outside the Premises and empty conduit from the main telephone service terminal board location to a location within Tenant's premises for which Tenant's main telephone service shall be available.
7. A domestic water service main and cold water supply line for the Premises, from which Tenant's domestic water service shall be available. See Section V.C.5 for water meter procurement responsibilities.
8. A sanitary sewer service main for the Premises, from which Tenant's sanitary sewer service shall be available.
9. A grease waste service line point of connection connected to a grease waste interceptor. Capacity and service size of the grease waste line and grease interceptor shall be as-is, where located in Landlord's Base Building Drawings.
10. A gas service line, size and capacity as indicated in Landlord's Base Building Drawings, located directly adjacent to the premises.
11. Intentionally Deleted.
12. Intentionally Deleted.
13. Landlord shall supply and install Premises exterior storefront glass, doors and windows per Landlord's Construction Documents. Any changes to these surfaces shall be at Tenant's expense and shall be pre-approved by Landlord.
14. Installation of all exterior doors and associated hardware as may be required to complete the Premises. Such doors and hardware shall comply with all required fire ratings.
15. A remote storage area as depicted on Exhibit A-8 which may be used as "Wet Storage" or "Dry Storage" only ("Storage Area"), as is permitted by municipal authorities.

- a. Storage Area will be provided with broom-swept concrete floor slab on grade. Tenant shall be required, at Tenant's expense, to modify and reinstate the concrete floor slab in accordance with Tenant's Drawings.
- b. Intentionally Deleted.
- c. Landlord shall provide all building finishes outside of the Storage Area which are not specifically made the responsibility of Tenant or another tenant of the Park/Plaza Development.
- d. The installation of metal studs to separate the Storage Area from adjoining stores and/or Common Areas. Such studs shall extend from the finished floor elevation to the underside of the deck above with Storage Area with five-eighth inch (5/8") fire code gypsum board or other approved material on common area side.
- e. Installation of all doors and associated hardware as may be required to complete the Storage Area. Such doors and hardware shall comply with all required fire ratings
- f. A common electrical service distribution system of a type and capacity set forth in the Landlord's Base Building Drawings.
 - (i) A remote electrical service area outside the Storage Area with common sub-panel with 120/208 3ph 4w supply.
 - (ii) Intentionally Deleted.
- g. Relocation of any thermostat controls to common area side.

IV. LANDLORD'S WORK AT TENANT'S EXPENSE

- A. Tenant Reimbursement Costs. Landlord may, at Landlord's sole discretion, provide for Tenant's account the following items of equipment or services at Tenant's cost ("Tenant Reimbursements"). The cost for Tenant Reimbursements shall Landlord's actual cost payable as Additional Rent and billed by Landlord at any time on or after the Commencement Date of the Lease.
 - 1. Temporary electrical power for Tenant's use during all or part of the construction of the Premises. Landlord reserves the right to limit both the amount of power consumed and the times such power is available.
 - 2. Trash containers for use by Tenant or Tenant's General Contractor during all or part of Tenant's construction of the Premises.
 - 3. Temporary toilet facilities for use by Tenant's General Contractor and construction personnel during Tenant's construction of the Premises.
- B. Tenant Contractor Costs. In addition to the Tenant Reimbursements set forth above, Landlord may provide for Tenant's account, as Landlord deems necessary or practical, in Landlord's sole opinion, or as may be requested of Landlord by Tenant or Tenant's General Contractor, items of construction, equipment, improvements or services at Tenant's cost. For Tenant's convenience, Landlord shall charge Tenant's General Contractor directly for these various items, either prior to the commencement of Tenant's Work, or at such other time(s) as Landlord may deem appropriate. In the event that Tenant's General Contractor shall refuse to pay Landlord for such items, Landlord shall invoice Tenant directly for reimbursement. Such items may include, but not necessarily be limited to, the following:
 - 1. Common Area granite paving for use at Tenant's storefront if damaged or broken during construction.
 - 2. Temporary construction barricade in the event Tenant does not construct and install its own temporary construction barricade in accordance with Landlord's criteria, including compliance with Landlord's barricade graphics program.
 - 3. Based upon the electrical service sizing criteria set forth in the Tenant Design Criteria Package, a main electrical service protection device (circuit breaker or fuse socket) located within the remote electrical service area, from which Tenant's main electrical service will be available.
 - 4. (Only applicable for FSU-1) Drainage and filling services for the sprinkler system main serving the Premises to facilitate Tenant's construction.

