

LEASE

SLOAN'S
TRADE NAME

HORTON FUN LAND, LLC
TENANT

FSU3
KIOSK NUMBER

Westfield®

**HORTON PLAZA
URBAN PARK**

INDEX TO LEASE

	Page No.		Page No.
DATA SHEET AND GRANT	1	Section 18 03 Adjustments in Minimum Annual Rental and Additional Rent	29
ARTICLE I GRANT AND TERM		Section 18 04 Payment of Proceeds Award	29
Section 1 01 Conditions of Grant	5	ARTICLE XIX DEFAULT	
Section 1 02 Term	5	Section 19 01 Rights Upon Default	30
Section 1 03 Late Opening	6	ARTICLE XX BANKRUPTCY OR INSOLVENCY	
ARTICLE II RENTAL		Section 20 01 Tenant's Interest Not Transferable	31
Section 2 01 Minimum Annual Rental	6	Section 20 02 Termination	31
Section 2 02 Percentage Rental	6	Section 20 03 Tenant's Obligations to Avoid Creditors' Proceedings	32
Section 2 03 Gross Sales	7	Section 20 04 Election to Assume Lease	32
Section 2 04 Intentionally Deleted	8	Section 20 05 Subsequent Bankruptcy	32
Section 2 05 Trash Removal Charge	8	Section 20 06 Assignment	32
Section 2 06 Additional Rent	9	Section 20 07 Occupancy Charges	32
Section 2 07 Late Charge	9	Section 20 08 Consent	32
Section 2 08 Tenant's Payment Obligations	9	Section 20 09 Attorney Fees	33
ARTICLE III RECORDS AND BOOKS OF ACCOUNT		Section 20 10 Other Laws	33
Section 3 01 Tenant's Records	9	ARTICLE XXI ACCESS BY LANDLORD	
Section 3 02 Reports by Tenant	9	Section 21 01 Right of Entry	33
ARTICLE IV AUDIT		ARTICLE XXII TENANT'S PROPERTY	
Section 4 01 Right to Examine Books	10	Section 22 01 Taxes on Tenant's Property	34
Section 4 02 Audit	10	Section 22 02 Loss and Damage	34
ARTICLE V CONSTRUCTION OF PREMISES		Section 22 03 Notice by Tenant	34
Section 5 01 Construction of Premises	10	ARTICLE XXIII HOLDING OVER	
Section 5 02 Certificate of Occupancy	11	Section 23 01 Holding Over	34
Section 5 03 Condition of Premises	11	Section 23 02 Successors	34
Section 5 04 Ultimate Rental Commencement Date	11	ARTICLE XXIV RULES AND REGULATIONS	
Section 5 05 Required Improvements	11	Section 24 01 Rules and Regulations	34
ARTICLE VI ALTERATIONS, CHANGES AND ADDITIONS		ARTICLE XXV QUIET ENJOYMENT	
Section 6 01 Alterations by Tenant	12	Section 25 01 Landlord's Covenant	35
Section 6 02 Removal by Tenant	12	ARTICLE XXVI INTENTIONALLY DELETED	
Section 6 03 Changes and Additions	12	ARTICLE XXVII MISCELLANEOUS	
Section 6 04 Rights of Landlord	13	Section 27 01 Waiver, Election of Remedies	35
ARTICLE VII CONDUCT OF BUSINESS BY TENANT		Section 27 02 Entire Agreement	35
Section 7 01 Permitted Use	13	Section 27 03 Interpretation, Use of Pronouns, Authority	35
Section 7 02 Operation of Business	14	Section 27 04 Delays, Force Majeure	36
Section 7 03 Hazardous Materials	16	Section 27 05 Notices	36
Section 7 04 Radius	18	Section 27 06 Captions and Section Numbers	36
ARTICLE VIII COMMON AREAS		Section 27 07 Broker's Commission	36
Section 8 01 Operation and Maintenance of Common Areas	18	Section 27 08 Intentionally Deleted	36
Section 8 02 Use of Common Areas	18	Section 27 09 Furnishing of Financial Statements	36
Section 8 03 Common Area Operating Costs and Expenses	19	Section 27 10 Waiver of Counterclaim or Defenses in Action for Possession	37
ARTICLE IX SIGNS		Section 27 11 Intentionally Deleted	37
Section 9 01 Tenant's Signs	19	Section 27 12 Floor Area	37
ARTICLE X MAINTENANCE OF PREMISES		Section 27 13 Interest on Past Due Obligations	37
Section 10 01 Landlord's Obligations for Maintenance	20	Section 27 14 Liability of Landlord	37
Section 10 02 Tenant's Obligations for Maintenance	20	Section 27 15 Accord and Satisfaction	37
ARTICLE XI INSURANCE AND INDEMNITY		Section 27 16 Execution of Lease, No Option	38
Section 11 01 Tenant's Insurance	20	Section 27 17 Governing Law	38
Section 11 02 Owner's/Landlord's Insurance	22	Section 27 18 Specific Performance of Landlord's Rights	38
Section 11 03 Covenant to Hold Harmless	22	Section 27 19 Survival of Tenant's Obligations	38
Section 11 04 Waiver of Right of Recovery	22	Section 27 20 Certain Rules of Construction	38
ARTICLE XII UTILITIES		Section 27 21 Confidentiality	38
Section 12 01 Utility Charges	23	Section 27 22 Attorney Fees	38
ARTICLE XIII ESTOPPEL STATEMENT, ATTORNMEN AND SUBORDINATION		Section 27 23 Index	39
Section 13 01 Estoppel Statement	24	Section 27 24 Warver of Trial by Jury	39
Section 13 02 Attornment	24	Section 27 25 Mortgagee Changes	39
Section 13 03 Subordination	24	Section 27 26 Real Estate Investment Trust	39
Section 13 04 Remedies	24	Section 27 27 Equal Employment Opportunity	41
ARTICLE XIV ASSIGNMENT AND SUBLETTING		Section 27 28 Storage Area	39
Section 14 01 Restrictions on Transfer	24	Section 27 29 Patio Area	40
ARTICLE XV WASTE OR NUISANCE		Section 27 30 Equal Opportunity and Contracting	41
Section 15 01 Waste or Nuisance	27	Section 27 31 Equal Benefits	41
ARTICLE XVI TRADE NAME, PROMOTIONAL PROGRAM AND MEDIA FUND		Section 27 32 Disabled Access Compliance	41
Section 16 01 Trade Name	28	Section 27 33 Accessibility Assessment	41
Section 16 02 Promotional Program	28	Section 27 34 Drug-Free Workplace	41
ARTICLE XVII DAMAGE AND DESTRUCTION		Section 27 35 Intentionally Deleted	42
Section 17 01 Reconstruction of Damaged Premises	28	Section 27 36 Local Business Employment	42
Section 17 02 Landlord's Option to Terminate Lease	28	Section 27 37 Water Quality - Best Management Practices	42
Section 17 03 Total or Partial Destruction of Premises	29	Section 27 38 Nondiscrimination	42
Section 17 04 Casualty During Last Lease Year	29	Section 27 39 Standard of Employees	42
Section 17 05 Notice of Casualty	29	Section 27 40 Consent	42
ARTICLE XVIII EMINENT DOMAIN		EXHIBITS - See Data Sheet	
Section 18 01 Total Condemnation of Premises	29		
Section 18 02 Partial Condemnation	29		

HORTON PLAZA URBAN PARK

**City of San Diego
County of San Diego
State of California**

LEASE

THIS LEASE ("Lease") is made as of this 5th day of November, 2015, by and between **CITY OF SAN DIEGO**, a California municipal corporation ("City"), and the City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former body, corporate and politic ("Successor Agency"), hereinafter collectively referred to as "Owner", by and through their agent **HORTON PLAZA SERVICES, INC.**, a Delaware corporation, whose address is: 2049 Century Park East, 41st Floor, Los Angeles, California 90067 ("Landlord"), and **HORTON FUN LAND, LLC**, a California limited liability company, whose address is: 12848 Harwich Lane, San Diego, California 92130 ("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 Lease Section 1.01 (a), shall include the real property shown on **Exhibit A-1**.

The Premises is described as follows:

Space No.	Level	Description	Approximate Floor Area
FSU3	Site	Restaurant	347 square feet
P-FSU3	Site	Patio	1,279 square feet
S-FSU3	Lower Level 1	Storage Area	106 square feet

RECITALS

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

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

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

DATA SHEET

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

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

Latest Rental Commencement Date: See Section 1.02 of the Lease

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

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

Rental Commencement Date through the last day of the twelfth (12th) full month following the Rental Commencement Date: \$114,448.54;

From the first day of the thirteenth (13th) full month following the Rental Commencement Date through the last day of the twenty-fourth (24th) full month following the Rental Commencement Date: \$117,882.00;

From the first day of the twenty-fifth (25th) full month following the Rental Commencement Date through the last day of the thirty-sixth (36th) full month following the Rental Commencement Date: \$121,418.46;

From the first day of the thirty-seventh (37th) full month following the Rental Commencement Date through the last day of the forty-eighth (48th) full month following the Rental Commencement Date: \$125,061.01;

From the first day of the forty-ninth (49th) full month following the Rental Commencement Date through the last day of the sixtieth (60th) full month following the Rental Commencement Date: \$128,812.84;

From the first day of the sixty-first (61th) full month following the Rental Commencement Date through the last day of the seventy-second (72nd) full month following the Rental Commencement Date: \$132,677.23;

From the first day of the seventy-third (73th) full month following the Rental Commencement Date through the last day of the eighty-fourth (84th) full month following the Rental Commencement Date: \$136,657.54;

From the first day of the eighty-fifth (85th) full month following the Rental Commencement Date through the last day of the ninety-sixth (96th) full month following the Rental Commencement Date: \$140,757.27;

From the first day of the ninety-seventh (97th) full month following the Rental Commencement Date through the last day of the one hundred eighth (108th) full month following the Rental Commencement Date: \$144,979.99;
and

From the first day of the one hundred ninth (109th) full month following the Rental Commencement Date through the last day of the one hundred twentieth (120th) full month following the Rental Commencement Date: \$149,329.39;

Notwithstanding anything to the contrary contained herein, for the first month following the Rental Commencement Date, the Minimum Annual Rental set forth above shall be abated. It is expressly agreed and understood that the foregoing abatement of Minimum Annual Rental shall in no event be deemed to modify, reduce or abate Tenant's obligation to pay all other Additional Rent charges under the Lease including Percentage Rental, nor shall such abatement change or modify in any way the Rental Commencement Date.