5. (Only applicable for FSU-1) Programming and testing of the fire alarm devices and sequence of operations, but shall not be connected.
6. (Only applicable for FSU-1) A branch piped skeletal fire sprinkler system within the Premises in accordance with Landlord's insurance carrier requirements, the requirements of the local fire marshal, all governing building codes and applicable NFPA standards and the Tenant Design Criteria Package. Landlord may install or may have installed sprinkler system components (including, but not limited to, system valves, branch lines, drops, and heads) in the Premises.

V. TENANT'S WORK AT TENANT'S EXPENSE

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

A. General Construction Requirements.

1. Tenant shall be responsible to finish and level any concrete floor slab(s) within the Premises, as may be required to accept Tenant's finished floor material and eliminate any tripping hazards. Where floor slab elevations within the Premises are above or below Common Area floor elevations, Tenant shall provide the necessary transitions at storefront areas and rear service door areas to make the floor of the Premises even with any adjoining floor elevation. Tenants shall furnish and install concrete floor slabs at any slab leave-out locations in accordance with the Base Building Drawings.
2. Installation of a finished floor in all areas within the Premises visible to the public.
3. Installation of a finished ceiling throughout the Premises in accordance with the Tenant Design Criteria Package (or as otherwise approved by Landlord and all jurisdictional authorities).
4. Installation of fire rated partitioning and enclosures throughout the Premises as may be required by Landlord or Owner (as defined in the Lease), all governing codes and all jurisdictional authorities.
5. Installation of interior partitioning and completion of demising walls (fire rated gypsum board or other required finish) throughout the Premises, as may be required to complete the Premises.
6. Installation of all construction and finish materials throughout the Premises and on the storefront of the Premises which are not specifically made the responsibility of Landlord. Such material installations shall include, but not be limited to, all wall coverings, floor coverings, and ceiling materials.
7. Installation of all interior doors and associated hardware as may be required to complete the Premises. Such doors and hardware shall comply with all required fire ratings.
8. Installation of all furniture, fixtures, cabinetwork, shelving, personal property, and equipment as may be required to complete the Premises.
9. Tenant shall ensure that all slab and roof penetrations which are a part of Tenant's Work are structurally reinforced, properly sealed and remain watertight to prevent possible damage. Failure to do so shall be at the sole risk and expense of Tenant in the event damage occurs. All such penetrations must conform to the Standards and any other Landlord criteria and shall be subject to Landlord's approval as to location and construction details. Roofing and weatherproofing of any installation or penetration by Tenant must be performed by Landlord's authorized roofing contractor, and Tenant shall pay all costs therefor directly to such roofing contractor.
10. Tenant shall install a sufficient number and capacity of floor drains so as to properly mitigate overflow water in the Premises. In the event Tenant converts Storage Area to "wet" storage, T will similarly address Storage Area so as to prevent overflow of water from reaching adjacent spaces/common area.
11. Installation of thermal and acoustical insulation within the Premises as required to comply with the following:
 - a. Installation of thermal insulation shall meet with the Standards and requirements of all governing codes and jurisdictional authorities, as may be required to complete the Premises.
 - b. Installation of acoustical insulation, sound dampening material, or roof equipment mounting details shall meet with the Standards and the requirements

of all governing codes, specifically including the Tenant Design Criteria Package. At a minimum, Tenant shall install sufficient acoustical insulation to prevent the transmission of any sound or noise in excess of 80 decibels (dB) above standing noise from the Tenant's Patio Seating Area. Tenant agrees that the 80 dB sound level may above standing noise be verified by Landlord through the use of a portable sound level meter, and, in the event Landlord determines that Tenant is transmitting sound or noise outside the Premises in excess of the 80 dB level above standing noise, Tenant will immediately resolve this condition in a manner approved by Landlord.

- c. Those premises located below or immediately adjacent to a theater which is located within the Shopping Center shall be subject to and comply with the noise limits and mitigation guidelines set forth in Exhibit B-1 attached hereto.
12. Mezzanines will not be permitted within the Premises without Landlord's prior written approval. Where permitted, mezzanines shall be designed and installed to be independent of the building structure and shall comply with the requirements of the Tenant Design Criteria Package and all governing codes.
- B. 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 Landlord for the Shopping Center.
- C. 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.
 - 4. Tenant shall make all required plumbing system installations to serve the Premises. Where provided, Tenant shall connect to, and extend from the sanitary sewer and

domestic water service mains provided by Landlord for the Premises. All such installations shall comply with the following:

- a. Tenant shall procure and install a water check valve and pressure regulating valve as required.
5. Restaurant, food, and salon uses, or any other uses that require domestic water usage, will be required to procure a water meter located within the specified location as determined by Landlord in Landlord's construction documents. Procurement shall include but not be limited to payment of all services required to procure said water meter from the local service provider.
6. Tenant shall install a branch piped fire sprinkler system within the Premises (for FSU-1 only). Tenant shall connect to Landlord's fire sprinkler supply main, or branch, and extend piping for branches, drops, and heads, as required to complete the fire sprinkler system within the Premises in accordance with 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. Tenant sprinkler system shop drawings and calculations must be submitted for review and approval by all local authorities having jurisdiction prior to installation of the sprinkler system.
7. Final connection to Landlord's fire sprinkler supply main shall not be made until the entire system within the Premises is completed, pressure tested and ready for service.
8. Tenant shall provide a heating, ventilating, and air conditioning (HVAC) system to serve the Premises. The location of any equipment outside the Premises shall be located within the screened-in roof area of the building the Premises is located and approved in writing by Landlord. The design and installation of the HVAC system shall be in accordance with the Standards and the provisions of the Tenant Design Criteria Package.
9. Tenant shall provide, as required, all exhaust air systems to serve the Premises in accordance with the Standards, including the provisions of the Tenant Design Criteria Package and Landlord's Base Building Drawings.
10. As determined by Landlord, at Landlord's sole discretion, tenants having odor-producing operations must maintain a negative pressure within their Premises and shall install a high velocity forced draft ventilation system with odor eliminating filtration systems discharging to the atmosphere via the roof area. Tenant shall be responsible for proper diffusion of the exhaust in such a manner as to prevent these odors from entering adjacent air intakes. The total exhaust from the Premises must exceed maximum make up air provided for the Premises by an amount exceeding the minimum outside air requirements of the heated/air-conditioned area for the Premises. Tenant shall provide and install all necessary components of said system in a manner acceptable to Landlord, at Tenant's sole cost and expense. Said system shall include, but not be limited to, exhaust hood(s), make up and exhaust ducts, fire dampers and fire rated duct chases/shafts where required (construction as required by code and located in areas approved by Landlord), exhaust and make-up fans, controls and grease drip pans.
11. In the event Tenant desires the use of a natural gas service, Tenant shall provide all required natural gas piping valves, regulators, from the point of connection provided by Landlord from which Tenant's natural gas service will be available. All pipe routing, earthquake valves and installation details shall be in accordance with all applicable governing codes and subject to Landlord's prior approval. Tenant's responsibility requirement shall include but not be limited to the procurement and installation of a gas flow meter located adjacent to Tenant's premises to monitor Tenant's usage. Said flow meter type and specifications may be specified by Landlord, at Landlord's sole discretion.

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.

- D. Tenant's Work shall include the procurement of all necessary permits, licenses, variances and utility services required to facilitate Tenant's construction and occupancy of the Premises, and the payment of any fees and taxes, 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.
- E. Tenant shall not use any materials in connection with Tenant's Work which contain asbestos or other materials or substances that are hazardous or toxic. In the event that Tenant introduces or allows to be introduced in the Premises any asbestos containing material or other material or

substance that is now or may hereafter be defined as hazardous or toxic or is otherwise regulated as a material or substance posing a potential health threat to persons, then prior to the expiration or earlier termination of this Lease or as required by applicable federal, state or local laws, rules or regulations, Tenant shall, at Tenant's sole cost and expense, remove any such materials or substances in accordance with all applicable federal, state or local laws, rules or regulations and in the manner that Landlord may direct which may include the use of contractors and/or consultants specified by Landlord.

- F. 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.
- G. A remote storage area as depicted on Exhibit A-8 shall be limited to "Dry Storage" only ("Storage Area").
 - 1. If required, Tenant shall install a smoke evacuation system within the Storage Area. 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.
 - 2. Tenant shall make all required plumbing system installations to serve the Storage Area. Where provided, Tenant shall connect to, and extend from the sanitary sewer as required.
 - 3. Tenant shall connect to Landlord's fire sprinkler supply main, or branch, and extend piping for branches, drops, and heads, as required to complete the fire sprinkler system within the Storage Area 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. Tenant sprinkler system shop drawings and calculations must be submitted for review and approval by all local authorities having jurisdiction prior to installation of the sprinkler system
 - a. Final connection to Landlord's fire sprinkler supply main shall not be made until the entire system within the Storage Area is completed, pressure tested and ready for service.
 - 4. Tenant shall provide, as required, all exhaust air systems to serve the Storage Area in accordance with the Standards and Landlord's Base Building Drawings.
 - 5. Tenant may be required to provide additional items of work or services as a part of Tenant's Work as required by code. If applicable, any such work or services shall be provided in accordance with the Standards or the provisions of the Landlord "Base Building Drawings"
- H. Tenant agrees that Landlord shall be making modification to the kiosks outside of the approved Construction Documents (prepared by Walker Macy) the cost of which shall be at Tenant's sole cost and expense. Tenant agrees to reimburse Westfield Development Inc. for all costs associated with said changes within thirty (30) days of invoice from Westfield Development Inc.