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

Percentage Rental Rate: Ten percent (10%) of Gross Sales in excess of the Annual Breakpoint(s) as follows:

Rental Commencement Date through the last day of the twelfth (12th) full month following the Rental Commencement Date: \$1,000,000.00;

From the first day of the thirteenth (13th) full month following the Rental Commencement Date through the last day of the twenty-fourth (24th) full month following the Rental Commencement Date: \$1,040,000.00;

From the first day of the twenty-fifth (25th) full month following the Rental Commencement Date through the last day of the thirty-sixth (36th) full month following the Rental Commencement Date:

\$1,081,600.00;

From the first day of the thirty-seventh (37th) full month following the Rental Commencement Date through the last day of the forty-eighth (48th) full month following the Rental Commencement Date:

\$1,124,864.00;

From the first day of the forty-ninth (49th) full month following the Rental Commencement Date through the last day of the sixtieth (60th) full month following the Rental Commencement Date:

\$1,169,858.56;

From the first day of the sixty-first (61st) full month following the Rental Commencement Date through the last day of the seventy-second (72nd) full month following the Rental Commencement Date:

\$1,216,652.90;

From the first day of the seventy-third (73rd) full month following the Rental Commencement Date through the last day of the eighty-fourth (84th) full month following the Rental Commencement Date:

\$1,265,319.02;

From the first day of the eighty-fifth (85th) full month following the Rental Commencement Date through the last day of the ninety-sixth (96th) full month following the Rental Commencement Date:

\$1,315,931.78;

From the first day of the ninety-seventh (97th) full month following the Rental Commencement Date through the last day of the one hundred eighth (108th) full month following the Rental Commencement Date:

\$1,368,569.05;

and

From the first day of the one hundred ninth (109th) full month following the Rental Commencement Date through the last day of the one hundred twentieth (120th) full month following the Rental Commencement Date:

\$1,423,311.81.

(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:** Primarily for the first class operation of a quick service Sloan's ice cream parlor selling gourmet ice cream, frozen custard, frozen yogurt, sorbet, ices, gelato, candy apples, brownies, doughnuts, cookies, other assorted bakery, pastry, and dessert items, home-made fudge, soda, milk, bottled water, juices, smoothies, milkshakes, and hot chocolate as further set forth on Tenant's Menu attached hereto and incorporated herein by reference as **Exhibit "F"**. The following items shall be permitted on an ancillary basis only: brewed coffee and tea, and pre-bottled coffee and tea beverages, and assorted novelty toys. Notwithstanding the foregoing, Tenant shall not advertise the sale of any non-affiliated, third party coffee beverages in 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:** SLOAN'S

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

Initial Assessment: None

(10) **Section 26.01: Security Deposit:** \$0.00

(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.

Tenant: To the Premises and:

Horton Fun Land, LLC
12848 Harwich Lane,
San Diego, California 92130
Attention: Ali Hajisatari

Billing Address:

Horton Fun Land, LLC
12848 Harwich Lane,
San Diego, California 92130
Attention: Ali Hajisatari

With a copy to:

Civic San Diego
401 B Street, Suite 400
San Diego, CA 92101-4298
Attn: Contracts Manager

(12) Guarantor: Ali Hajisatari, an individual, in accordance with the provisions of the Guaranty attached hereto.

ATTACHMENTS AND EXHIBITS

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

- EXHIBIT "A-1":.....SITE PLAN
- EXHIBIT "A-2":.....FLOOR PLAN
- EXHIBIT "A-3":.....LEGAL DESCRIPTION
- EXHIBIT "A-4":.....ACCESS TO PARK/PLAZA DEVELOPMENT AND PREMISES
- EXHIBIT "A-5":.....INTENTIONALLY DELETED
- EXHIBIT "A-6":.....TRASH AREA
- EXHIBIT "A-7":.....STORAGE AREA
- EXHIBIT "A-8":.....PATIO AREA
- EXHIBIT "B":.....CONSTRUCTION OF PREMISES
- EXHIBIT "B-1":.....BACKGROUND MUSIC NOISE MITIGATION
- EXHIBIT "C":.....SATELLITE DISH RIGHTS
- EXHIBIT "D":.....ADDITIONAL INSURED ENTITIES
- EXHIBIT "E":.....RULES AND REGULATIONS
- EXHIBIT "F":.....MENU
- GUARANTY.....ALI HAJISATARI

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66

ARTICLE I

GRANT AND TERM

Section 1.01 CONDITIONS OF GRANT.

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

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

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

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

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

Section 1.02 TERM.

The "Term" of this Lease shall commence on the date (the "Commencement Date") of the execution of this Lease by Landlord and Tenant. Tenant's obligation for payment of Minimum Annual Rental, 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 sixty (60) days following delivery ("Delivery Date") if the Premises to Tenant, said delivery and actual Delivery Date shall be as set forth in a written notice sent by Landlord to Tenant specifying same. Any occupancy of the Premises by Tenant following the Commencement Date and prior to the Rental Commencement Date shall be subject to all terms and conditions of this Lease other than payment of Rental. The Term of this Lease shall be ten (10) years and shall end on the Expiration Date set forth in Item (1) of the Data Sheet, unless sooner terminated in accordance with this Lease. Unless otherwise approved in writing by Landlord, Tenant shall open its store in the Premises for business to the public (with leasehold improvements pursuant to **Exhibit B** hereto completed and the Premises fully fixtured, stocked with current season merchandise in place and staffed, with Tenant prepared to engage in selling merchandise and/or services as provided pursuant to Article VII by the Rental Commencement Date. For the purposes of this Lease, the first lease year shall be the period commencing on the Rental Commencement Date and ending on January 31 next following; after the first lease year, the term "lease year" shall mean a fiscal year of twelve (12) consecutive calendar months ending on January 31 of each calendar year.

1 **Section 1.03 LATE OPENING.**

2 In the event Tenant shall fail to open its store for business by the Rental Commencement Date,
3 the parties agree that it is and will be impracticable and extremely difficult to determine the actual
4 damages suffered by Landlord. Therefore, the parties have agreed that in order to compensate Landlord
5 for its loss, Tenant shall pay to Landlord as Additional Rent, upon demand, the sum of \$500.00 per day
6 for each day Tenant delays its initial opening in accordance with Section 1.02 above, after and including
7 the Rental Commencement Date. This remedy shall be in addition to any and all other remedies provided
8 in this Lease or by law to Landlord in the event of default by Tenant. Such Additional Rent shall be
9 deemed to be in lieu of Percentage Rental only (as that term is defined in Section 2.02) that might have
10 been earned during the period of Tenant's failure to open. The amount has been determined based upon
11 numerous considerations including the fact that Landlord will have expended considerable sums of
12 money in reliance upon and based upon Tenant opening for business on the Rental Commencement Date.
13

14 **ARTICLE II**

15 **RENTAL**

16 **Section 2.01 MINIMUM ANNUAL RENTAL.**

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

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

33 **Section 2.02 PERCENTAGE RENTAL.**

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

40 (b) Percentage Rental shall be computed on all Gross Sales made during each lease year and
41 payable by Tenant in installments commencing on the date which is ten (10) days after that calendar
42 month of each lease year in which Gross Sales to date for such lease year exceed the Annual Breakpoint.
43 The first (1st) installment shall equal the product of (a) the Percentage Rental Rate and (b) the difference
44 between Gross Sales to date for such lease year and the Annual Breakpoint for such lease year.
45 Thereafter, for the balance of such lease year, each monthly installment of Percentage Rental shall be
46 payable simultaneously with the delivery of each monthly statement of Gross Sales and shall equal the
47 product of (i) the Percentage Rental Rate and (ii) Gross Sales for the month depicted on the monthly
48 statement.
49

50 (c) If, at the end of any lease year, the total amount of Percentage Rental paid by Tenant
51 based upon Gross Sales for such lease year exceeds the total amount of Percentage Rental required to be
52 paid by Tenant for such lease year, Tenant shall receive a credit, equivalent to such excess, against the
53 next monthly payments of Percentage Rental due from Tenant to Landlord under this Lease. If at the end
54 of the final lease year the total amount of Percentage Rental paid by Tenant exceeds the total amount of
55 Percentage Rental required to be paid by Tenant for such lease year, such excess shall be refunded to
56 Tenant after (i) Tenant has vacated the Premises in accordance with the provisions of this Lease and (ii)
57 any Rental due Landlord from Tenant under this Lease has been paid in full or deducted therefrom. If at
58 the end of any lease year, the total amount of Percentage Rental paid by Tenant for such lease year is less
59 than the total amount of Percentage Rental required to be paid by Tenant for such lease year, Tenant shall
60 pay the amount of such deficiency on or before the thirtieth (30th) day after the last day of such lease
61 year. Should any lease year contain less than twelve (12) calendar months, then, the Annual Breakpoint
62 shall be adjusted proportionately for such partial lease year.
63
64
65
66

(d) It is expressly understood and agreed that Landlord does not consider Minimum Annual Rental in itself a fair and adequate rental for the Premises and would not have entered into this Lease unless Tenant had obligated itself to pay Percentage Rental, which Landlord expects to supplement the Minimum Annual Rental and the Additional Rent to provide a fair and adequate rental return. Therefore, if Tenant fails to continuously operate its business in accordance with the terms of this Lease, fails to keep the required store hours, or vacates the Premises prior to the expiration of the Term hereof, Landlord will suffer damages in an amount which is not readily ascertainable and thus Landlord, in any such event, shall have the right, at its option, to collect as Additional Rent, and not as a penalty, in addition to all other charges and Minimum Annual Rental due hereunder, one-thirtieth (1/30th) of an amount equal to the greater of (a) the amount of Minimum Annual Rental due for the month in which Tenant failed to operate as required by this Lease, or (b) the average monthly amount of Minimum Annual Rental and Percentage Rental payable for the immediately preceding lease year, for each day or portion thereof during which Tenant fails to operate as required by this Lease including, without limitation, Tenant's failure to maintain the required store hours, and, in addition, Landlord shall have the right to treat any of such events as a material default and breach of this Lease.

Section 2.03 GROSS SALES.

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

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

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

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

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

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

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

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

(7) Sales to employees at discounted or reduced prices, in accordance with Tenant's standard employee discount plan; however, said exclusion for discounted merchandise shall not exceed one percent (1%) of Tenant's Gross Sales per annum;

1 (8) Sales of gift certificates, provided, however, that the value of gift certificates
2 shall be included in Gross Sales when redeemed, irrespective of where sold;

3
4 (9) Gratuities paid to Tenant's service personnel or collected by Tenant for
5 redistribution to Tenant's service personnel;

6
7 (10) Fees paid to third-party issuers of credit cards in connection with credit card
8 transactions included in Gross Sales; however, said exclusion for credit card fees shall not exceed one
9 percent (1%) of Tenant's Gross Sales per annum; and

10
11 (11) Insurance proceeds or other sums or credits received in the settlement of claims
12 for loss, damage or destruction of or to Tenant's merchandise or trade fixtures.

13
14 **Section 2.04 INTENTIONALLY DELETED.**

15
16 **Section 2.05 TRASH REMOVAL CHARGE.**

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

24
25 (b) Solid waste disposal contractors designated by Landlord shall remove trash from said
26 receptacles at such intervals as Landlord may determine, in Landlord's sole discretion. The Data Sheet
27 will set forth whether the Tenant will initially pay (i) the "Trash Removal Charge" as set forth on the Data
28 Sheet, or (ii) directly to the solid waste disposal contractor designated by Landlord. Landlord shall have
29 the right to change the method of payment at any time during the Term by providing Tenant thirty (30)
30 days' prior written notice.

31
32 (c) In the event Landlord elects that Tenant pay a Trash Removal Charge, Tenant shall be
33 solely responsible for and shall promptly pay, as Additional Rent hereunder, the sum set forth in the Data
34 Sheet as the "Trash Removal Charge" for each lease year during the Term in equal consecutive monthly
35 installments in advance on or before the first day of each month, without prior demand or notice. Such
36 Trash Removal Charge payable by Tenant shall be adjusted annually commencing on the 1st day of
37 January immediately following the Rental Commencement Date and each January 1st thereafter by the
38 annual percentage increase in the "Index" (as defined in Section 27.23) to the respective January or the
39 closest subsequent month thereto that the Index is published; provided, however, in no event shall Tenant
40 pay less than the Trash Removal Charge payable for the preceding year.

41
42 If Landlord elects that Tenant pay the solid waste disposal contractors directly, then
43 Landlord shall instruct such contractor to bill its charges directly to Tenant, and Tenant shall pay such
44 charges directly to the contractor, and no separate Trash Removal Charge shall be payable hereunder.

45
46 At any time during the Term, Landlord may, upon thirty (30) days' prior written notice to
47 Tenant, discontinue furnishing trash removal services to the Premises without thereby affecting this Lease
48 in any manner or otherwise incurring any liability to Tenant except that Landlord will no longer be
49 required to furnish trash removal services to the Premises. If Landlord does not provide such services and
50 if Landlord has elected not to retain a third party to provide such services, Tenant shall arrange for the
51 regular pickup of all trash, garbage and other solid waste with a contractor and upon terms approved in
52 writing by Landlord, in its sole discretion.

53
54 **Section 2.06 ADDITIONAL RENT.**

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

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35
- 36
- 37
- 38
- 39
- 40
- 41
- 42
- 43
- 44
- 45
- 46
- 47
- 48
- 49
- 50
- 51
- 52
- 53
- 54
- 55
- 56

18
19
20
21
22
23
24
25
26
27

19
20
21
22
23
24
25
26
27

28
29
30
31
32

33

34

35

38

39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58

50

51
52
53
54
55
56

1 or Annual Gross Sales Statement when due, Landlord, in addition to any other rights and remedies that
2 Landlord may have under this Lease, or at law or in equity, shall be entitled to assess an administrative
3 charge of \$50.00 for each such delinquent Gross Sales Statement to help defray additional expenses.

4 5 **ARTICLE IV**

6 7 **AUDIT**

8 9 **Section 4.01 RIGHT TO EXAMINE BOOKS.**

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

18 19 **Section 4.02 AUDIT.**

20 (a) At its option, Landlord may at any time upon twenty (20) days' prior written notice to
21 Tenant, cause a complete audit (including a physical inventory) to be made by an auditor selected by
22 Landlord of the entire records and operations of Tenant and/or any subtenants, concessionaires, licensees
23 and/or assignees relating to the Premises for the period covered by any statement issued or required to be
24 issued by Tenant or a concessionaire as above set forth in Article III. Tenant shall make available to
25 Landlord's auditor at the Premises or at Tenant's principal business office in the United States, within
26 twenty (20) days following Landlord's notice requiring such audit, all of the books, source documents,
27 accounts, records and sales tax reports of Tenant and any of its concessionaires which such auditor deems
28 necessary or desirable for the purpose of making such audit, including Tenant's state and federal income
29 tax returns. If such audit discloses that Tenant's Gross Sales as previously reported for the period audited
30 were understated, Tenant shall immediately pay to Landlord the additional percentage rental due for the
31 period audited. Further, if such understatement was in excess of three percent (3%) of Tenant's actual
32 Gross Sales as disclosed by such audit, Tenant shall immediately pay to Landlord the cost of such audit,
33 and if such understatement was in excess of ten percent (10%) of Tenant's Gross Sales as disclosed by
34 such audit, Landlord may declare this Lease terminated and the Term ended, in which event this Lease
35 shall cease and terminate on the date specified in such notice with the same force and effect as though the
36 date set forth in such notice were the date set forth in this Lease for expiration of the Term, and Tenant
37 shall vacate and surrender the Premises on or before such date in the condition required by this Lease for
38 surrender upon the expiration of the Term.

39
40 (b) If upon examination or audit Landlord's accountant or representative determines that
41 sufficient documentation is not maintained, retained, recorded or available to verify Tenant's actual Gross
42 Sales, Tenant shall pay for the cost of such audit and, in addition, should Landlord deem it necessary,
43 Tenant shall reconstruct, at its sole cost and expense, all Records for the determination of Gross Sales for
44 any period being audited.

45
46 (c) If Tenant subleases, licenses, or in any manner allows the Premises to be used by another
47 party (the "Subtenant"), Tenant is responsible for ensuring that the Subtenant's Records conform to the
48 requirements of this Lease. The failure of Subtenant to maintain its Records as required under this Lease,
49 or to correctly report Gross Sales, will be deemed a failure on the part of Tenant to conform to the
50 requirements of this Lease and shall subject Tenant to the remedies set forth in Section 4.02(a) or Section
51 4.02(b) above, including termination of this Lease.

52 53 **ARTICLE V**

54 55 **CONSTRUCTION OF PREMISES**

56 57 **Section 5.01 CONSTRUCTION OF PREMISES.**

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

63
64 (b) Without limiting the generality of the incorporation by reference of all exhibits and/or
65 addenda to this Lease, Tenant's failure to furnish the plans and specifications required pursuant to Exhibit
66 B ("Plans and Specifications") to Landlord and Owner within the time periods and in the form required

1 by **Exhibit B**, or failure to perform any other obligation under **Exhibit B**, shall constitute a default under
2 this Lease pursuant to Article XIX below, which shall entitle Landlord to all remedies set forth in Article
3 XIX below. In addition, if Landlord reasonably determines that Landlord and Tenant are unable to agree
4 upon Plans and Specifications for Tenant's Work, Landlord shall notify Tenant and the parties shall meet
5 as necessary and otherwise use their good faith efforts to resolve such dispute for a period of fifteen (15)
6 days; thereafter, if the dispute is not resolved, Landlord may at its option, terminate this Lease upon ten
7 (10) days' additional notice to Tenant, in which event this Lease shall terminate on the date specified in
8 such notice. No deviation from the final Plans and Specifications, once approved by Landlord and
9 Owner, shall be made by Tenant without Landlord's and Owner's prior written consent. Approval of the
10 final Plans and Specifications by Landlord and Owner shall not constitute the assumption of any
11 responsibility by Landlord or Owner for their accuracy, efficacy, or sufficiency, and Tenant shall be
12 solely responsible for such items. Any occupancy of the Premises by Tenant prior to the Rental
13 Commencement Date shall be solely for the purpose of inspection, measurement and obtaining
14 information necessary to prepare Plans and Specifications and to construct its leasehold improvements,
15 and shall be subject to all terms and conditions of this Lease applicable to such entry prior to the Rental
16 Commencement Date pursuant to Section 1.02 above.

17
18 **Section 5.02 CERTIFICATE OF OCCUPANCY.**

19 Within the earlier of (a) twenty (20) days after completion of construction of Tenant's Work in
20 accordance with the final Plans and Specifications as approved by Landlord and Owner (as described in
21 Section 5.01 and **Exhibit B**); or (b) twenty (20) days after Tenant opens the Premises for business, Tenant
22 shall deliver to Landlord and Owner the original of the Certificate of Occupancy for the Premises issued
23 by the appropriate governmental agency, original execution copies of all mechanics' lien releases or other
24 lien releases on account of Tenant's Work, notarized and unconditional, in such form as Landlord shall
25 have approved, copies of all building permits indicating inspection and approval by the issuer of said
26 permits, and an architect's certification that Tenant's Work has been constructed in accordance with the
27 final Plans and Specifications and is fully complete in accordance with **Exhibit B**.

28
29 **Section 5.03 CONDITION OF PREMISES.**

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

48
49 **Section 5.04 ULTIMATE RENTAL COMMENCEMENT DATE.**

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

55
56 **Section 5.05 REQUIRED IMPROVEMENTS.**

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66

ARTICLE VI

ALTERATIONS, CHANGES AND ADDITIONS

Section 6.01 ALTERATIONS BY TENANT.

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

Section 6.02 REMOVAL BY TENANT.

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

Tenant acknowledges as part of its Franchise Agreement with SLOAN'S FRANCHISE, LLC, ("Franchisor"), and provided that the Franchise Agreement has been terminated, that upon the expiration or earlier termination of this Lease, Franchisor shall be permitted to enter the Premises by giving Landlord forty eight (48) hours prior written notice to enter the Premises and remove, at its sole expense from the Premises, within five (5) days after Tenant ceases operating for business, all items and architectural characteristics that are indicative of Tenant's business, and otherwise to "de-identify" the Premises, as Franchisor reasonably believes necessary or appropriate for the protection of Franchisor's interest in the "Sloan's" trademarks, trade dress, trade names, copyrights, and other intellectual property, (the "Intellectual Property") provided Franchisor immediately repairs any damage caused by such removal, including the patching and filling of holes. Immediately upon the termination of said five (5) day period, notwithstanding the provisions hereof, such rights shall have no further force or effect. After such time, Landlord shall have no obligation to store the Intellectual Property on the Premises or anywhere else. Landlord agrees not to interfere with any enforcement by Franchisor of its rights in and to the Property, and agrees to permit Franchisor reasonable access to the Premises where the Intellectual Property may be found in order to exercise Franchisor's rights; provided, however, that (a) Franchisor shall cooperate with Landlord in the scheduling of removal of the Intellectual Property so as not to interfere with the conduct of business of other tenants in the Park/Plaza Development, including the scheduling of such removal at such days and/or hours as the Premises shall be closed for business to the public; and (b) Franchisor shall promptly repair at Franchisor's expense, any physical damage to the Premises caused by the removal of the Intellectual Property; provided that Landlord shall not be liable for any diminution in value of the Premises caused by the absence of the Intellectual Property actually removed or by any necessity of replacing the Intellectual Property.