VI. PLANS

- A. Landlord shall furnish to Tenant or, at Tenant's direction, to Tenant's agent, certain design and construction information pertinent to the Premises, including, but not limited to, one (1) copy of the Tenant 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.

VII. GENERAL BUILDING SPECIFICATIONS

- A. Tenant shall engage the services of a licensed general contractor ("Tenant's General Contractor") for the purpose of constructing the Premises and performing related services as required to complete Tenant's Work. Tenant's General Contractor shall 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 Shopping Center or any other work, and Tenant further agrees to

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

Tenant will comply with the instructions of Landlord or Landlord's General Contractor for the purpose of avoiding, ending and/or minimizing labor disputes, 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

w/ a copy to:

City of San Diego
1200 Third Street, Suite 1700
San Diego, California 92101
Attn: 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, in the amount of \$5,000.00, which shall be fully refundable. 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.

VIII. COMPLETION OF CONSTRUCTION

A. Tenant shall not be permitted to, and shall not, open for business in the Premises until the "Opening Requirements" set forth below are met:

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 Shopping Center 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.

IX. INSURANCE

A. Tenant shall secure, pay for and maintain, or cause Tenant's General Contractor to secure, pay for and maintain, for all periods of construction and fixturing work within the Premises, all of the insurance policies required in the amounts as set forth herein below. Tenant shall not permit 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

ADDENDUM TO EXHIBIT B

INTENTIONALLY DELETED

EXHIBIT B-1

BACKGROUND MUSIC NOISE MITIGATION REQUIREMENTS FOR TENANTS LOCATED BELOW and / or ADJACENT TO THEATERS

Qualitative Description of Background Noise	Maximum r.m.s. Sound Pressure Level *			Noise Mitigation Guidelines **
	dBA	In any Octave Band 31 - 250Hz dB re: 20 µ Pa+	In any Octave Band 500-8000 Hz dB re: 20 µ Pa+	
"Soft to "Medium"	<70 dBA	< 80	< 70	None
"Loud"	70 – 85 dBA	< 85	< 85	Suspended loudspeakers must be vibrations isolated using one inch (1") deflection spring hangers.
"Very Loud"	> 85 dBA	> 85, but not exceeding 95°	>85, but not exceeding 95°	Acoustical analysis is required by an independent acoustical consultant. Acoustical analysis will document: noise levels, floor ceiling assembly, location of speakers, details of floor ceiling penetration, etc. Construction requirements may include: single/multi level vibration isolated drywall ceiling with <12" gap between ceiling and slab above; batt insulation in the cavity; vibration isolation of speakers; sound attenuates within ductwork penetrating floor ceiling construction; etc.

- * Measured during the hours of simultaneous operation of Tenant and the theater above.
- + Octave band sound pressure levels dB re: 20 µ PA
- ° Sound levels generated in Food Court, Common Areas or tenant areas shall not be permitted to exceed 95 dB (octave band sound pressure level, dB re: 20 µ Pa) at any time.
- ** Provided for guidance only. Tenant is required to meet the above requirements irrespective of the mitigation guidelines presented.

EXHIBIT C

ADDITIONAL INSURED ENTITIES

HORTON PLAZA URBAN PARK

- (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

INTENTIONALLY DELETED

EXHIBIT E

INTENTIONALLY DELETED

EXHIBIT F
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 Shopping Center 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 Shopping Center, the roof of the Shopping Center, the warranty for the roof of the Shopping Center, or the safety of the Shopping Center; (ii) does not adversely affect in any material manner the electrical, mechanical, or any other systems of the Shopping Center or the functioning thereof; (iii) does not adversely interfere with the operation of the Shopping Center or the provision of services or utilities to other current or future tenants in the Shopping Center; 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 Shopping Center 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, 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 Shopping Center or any part thereof, including without limitation the land on which the Shopping Center is located.