Section 6.03 CHANGES AND ADDITIONS.

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

1 reserves the right at any time, and from time to time, to change, modify, or abolish any temporary off-site
2 utility serving the Park/Plaza Development. The purpose of Exhibit A-1 is to show the approximate
3 location of the Park/Plaza Development while the purpose of Exhibit A-2 is to show the approximate
4 location of the Premises within the Park/Plaza Development.

5
6 **Section 6.04 RIGHTS OF LANDLORD.**

7 (a) Landlord hereby reserves the right at any time following the Commencement Date to
8 change the location of the Premises in the Park/Plaza Development, as the same may be expanded from
9 time to time; provided such relocated premises shall contain approximately the same number of square
10 feet as the original Premises. In the event Landlord elects to exercise such right, it shall so advise Tenant
11 by sixty (60) days prior written notice, and Tenant hereby agrees to be bound by such election and to
12 execute, upon receipt from Landlord, whatever amendments or other instruments as may be required to
13 correctly reflect the foregoing. Landlord shall pay the costs of renovating the relocated Premises so that
14 the same are substantially similar to the leasehold improvements in the original Premises (including
15 leasehold improvements) and of moving and reinstalling Tenant's trade fixtures, merchandise, personal
16 property, and storefront sign. Landlord shall reimburse Tenant for any lost revenue that Tenant incurs
17 during any period that Tenant is required to close due to such relocation. Landlord shall have no liability
18 for such relocation or the closing of the Premises other than as specifically set forth in this paragraph.

19
20 (b) Intentionally Deleted.

21
22 **ARTICLE VII**

23
24 **CONDUCT OF BUSINESS BY TENANT**

25
26 **Section 7.01 PERMITTED USE.**

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

34
35 (b) **Competing Use.** Owner and Landlord hereby agree that after the Rental Commencement
36 Date, if Owner and Landlord enter into a new lease with a tenant for premises in the Park/Plaza
37 Development whose primary use is for the sale of ice cream, frozen yogurt and other frozen desserts
38 including ices, sorbets and gelato (the "Competing Use"), then, as long as such Competing Use exists,
39 Tenant shall be entitled to the remedy set forth below in this subsection 7.01(b). For the purpose of this
40 subsection 7.01(b), "primary use" is defined as any tenant whose Competing Use is the sale of ice cream,
41 frozen yogurt and other frozen desserts including ices, sorbets and gelato which is greater than twenty
42 percent (20%) of its menu items.

43
44 In the event that Tenant believes a Competing Use exists, Tenant shall give Landlord
45 written notice of the operation of a Competing Use by another tenant in the Shopping Center (the
46 "Competing Tenant"), which shall be subject to verification by Landlord within thirty (30) days of receipt
47 of Tenant's notice. If verified by Landlord, and Landlord fails to cause such Competing Use to cease
48 within ninety (90) days after receipt of Tenant's notice and Landlord's subsequent verification, then at the
49 expiration of such 90-day period, Tenant may pay, in lieu of Minimum Annual Rental and Percentage
50 Rental set forth in this Lease (Additional Rent shall continue to be paid throughout the Term), fifty
51 percent (50%) of the Minimum Annual Rental set forth in the Data Sheet ("Alternate Rent") through that
52 date which is the earlier of (x) the date the Competing Use ceases, or (y) twelve (12) months of Tenant
53 paying Alternate Rent, at which time (aa) Tenant shall resume payment of Minimum Annual Rental and
54 Percentage Rental as set forth in the Lease, and (bb) if such Competing Use continues, then Tenant may,
55 within thirty (30) days of the expiration of such 12-month period, time being of the essence, exercise a
56 one-time right to terminate the Lease upon ninety (90) days prior written notice to Landlord. Such right
57 of termination shall be nullified in the event the Competing Tenant ceases to operate the Competing Use
58 prior to the end of the 90-day period. The remedies set forth in this subsection 7.01(b) shall be Tenant's
59 sole remedies for a tenant operating under a Competing Use.

60
61 Notwithstanding the foregoing, Tenant's right to pay Alternate Rent is conditioned upon
62 all of the following: (i) Tenant is not in default (after notice and expiration of any applicable cure period)
63 under this Lease, (ii) Tenant has at all times during the Term continuously operated from the Premises in
64 accordance with the provisions of this Lease, and (iii) Tenant continues to operate the Premises with the
65 Permitted Use as stated on the Data Sheet as of the Commencement Date. Further, the following shall not
66 be considered a Competing Tenant under this subsection 7.01(b): (1) any Department Store; (2) any

1 tenant or occupant of the Park/Plaza Development entitled to possession under a lease or occupancy
2 agreement in existence as of the Commencement Date, or to successors or assigns of such tenants or
3 occupants or to any renewals, expansions, extensions, relocations or replacements for the same; or (3) the
4 non-primary sale of such item(s) by any tenant or occupant (whose Competing Use is the sale of ice
5 cream, frozen yogurt and other frozen desserts including ices, sorbets and gelato which is equal to or less
6 than twenty percent (20%) of its menu items).

7
8 Further, the rights under this subsection 7.01(b) are personal to Tenant and shall
9 automatically terminate upon any assignment, transfer, hypothecation or encumbrance of this Lease, or
10 upon any sublease of the Premises.

11
12 If the restriction against the Competing Use hereunder is found to violate any federal,
13 state or local anti-trust law, or other law, governmental rule or regulation, then this subsection 7.01(b)
14 shall immediately become null and void and be of no further force or effect.

15
16 **Section 7.02 OPERATION OF BUSINESS.**

17 (a) Tenant agrees to be open for business and to operate in all of the Premises during the
18 entire Term following the Rental Commencement Date, and to actively and diligently conduct its business
19 at all times in a first class and reputable manner, maintaining at all times a full staff of employees and a
20 complete stock of current season merchandise. Tenant shall install and maintain at all times a display of
21 merchandise in the display windows, if any, of the Premises and shall keep the same well lighted. Tenant
22 shall be obligated to be open for business and to operate continuously during all hours established by
23 Landlord as Park/Plaza Development business hours. Tenant shall be obligated to be open for business
24 and to operate continuously during its normal business hours of 7:00 AM to 11:30 PM Monday through
25 Sunday. Tenant's obligation to be open for business shall include, but not be limited to, opening for
26 business not more than fifteen (15) minutes late, closing for business not more than fifteen (15) minutes
27 early, and closing for business for not more than fifteen (15) minutes during Park/Plaza Development
28 business hours. If Tenant fails to comply with any of the provisions of this Section 7.02(a), then Tenant
29 shall pay within ten (10) days of demand therefor by Landlord Additional Rent in the amount of
30 \$1,000.00 per day until such time as Tenant is in compliance with this Section 7.02(a). This remedy shall
31 be in addition to any and all other remedies provided in this Lease or by law to Landlord. Failure by
32 Tenant to be open for business and to operate shall entitle Landlord, in addition to other remedies
33 provided in this Section 7.02, this Lease or by law, to mandatory injunctive relief. Without limiting the
34 generality of the foregoing, in the event the hours during which the Park/Plaza Development is legally
35 permitted to be open to the public are regulated by any lawful authority, then Landlord shall be the sole
36 judge of which hours and days shall be Park/Plaza Development business hours.

37
38 Notwithstanding anything to the contrary in this Section 7.02(a), provided Tenant is not
39 in default under the Lease, Tenant may be permitted to extend its hours as mutually agreed upon by the
40 parties hereto without incurring any Additional Rent charges related to such extended operating hours. In
41 the event Tenant desires to change such hours of operation, Tenant agrees to deliver prior written notice
42 to the manager of the Park/Plaza Development.

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

60
61 No auction, liquidation, going out of business, fire, or bankruptcy sale may be conducted
62 or advertised by sign or otherwise in the Premises. Tenant shall not permit the operation of any coin
63 operated or vending machines or pay telephones in the Premises, other than in the areas reserved solely
64 for the use of Tenant's employees. Tenant shall not use the areas adjacent to the Premises for business
65 purposes or any other purpose. Tenant shall not store anything in service or exit corridors. All receiving
66 and delivery of goods and merchandise for the Premises, and all removal of merchandise, supplies,

1 equipment, trash and debris and all storage of trash and debris from the Premises shall be made only by
2 way of or in the areas provided by Landlord. Tenant shall be solely responsible for prompt disposal
3 within the Premises or in such areas as may be provided for such disposal by Landlord of all trash and
4 debris from the Premises. Tenant shall not use or permit the use of any portion of the Premises as sleeping
5 quarters, lodging rooms, for any unlawful purpose, or for cooking, except as specifically permitted in
6 Section 7.01. Tenant shall not install any radio, television, communication dish or other similar device or
7 related equipment to the exterior to the Premises, shall not cause or make any penetration of the roof of
8 the Premises or the building in which the Premises is located and shall not erect any aerial or antenna on
9 the roof or exterior walls of any building within the Park/Plaza Development.

10
11 If Tenant shall fail to comply with any of the provisions of this Section 7.02(b), promptly
12 after written notice, provided that no notice shall be required hereunder more than two (2) times in any
13 lease year, then Tenant shall pay, within ten (10) days of demand therefor by Landlord, Additional Rent
14 in the amount of \$100.00 per day until such time as Tenant is in compliance. This remedy shall be in
15 addition to any and all other remedies provided in this Lease or by law to Landlord.

16
17 (c) If Tenant is permitted pursuant to this Lease to engage in the sale of food and/or
18 beverages from the Premises, whether in the area designated as a dining area or otherwise, the same shall
19 be offered only pursuant to a menu approved in writing by the Landlord and attached as an exhibit to this
20 Lease which shall not be changed without Landlord's prior written consent, provided however, Tenant
21 shall have the right to make incidental changes to the menu without Landlord's consent, such as making
22 changes or modifications to the flavors of ice cream, frozen yogurt, or sorbet. Further, in such event,
23 Tenant shall provide to Landlord upon demand proof satisfactory to Landlord that monthly cleaning and
24 maintenance of all grease traps, pans and hood ventilators located in the Premises has been performed by
25 a suitable contractor. A suitable contractor shall be one who is bondable and capable of performing
26 Tenant's obligations hereunder. If Tenant is permitted to engage in the sale of food and/or beverages from
27 the Premises and the Premises is not located within a dining area, Tenant shall be solely responsible for
28 prompt collection of all trash and debris within the area depicted on Exhibit A-4 attached hereto and
29 incorporated herein by this reference. Tenant shall further be solely responsible for prompt disposal
30 within the Premises or in such areas as may be provided for such disposal by Landlord of all such trash
31 and debris. If Tenant fails to effect such prompt collection and disposal, Landlord may provide for such
32 collection and disposal and, in such event, Tenant shall pay to Landlord the cost of such collection and
33 disposal plus a fifteen percent (15%) administrative fee to Landlord within ten (10) days after receipt of a
34 written statement setting forth such cost.

35
36 (d) Tenant acknowledges that the Premises is located in the Park/Plaza Development and that
37 Owner and Landlord shall have the rights to utilize the Park/Plaza Development for: (i) non-programmed
38 passive and active public park recreational purposes ("Park Uses"); (ii) temporary pre-scheduled events
39 (either with or without an admission fee) including, but not limited to: (A) arts and entertainment
40 programs and events; (B) promotional programs and events; (C) concert and performance programs and
41 events; (D) educational programs and events; (E) fairs, festivals, and market programs and events; (F)
42 awareness and fundraising programs and events; (G) athletic, recreational and health programs and
43 events; (H) holiday special programs and events; (I) exhibits and shows; and (J) private events. Tenant
44 acknowledges and agrees that from time to time, the Park/Plaza Development may be used for a private
45 Park Use or other private temporary pre-scheduled event that would require Tenant or event operator to
46 erect a shielding so as to partially enclose the Premises and block visibility of said private Park Use or
47 private temporary pre-scheduled event. Tenant further acknowledges and agrees that if the Park/Plaza
48 Development is used for a private Park Use or private temporary pre-scheduled event, Landlord reserves
49 the right to cause the Premises to be closed for no more than twenty-four (24) hours at any one time and
50 no more than fifteen (15) times per annum and Landlord shall pay Tenant an amount of \$1,000.00 per
51 closure. Tenant shall have the right to close the Premises without being subject to any penalties as set
52 forth in this Section. The remedy set forth in this subsection 7.02(d) shall be Tenant's sole remedy for a
53 closure of the Premises under this Section 7.02(d).

54
55 (e) Tenant acknowledges that its employees work in the Park/Plaza Development which are
56 open to the public and will require its employees to be dressed and conduct themselves professionally.
57 Tenant shall not permit any of its employees to call out to or aggressively approach any customers of the
58 Park/Plaza Development or, by its manner of operation of business at the Park/Plaza Development,
59 disturb the quiet enjoyment of any other occupant or tenant of the Park/Plaza Development. If Landlord
60 receives two (2) or more complaints regarding the behavior of Tenant's salespeople and/or Tenant's sales
61 practices more than once during the Term, then Tenant shall pay, within ten (10) days of demand therefor
62 by Landlord, Additional Rent in the amount of \$250.00 for each additional complaint received by
63 Landlord. Further, if Tenant violates the provisions of this paragraph more than three times during the
64 Term, or if Landlord determines in its sole discretion that the standards of the operation of the Park/Plaza
65 Development are not being maintained due to the manner of Tenant's operation of business, then

1 Landlord shall have the right, at Landlord's sole option, to immediately terminate this Lease upon written
2 notice to Tenant.

3
4 (f) **Exhibit C** attached hereto and made a part hereof contains certain additional rights and
5 obligations of Tenant concerning satellite dish equipment.

6
7 **Section 7.03 HAZARDOUS MATERIALS.**

8 (a) For the purposes of this Section 7.03 the following terms shall have the following
9 meanings: (i) the term "Hazardous Material" shall mean: (aa) any material or substance that, whether by
10 its nature or use, is subject to regulation under any Environmental Requirement, or (bb) any material,
11 substance or waste which is toxic, ignitable, explosive, corrosive or reactive, or (cc) asbestos, or (dd)
12 petroleum and petroleum-based products, or (ee) formaldehyde, or (ff) polychlorinated biphenyls (PCBs),
13 (gg) Freon and other chlorofluorocarbons or (hh) such other material as is designated in a notice from
14 Landlord to Tenant (whether such notice is provided before or after Tenant first commences to use such
15 material); (ii) the term "Environmental Requirement" shall include the Comprehensive Environmental
16 Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq.), the Hazardous Materials
17 Transportation Act (49 U.S.C. §1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C.
18 §6901 et seq.), the Toxic Substances Control Act (15 U.S.C. §2601 et seq.), the Clean Air Act (42 U.S.C.
19 §7401 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), all as presently in
20 effect and as the same may hereafter be amended, any regulation pursuant thereto, or any other present or
21 future law, ordinance, rule, regulation, order or directive addressing environmental, health or safety issues
22 of or by any Governmental Authority; and (iii) the term "Governmental Authority" shall mean the Federal
23 government, or any state or other political subdivision thereof, any local government, or any agency,
24 court or body of the Federal government, any state or other political subdivision thereof, exercising
25 executive, legislative, judicial, regulatory or administrative functions.

26
27 (b) Tenant hereby represents and warrants to Landlord that it will ensure that (i) no
28 Hazardous Material will be generated, manufactured, sold, transported or located at, on, in, under or about
29 the Premises; (ii) no Hazardous Material will be generated, manufactured, sold, transported or located at,
30 in, on, under or about the Premises in a manner which violates any Environmental Requirement, or which
31 requires cleanup or corrective action of any kind under any Environmental Requirement and (iii) no
32 Hazardous Material will be transported, released, emitted, sold, discharged, leached, dumped or disposed
33 of from the Premises onto or into any other property. However, the above prohibition concerning
34 Hazardous Materials shall not prevent Tenant from selling regular consumer products which contain
35 small, safe amounts of such Hazardous Materials or maintaining small, safe amounts of cleaning solutions
36 at the Premises.

37
38 Notwithstanding anything to the contrary contained herein, Tenant's responsibility under
39 this Section 7.03 shall be limited to Hazardous Materials brought onto the Premises by Tenant, any
40 subtenant, licensee, concessionaire or assignee of Tenant, or any of their respective employees, agents or
41 contractors, or anyone under Tenant's control.

42
43 (c) Tenant shall comply and shall cause any other person on or about the Premises,
44 including, without limitation, employees, invitees, contractors, subcontractors, licensees, subtenants or
45 agents, to comply in all respects with all Environmental Requirements, and shall cause itself and its
46 employees, invitees, contractors, subcontractors, licensees, subtenants or agents not to generate, store,
47 handle, manufacture, process, sell, dispose of, transport or otherwise use Hazardous Materials at, in, on,
48 under or about the Premises in a manner that could lead or potentially lead to the imposition on Landlord
49 or the Park/Plaza Development of any liability or lien of any nature whatsoever.

50
51 (d) Tenant shall (i) notify Landlord promptly in the event of any spill or other release of any
52 Hazardous Material at, in, on, under or about the Premises which is required to be reported to a
53 Governmental Authority under any Environmental Requirement; (ii) promptly forward to Landlord copies
54 of any notices received by Tenant relating to the alleged violations of any Environmental Requirement;
55 and (iii) promptly pay when due any fine or assessment against Tenant, Owner, Landlord or the
56 Park/Plaza Development relating to any Environmental Requirement or the existence of Hazardous
57 Materials at the Premises due to Tenant's violation of the provisions of this Section 7.03.

58
59 (e) If, at any time, it is determined that the operation or use of the Premises by Tenant
60 violates any applicable Environmental Requirement, or that there are Hazardous Materials located at, in,
61 on, under or about the Premises which require special handling in collection, storage, treatment or
62 disposal, or any other form of cleanup or corrective action, Tenant shall within ten (10) days after receipt
63 of notice thereof from any Governmental Authority or from Landlord take, at its sole cost and expense,
64 such actions as may be necessary to fully comply in all respects with all Environmental Requirements;
65 provided, however, that if such compliance cannot reasonably be completed within such ten (10) day
66 period, Tenant shall commence such necessary action within such ten (10) day period and shall thereafter

1 diligently and expeditiously proceed to fully comply in all respects and in a timely fashion with all
2 Environmental Requirements. If Tenant fails to timely take, or to diligently and expeditiously proceed to
3 complete in a timely fashion, any such action, Landlord may, in its sole and absolute discretion, make
4 advances or payments towards the performance or satisfaction of the same, but shall in no event be under
5 any obligation to do so. All sums so advanced or paid by Landlord (including, without limitation, counsel
6 and consultant fees and expenses, investigation and laboratory fees and expenses, and fines or other
7 penalty payments) and all sums advanced or paid in connection with any judicial or administrative
8 investigation or proceeding relating thereto, will immediately, upon demand, become due and payable
9 from Tenant. If Tenant fails to make such payment within ten (10) days of such demand, Tenant shall be
10 in default under this Lease and Landlord may, without any further notice to Tenant terminate this Lease or
11 resort to any other of its rights upon default set forth in Article XIX. Tenant will execute and deliver,
12 promptly upon request, such instruments as Landlord may deem useful or necessary to permit Landlord to
13 take such action, and such notes, mortgages, or other security as Landlord may require to secure all sums
14 to be advanced or paid by Landlord.

15
16 (f) If a lien is filed against the Premises or the Park/Plaza Development by any
17 Governmental Authority resulting from the need to expend or the actual expending of monies arising
18 from an Environmental Requirement, or a liability regarding Hazardous Materials related to an action or
19 omission, whether intentional or unintentional, of Tenant or for which Tenant is responsible, then Tenant
20 shall, within ten (10) days from the date that the Tenant is first given notice that such lien has been placed
21 (or within such shorter period of time as may be specified by Landlord if such Governmental Authority
22 has commenced steps to cause the property to be sold pursuant to such lien) either (i) immediately pay the
23 claim and remove the lien, or (ii) immediately furnish a cash deposit, bond, or such other security with
24 respect thereto as is satisfactory in all respects to Landlord and is sufficient to effect a complete discharge
25 of such lien.

26
27 (g) If Landlord reasonably believes that (i) Tenant has permitted a Hazardous Material at the
28 Premises, or (ii) that any other condition violates or threatens to violate any Environmental Requirement,
29 Landlord may, at its option, cause an environmental site assessment of the Premises or portions thereof to
30 be conducted to confirm Tenant's compliance with the provisions of this Section, and Tenant shall
31 cooperate in all reasonable ways with Landlord in connection with any such environmental site
32 assessment and shall pay all costs and expenses incurred in connection therewith if it is determined that
33 Tenant, its agents, employees or anyone under Tenant's control has violated an Environmental
34 Requirement.

35
36 (h) Tenant shall defend, indemnify, and hold harmless Owner, Landlord, their affiliates,
37 parent corporation, subsidiaries, partners, members, management company, successors and assigns, and
38 the employees, agents, officers, directors, shareholders, members, advisers, trustees and fiduciaries of any
39 of them from and against any and all loss, claims, demands, penalties, causes of action, fines, liabilities,
40 settlements, damages, consequential damages, costs or expenses of whatever kind or nature, known or
41 unknown, foreseen or unforeseen, contingent or otherwise (including, without limitation, counsel and
42 consultant fees and expenses, investigation and laboratory fees and expenses, court costs, and litigation
43 expenses) directly or indirectly arising out of, or in any way related to (i) any breach by Tenant of any of
44 the provisions of this Section 7.03; (ii) the presence, use, generation, transportation, disposal, spillage,
45 discharge, emission, leakage, release, or threatened release of any Hazardous Material which is at, in, on,
46 under, about, from or affecting the Premises, the Park/Plaza Development including, without limitation,
47 any damage or injury resulting from any such Hazardous Material to or affecting the Premises, the
48 Park/Plaza Development or any soil, water, air, vegetation, buildings, personal property, persons or
49 animals; (iii) any personal injury (including wrongful death) or property damage (real or personal) arising
50 out of or related to any such Hazardous Material; (iv) any lawsuit brought or threatened, settlement
51 reached, or order or directive of or by any Governmental Authority relating to such Hazardous Material;
52 or (v) any violation of any Environmental Requirement or any policy or requirement of Owner and
53 Landlord hereunder. The indemnities set forth in this subparagraph (h) are limited to actions or omissions
54 of Tenant, its contractors, subcontractors, licensees, concessionaires or others on the Premises at the
55 request of or with the consent of Tenant. Tenant shall indemnify Owner and Landlord for all losses,
56 including, but not limited to, damages occasioned by the inability of Owner and Landlord to relet the
57 Premises or a reduction in the fair market and/or Rental value of the Premises or Park/Plaza
58 Development.

59
60 This indemnification shall, notwithstanding any exculpatory or other provision of any
61 nature whatsoever to the contrary set forth in the Lease, or any other document or instrument now or
62 hereafter executed between Owner, Landlord and Tenant, constitute the personal recourse undertaking,
63 obligation and liability of the Tenant and any guarantor. The obligations set forth in this Section 7.03
64 shall survive the termination of the Lease.

1 Provided, however, references to Hazardous Materials under the foregoing clauses (ii),
2 (iii) and (iv), and subsection 7.03(j) below shall be deemed to refer only to such Hazardous Materials as
3 were brought onto the Premises or generated in the Premises by Tenant, any subtenant, licensee,
4 concessionaire or assignee of Tenant, or any of their respective employees, agents or contractors.

5
6 (i) If the Lease is assigned to, or assumed by another party, or in the event of a sublease, it
7 shall be a condition of such assignment, assumption or sublease that the assignee, party assuming or
8 sublessee shall assume the obligations of this Section 7.03 in addition to such obligations of Tenant
9 continuing after and surviving such sublease, assignment or assumption. The obligations and liabilities of
10 Tenant under this Section 7.03 shall survive and continue in full force and effect and shall not be
11 terminated, discharged or released, in whole or in part, irrespective of any assignment, sublease, or
12 assumption and irrespective of any other fact or circumstance of any nature whatsoever.

13
14 (j) Tenant shall surrender the Premises to Landlord upon the expiration or earlier termination
15 of the Lease free of Hazardous Materials and free of any violation of any Environmental Requirement.
16 Upon surrender, Tenant shall provide Landlord with a report by experts acceptable to Landlord showing
17 the Premises free of Hazardous Materials.

18
19 **Section 7.04 RADIUS.**

20 Tenant acknowledges that sales from a store owned by it or a related entity as described herein
21 within a one (1) mile radius may reduce the Gross Sales that might otherwise be made from the Premises.
22 If such a business is operated, the specific effect on Gross Sales may be difficult or impossible to
23 establish with certainty. Therefore, in order to provide Owner and Landlord with a fair and adequate
24 rental for the Premises, in the event that during the Term hereof Tenant or any person, firm, corporation
25 or other entity who or which controls or is controlled by Tenant, or by any person, firm, corporation or
26 other entity who or which controls Tenant, shall directly, either individually or as a partner or stockholder
27 or otherwise, own, operate or become financially interested in any business similar to or in competition
28 with the business of Tenant described in the Data Sheet, within a radius of one (1) mile from the
29 Park/Plaza Development, then the Gross Sales of any such business or businesses within said area shall be
30 included in the Gross Sales made from the Premises and the Percentage Rental hereunder shall be
31 computed upon the aggregate of the Gross Sales made from the Premises and by any such other business
32 or businesses then conducted within said area. Tenant shall be obligated to provide Landlord with a
33 statement of Tenant's Gross Sales for all such other businesses operated within such area, in accordance
34 with the provisions of Article III and Landlord shall have a right to examine the books and to audit such
35 other businesses in a manner as set forth in Article IV of this Lease.

36
37 This Section 7.04 shall not apply to (i) any such business or businesses open and in operation
38 within said area as of the date of execution of this Lease or (ii) the adjacent property known as "Horton
39 Plaza". Owner, Landlord or Landlord's authorized representative or agent shall have the right at all
40 reasonable times during the Term hereof and for a period of at least two (2) years after the expiration of
41 the Term, to inspect, audit, copy and make extracts of the books, source documents, records and accounts
42 pertaining to such other business or businesses for the purpose of determining or verifying the Additional
43 Rent due to Owner/Landlord pursuant to this Section.

44
45 **ARTICLE VIII**

46
47 **COMMON AREAS**

48
49 **Section 8.01 OPERATION AND MAINTENANCE OF COMMON AREAS.**

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

54
55 **Section 8.02 USE OF COMMON AREAS.**

56 The term "Common Area(s)", as used in this Lease, shall mean, to the extent provided by
57 Landlord, all improved and unimproved areas within the Park/Plaza Development including, without
58 limitation: (i) traffic control and traffic information signs and equipment, roadways, pedestrian
59 sidewalks, curbs, driveways, a monorail system, if any, public transportation loading and unloading
60 facilities not devoted to a single tenant, truckways, delivery areas, landscaped areas, roofs, skylights,
61 beams, stairs and ramps not contained within any Floor Area, public restrooms and comfort stations,
62 service areas, service and fire exit corridors, passageways and other areas, amenities, facilities and
63 improvements provided by Landlord, and (ii) those areas within the Park/Plaza Development and areas
64 adjacent to the Park/Plaza Development containing signs, pylons or structures advertising the Park/Plaza
65 Development. The use and occupancy by Tenant of the Premises shall include the non-exclusive use of
66 the Common Areas in common with Landlord and with all others for whose convenience and use the

1 Common Areas have been or may hereafter be provided by Landlord or by the owners of Common Areas
2 not within the Park/Plaza Development as specified in the preceding sentence, subject, however, to such
3 rules and regulations for the use thereof as may be prescribed from time to time by Landlord or the owner
4 of such Common Areas. In no event, however, shall Tenant, its agents or employees, use the Common
5 Areas for the display or sale of merchandise.

6
7 Landlord shall have the right, but not the obligation, from time to time, to modify the Common
8 Areas, remove portions of the Common Areas from common use, to permit entertainment events,
9 advertising displays, educational displays and other displays in the Common Areas that in Landlord's
10 judgment tend to attract the public, to erect buildings or other improvements on the Common Areas, to
11 lease kiosks and to establish, modify and enforce reasonable rules and regulations with respect to all
12 Common Areas. Tenant shall not be entitled to any credit for income earned by Landlord with respect to
13 the Common Area.

14
15 Owner or Landlord may at any time close all or any portion of the Common Area to make repairs
16 or changes, to prevent the acquisition of public rights, and may do such other acts in and to the Common
17 Areas as in its reasonable judgment may be desirable.

18
19 **Section 8.03 COMMON AREA OPERATING COSTS AND EXPENSES.**

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

29
30 (b) The "Common Area Charge" shall initially mean an amount equal to \$40.00 per square
31 foot of Floor Area of the Premises per annum. The Common Area Charge shall be payable for each year
32 during the Term and shall be increased annually on a compounded basis at each January 1st following the
33 Rental Commencement Date by five percent (5%). Landlord and Tenant hereby agree that the Common
34 Area Charge has been freely negotiated and agreed upon by the parties and is not subject to dispute,
35 review, or challenge by Tenant whether at law or in equity. **Accordingly, Tenant expressly waives any
36 and all rights it has or may have to inspect and/or audit Landlord's records relating to the
37 Common Area Charge.** The Common Area Charge shall be paid as Additional Rent to Landlord at the
38 address shown on the Data Sheet in monthly installments on the first day of each calendar month, in
39 advance, without demand, offset or reduction.

40
41 **ARTICLE IX**

42
43 **SIGNS**

44
45 **Section 9.01 TENANT'S SIGNS.**

46 Tenant shall affix a sign to the exterior surface of the storefront of the Premises located inside the
47 Park/Plaza Development. Tenant shall pay all costs of fabricating, constructing, operating, and
48 maintaining such sign including, without limitation, all charges for electricity. Tenant shall keep said
49 sign well lighted during such hours as Landlord shall designate and shall maintain said sign in good
50 condition and repair during the entire Term of this Lease. Said sign shall conform to the criteria for signs
51 contained in Exhibit B, and the size, content, design and location thereof shall be subject to the prior
52 written approval of Landlord. Except as hereinabove mentioned, Tenant shall not place or cause to be
53 placed, erected or maintained on any exterior door, wall, window or the roof of the Premises, or on the
54 interior or exterior surface of the glass of any window or door of the Premises, or on any sidewalk or
55 other location outside the Premises, or on or within any display window space in the Premises, whether or
56 not there is display window space in the Premises, or within any entrance to the Premises, any sign
57 (flashing, moving, hanging, handwritten, or otherwise), decal, placard, decoration, flashing, moving or
58 hanging lights, lettering, or any other advertising matter of any kind or description; provided, however,
59 that subject to the prior written approval of Landlord with respect to design and placement, Tenant may
60 place decals for safety purposes on glass storefronts where warranted. No symbol, design, name, mark, or
61 insignia adopted by Owner or Landlord for the Park/Plaza Development shall be used without the prior
62 written consent of Landlord. No illuminated sign located in the interior of the Premises and visible from
63 outside the Premises shall be permitted without the prior written approval of Landlord. All signs located
64 in the interior of the Premises shall be in good taste so as not to detract from the general appearance of the
65 Premises or the Park/Plaza Development. In the event Tenant shall be in default of this Section 9.01
66 following ten (10) days written notice from Landlord, Tenant shall pay as Additional Rent the sum of

1 \$100.00 for each day of default in order to reimburse Landlord for the additional administrative expenses
2 resulting therefrom.

3 4 ARTICLE X

5 6 MAINTENANCE OF PREMISES

7 8 Section 10.01 TENANT'S OBLIGATIONS FOR MAINTENANCE.

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

30
31 (b) Tenant shall keep the Premises and all other parts of the Park/Plaza Development free
32 from any and all liens arising out of any work performed, materials furnished, or obligations incurred by
33 or on behalf of Tenant. Within fifteen (15) days after written request therefor by Landlord, Tenant shall
34 (a) bond against or discharge any mechanics' or materialmen's lien or (b) furnish Landlord with a copy of
35 the recorded waiver of lien, recorded release of lien, or of the recorded bond discharging such lien.
36 Tenant shall reimburse Landlord as Additional Rent for any and all costs and expenses including, without
37 limitation, attorneys' fees, which may be incurred by Landlord by reason of the filing of any such liens
38 and/or removal of same, such reimbursement to be made within fifteen (15) days after receipt by Tenant
39 from Landlord of a statement setting forth the amount of such costs and expenses such reimbursement to
40 be paid to Landlord in the manner and at the place provided in this Lease. Tenant shall give Landlord at
41 least fifteen (15) days' written notice prior to commencing or causing to be commenced any work on the
42 Premises (whether prior or subsequent to the Commencement Date), so that Landlord shall have
43 reasonable opportunity to file and post a notice of non-responsibility for Tenant's work.

44
45 (c) In the event Tenant fails, refuses or neglects to maintain the Premises as required
46 hereunder or to commence and complete repairs promptly and adequately, to remove or bond against any
47 lien, to pay any cost or expense, to reimburse Landlord, or otherwise to perform any act or fulfill any
48 obligation required of Tenant pursuant to this Section 10.02, Landlord may, but shall not be required to,
49 perform such maintenance or to make or complete any such repairs, remove or bond against such lien,
50 pay such cost or perform such act or the like without prior notice to, but at the sole cost and expense of
51 Tenant. Tenant shall reimburse Landlord, as Additional Rent, for all cost and expense of Landlord
52 thereby incurred within ten (10) days after receipt by Tenant from Landlord of a statement setting forth
53 the amount of such cost and expense.

54 55 ARTICLE XI

56 57 INSURANCE AND INDEMNITY

58 59 Section 11.01 TENANT'S INSURANCE.

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

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

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

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

1 insurance required to be carried by Tenant that names the parties set forth in this Section 11.01 (c) (ii) as
2 additional insured entities shall not be subject to a deductible or self-insured retention, it being the intent
3 of the parties that such insurance shall fully and completely insure such additional insured entities for all
4 loss or expense.

5
6 (d) In the event that Tenant fails to procure or to maintain, at the times and for the duration
7 specified in this Section 11.01, any insurance required by this Section 11.01, or fails to carry insurance
8 required by law or governmental regulation and such failure continues for more than five (5) days after
9 written notice thereof from Landlord, Landlord may (but shall not be required to) at any time or from time
10 to time, and without notice to Tenant, procure such insurance and pay the premiums therefor, and the cost
11 of same, plus a fifteen percent (15%) administrative fee shall be deemed Additional Rent and shall be
12 payable upon Landlord's demand.

13
14 (e) Tenant will not do or suffer to be done, or keep or suffer to be kept, anything in, upon or
15 about the Premises which will violate Owner's and Landlord's policies of hazard or liability insurance or
16 which will prevent Owner and Landlord from procuring such policies in companies acceptable to Owner
17 and Landlord. If anything done, omitted to be done or suffered by Tenant to be kept in, upon or about the
18 Premises shall cause the rate of fire or other insurance on the Premises or on other property of Landlord
19 or of others within the Park/Plaza Development to be increased beyond the minimum rate from time to
20 time applicable to the Premises or to any property for the use or uses made thereof, Tenant will pay, as
21 Additional Rent, the amount of any such increase upon Landlord's demand.

22 23 **Section 11.02 OWNER'S/LANDLORD'S INSURANCE.**

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

33 34 **Section 11.03 COVENANT TO HOLD HARMLESS.**

35 Tenant covenants to defend and indemnify Landlord, the City of San Diego, a California
36 municipal corporation, the City of San Diego, solely in its capacity as the designated successor agency to
37 the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic and
38 Civic San Diego, a nonprofit public benefit corporation, and all of their affiliates, parent corporation,
39 subsidiaries, partners, members, management company, successors, and assigns, and elected officials, the
40 employees, agents, officers, directors, shareholders, members, advisers, trustees and fiduciaries of any of
41 them, (collectively referred to as the "Indemnified Parties"), save them harmless (except to the extent of
42 loss or damage resulting from the intentional or willful acts or omissions or the gross negligence of the
43 Indemnified Parties not required to be insured against by Tenant pursuant to this Article XI) from and
44 against any and all claims, actions, demands, judgments, awards, fines, mechanics' liens or other liens,
45 losses, damages, liability and expense, including attorneys' fees and court costs, in connection with all
46 losses, including loss of life, personal injury and/or damage to property, arising from or out of any
47 occurrence (or arising from or out of Tenant's failure to comply with any provision of this Lease) caused
48 wholly or in part by any act or omission of Tenant, its concessionaires, agents, contractors, suppliers,
49 employees, servants, customers or licensees and including any product liability claim or any labor dispute
50 involving Tenant or its contractors and agents. In case Landlord, Owner, or any other party so
51 indemnified shall be made a party to any litigation commenced by or against Tenant, then Tenant shall
52 defend, indemnify, protect and save them harmless and shall pay, as the same becomes due and payable,
53 all costs, expenses and reasonable attorneys' fees and court costs incurred or paid by them in connection
54 with such litigation. The Indemnified Parties reserve to themselves, at their sole option, the right to
55 appoint or approve of counsel to defend their separate interests in any action where it or its related entity
56 is a named party.

57 58 **Section 11.04 WAIVER OF RIGHT OF RECOVERY.**

59 Except as otherwise provided in this Lease, neither Owner, Landlord nor Tenant shall be liable to
60 the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for
61 any loss or damage to any building, structure or other tangible property, or any resulting loss of income,
62 or losses under worker's compensation laws and benefits, even though such loss or damage might have
63 been occasioned by the negligence of such party, its agents or employees. The provisions of this Section
64 11.04 shall not limit the indemnification for liability to third parties pursuant to Section 11.03.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66

ARTICLE XII

UTILITIES

Section 12.01 UTILITY CHARGES.

(a) Tenant shall be solely responsible for and shall promptly pay for all fees, deposits and charges, including use and/or connection fees, hook-up fees, standby fees, and/or penalties for discontinued or interrupted service, and the like, for water, gas, electricity, HVAC, fire alarm, burglar alarm, telephone, cable television, sewer and sanitation, solid waste disposal and any other service or utility used in or upon or furnished to the Premises, including, without limitation, any services to be supplied by Landlord from a central utility plant or other utility system, as more particularly set forth in the Data Sheet or on **Exhibit E** if applicable, irrespective of whether any of the foregoing are initially paid in advance by Landlord, or otherwise. Landlord, at its sole option, may elect to furnish any or all of such services with a separate charge therefor to Tenant, at competitive rates within the immediate geographic area in which the Park/Plaza Development is located, such charge to be based upon the services used by Tenant, as reflected by meter, submeter or otherwise. Tenant shall pay such charge, as Additional Rent, at such time and upon such terms as installments of Minimum Annual Rental are due.

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

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

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

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

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

(f) Tenant shall operate its heating, ventilating, and air conditioning ("HVAC") system(s) serving the Premises so as to maintain comfortable conditions during regular Park/Plaza Development business hours. Tenant's obligation to connect to the services supplied by Landlord, as set forth in this

1 Section 12.01 and **Exhibit B**, as well as Tenant's installation, operation and maintenance of its HVAC
2 system(s) within the Premises, shall be as set forth herein, in **Exhibit B** and in any related exhibit(s).

3
4 (g) If Tenant desires to install any equipment which shall exceed the capacity of any utility
5 facilities or which shall require additional utility facilities, Tenant shall not have the right to do so without
6 Landlord's prior written approval of Tenant's Plans and Specifications and specifications therefor. If such
7 installation is approved by Landlord, and if Landlord provides such additional facilities to accommodate
8 Tenant's installation, Tenant agrees to pay Landlord, on demand, the cost of providing such additional
9 utility facilities or utility facilities of greater capacity. Tenant shall in no event use any of the utility
10 facilities in any way which shall overload or overburden the utility systems.

11 12 **ARTICLE XIII**

13 14 **ESTOPPEL STATEMENT, ATTORNMENT, AND SUBORDINATION**

15 16 **Section 13.01 ESTOPPEL STATEMENT.**

17 Within ten (10) days after request therefor by Owner and/or Landlord (which request may not be
18 given more often than one (1) time during any twelve (12) month period, unless requested by Landlord's
19 mortgagee or required in connection with a financing or sale of the Park/Plaza Development), Tenant
20 shall execute, in recordable form, and deliver to Landlord a statement, in writing, certifying (a) that this
21 Lease is in full force and effect, (b) the Commencement Date, the Rental Commencement Date and the
22 expiration date of this Lease, (c) that Rental and all other charges hereunder are paid currently without
23 any offset or defense thereto, (d) the amount of Rental and all other charges hereunder, if any, paid in
24 advance, (e) whether this Lease has been modified and, if so, identifying the modifications, (f) that there
25 are no uncured defaults by Landlord or stating in reasonable detail those claimed by Tenant (provided
26 that, in fact, such details are accurate and ascertainable), and (g) such other matters as may be reasonably
27 requested by Landlord. Tenant's failure or refusal to execute timely such statement shall constitute an
28 acknowledgment by Tenant that the statements contained in such statement are true and correct without
29 exception, and may be relied upon by Owner, Landlord or by any prospective or existing transferee of all
30 or any part of Owner's or Landlord's interest in the Park/Plaza Development or this Lease or by any of
31 Owner's or Landlord's lenders.

32 33 **Section 13.02 ATTORNMENT.**

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

41 42 **Section 13.03 SUBORDINATION.**

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

52 53 **Section 13.04 REMEDIES.**

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

57 58 **ARTICLE XIV**

59 60 **ASSIGNMENT AND SUBLETTING**

61 62 **Section 14.01 RESTRICTIONS ON TRANSFER.**

63 (a) Notwithstanding any provision contained herein to the contrary, Tenant agrees not to
64 mortgage, encumber, pledge or hypothecate all or any part of this Lease, Tenant's interest in the Premises,
65 or Tenant's business. Further, Tenant shall not transfer, assign, sublet, enter into franchise, license or
66 concession agreements, change ownership or voting control of, all or any part of this Lease, Tenant's

1 interest in the Premises or Tenant's business (collectively "Transfer") without first procuring the written
2 consent of Landlord, which consent shall not be unreasonably withheld, subject to the terms, covenants
3 and conditions contained in this Lease and to the right of Landlord to elect to terminate this Lease as
4 provided in Section 14.02 below. Any attempted or purported Transfer without Landlord's prior written
5 consent shall be void and of no force or effect and shall not confer any estate or benefit on anyone.
6 Further, any such attempted or purported Transfer shall entitle Landlord immediately to terminate this
7 Lease and all further obligations of Landlord hereunder. A consent to one Transfer by Landlord shall not
8 be deemed to be a consent to any subsequent Transfer to any other party. No Transfer of this Lease or
9 agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve
10 Tenant or any guarantor from liability under this Lease.

11
12 (b) Landlord and Tenant agree that it shall not be unreasonable for Landlord to withhold its
13 consent to any proposed Transfer for any of the following reasons, which are not exclusive:

14
15 (1) The contemplated use of the Premises by the proposed transferee, assignee or
16 sublessee (hereinafter referred to as the "Transferee") is not substantially identical to the "Use of
17 Premises" permitted under this Lease;

18
19 (2) The proposed use of the Premises by the proposed transferee is inconsistent with
20 the retail tenant mix desired by Owner or Landlord;

21
22 (3) The net worth and/or financial stability of the Transferee is, or would be after the
23 completion of the Transfer, inadequate to operate the business permitted to be conducted in the Premises
24 in the manner required by this Lease and/or to meet all of Tenant's financial and other obligations under
25 this Lease;

26
27 (4) The Transferee's reputation (or that of any of its affiliates) would have an adverse
28 effect upon the reputation of Owner, the Park/Plaza Development or the other businesses located therein;

29
30 (5) The Percentage Rental that would be reasonably anticipated from the sales of the
31 Transferee would reasonably be expected to be less than that of Tenant hereunder;

32
33 (6) The Transferee would breach any covenant of Landlord respecting radius,
34 location, use or exclusivity in any other lease, financing agreement or other agreement relating to the
35 Shopping Center;

36
37 (7) Tenant is in default pursuant to this Lease;

38
39 (8) The nature of the Transferee's proposed or likely use of the Premises would
40 involve any risk, greater than that of Tenant's, of the use, release, disposition or mishandling of
41 "Hazardous Materials" (as defined in Section 7.03),

42
43 (9) The Transferee is not likely to conduct on the Premises a business of a quality
44 substantially equal to that conducted by Tenant; or

45
46 (10) Any ground lessor or mortgagee whose consent to such transfer is required fails
47 to consent thereto.

48
49 (c) Notwithstanding anything contained in this Lease to the contrary and provided Tenant is
50 not in default beyond any applicable notice and cure periods of any of the provisions of this Lease, Tenant
51 shall have the right, but not more than once during the Term without the prior consent of Landlord (and
52 subject to Section 14.02 below), to assign this Lease to Franchisor or another bona fide franchisee of
53 Franchisor to conduct the business permitted in the Premises under the terms of this Lease. Any such
54 assignment pursuant to this Section 14.01(d) shall be subject to all of the following conditions: (i) such
55 assignee shall assume all obligations of Tenant under this Lease; (ii) no such assignment shall release
56 Tenant from any obligation under the Lease; (iii) any such assignment shall be subject to all of the terms,
57 covenants and conditions of this Lease including without limitation the Permitted Use and Trade Name
58 required to be used by Tenant under this Lease; (iv) any such franchisee shall have participated in the
59 Franchisor's training programs prior to the effective date of such Transfer, and shall demonstrate that they
60 have the ability to efficiently and effectively operate the Premises for the Permitted Use in a manner
61 consistent with at least as high a standard of shopping center operation as then exists in the Premises; (v)
62 the assignee's net worth shall be equal to or greater than the net worth of Tenant at the Commencement
63 Date or the date of such Transfer, whichever is greater; and (vi) Tenant shall give Landlord written notice
64 of such assignment at least thirty (30) days prior to such assignment setting forth the name and address of
65 any such assignee and a copy of the document setting forth the assumption of liability of this Lease by
66 virtue of any such assignment, and any other documentation requested by Landlord.

1 (d) For any Transfer permitted by subsections 14.01(c)) above, (i) any such Transfer shall
2 only be effective upon Landlord's receipt of the documentation specified in the applicable subsection, (ii)
3 Tenant shall remain fully liable under this Lease for the remainder of the Term, (iii) Landlord shall not be
4 entitled to any right to terminate the Lease early as set forth in Section 14.02, nor to an adjustment in
5 Rental as set forth in Section 14.03, and (iv) any processing or administrative fee assessed by Landlord as
6 set forth in Section 14.04 shall not exceed \$2,000.00 for each such permitted Transfer.

7
8 (e) Further notwithstanding anything in this Lease to the contrary, the following shall not be
9 deemed an assignment, transfer or violation of this Lease: any transfer of corporate shares by gift,
10 bequest or inheritance by, between or among the present shareholders of Tenant, or to their beneficiaries
11 for tax or estate planning purposes.

12 13 **Section 14.02 PROCEDURE FOR TRANSFER.**

14 Should Tenant desire to make a Transfer hereunder, Tenant shall, in each instance, give written
15 notice of its intention to do so to Landlord at least ninety (90) days before the intended effective date of
16 any such proposed Transfer, specifying in such notice whether Tenant proposes to assign or sublet, or
17 enter into license, franchise or concession agreements, the proposed date thereof, and specifically
18 identifying the proposed Transferee, the net worth and previous business experience of the proposed
19 Transferee, including without limitation copies of the proposed Transferee's last two years' income
20 statement, balance sheet and statement of changes in financial position (with accompanying notes and
21 disclosures of all material changes thereto) in audited form, if available, and certified as accurate by the
22 proposed Transferee. Such notice shall be accompanied, in the case of a proposed assignment, subletting,
23 license, franchise or concession agreement, by a copy of the proposed assignment, sublease, license,
24 franchise or concession agreement or, if same is not available, a letter of commitment or a letter of intent.
25 In the case of a proposed sale of Tenant's business, Tenant shall provide a copy of the proposed sale and
26 financing agreements.

27
28 Landlord shall, within sixty (60) days after its receipt of such notice of a proposed Transfer, by
29 giving written notice to Tenant of its intention to do so: (a) withhold its consent to the Transfer; or (b)
30 consent to the Transfer. Failure of Landlord to give Tenant written notice of Landlord's action with
31 respect to any request for Landlord's consent to a proposed Transfer shall not constitute or be deemed
32 Landlord's consent to such Transfer. Landlord's consent to a proposed Transfer shall only be given if and
33 when Landlord has notified Tenant in writing that Landlord consents to such proposed Transfer.

34
35 If Landlord withholds its consent to any proposed Transfer pursuant hereto and if Tenant requests
36 in writing within ten (10) days after Tenant's receipt of Landlord's written notice of such withholding of
37 consent, Landlord shall provide to Tenant a statement of its reason(s) for withholding consent to the
38 proposed Transfer within a reasonable time after Landlord's receipt of Tenant's request therefor. Tenant
39 acknowledges and agrees that each of the rights of Landlord set forth herein in the event of a proposed
40 Transfer is a reasonable restriction on Transfer for purposes of applicable laws. Landlord shall have no
41 liability to Tenant or to any proposed Transferee in damages if it is adjudicated that Landlord's consent
42 shall have been unreasonably withheld and/or that such unreasonable withholding of consent shall have
43 constituted a breach of this Lease or other duty to Tenant, the proposed Transferee or any other person.
44 In such event, Tenant's sole remedy shall be to have the proposed Transfer declared valid, as if Landlord's
45 consent had been duly and timely given (although Tenant shall be entitled to reasonable attorneys' fees if
46 it is the successful party in such litigation, in accordance with the terms of this Lease).

47 48 **Section 14.03 TRANSFER RENT ADJUSTMENT.**

49 If Tenant shall make a permitted Transfer hereunder, the Minimum Annual Rental specified in
50 Section 2.01 shall be increased, effective as of the date of such Transfer, to the highest of: (a) the total
51 rent payable by the Transferee pursuant to such Transfer; or (b) an amount equal to the total of the
52 Minimum Annual Rental, plus Percentage Rent, required to be paid by Tenant pursuant to this Lease
53 during the 12-month period immediately preceding such Transfer, the amount of which Landlord shall
54 notify Tenant before the effective date of the Transfer. In no event shall the Minimum Annual Rental,
55 after Transfer, be less than the Minimum Annual Rental immediately before Transfer.

56 57 **Section 14.04 REQUIRED DOCUMENTS AND FEES.**

58 Each Transfer to which Landlord has consented shall be evidenced by a written instrument in
59 form satisfactory to Landlord, executed by Tenant and the Transferee, under which the Transferee shall
60 agree in writing for the benefit of Owner and Landlord (except as otherwise agreed in writing by Owner
61 and Landlord) to assume, perform and abide by all of the terms, covenants and conditions of this Lease to
62 be done, kept and performed by Tenant, including the payment of all amounts due or to become due under
63 this Lease directly to Landlord and the obligation to use the Premises only for the purpose specified in
64 this Lease. Tenant shall reimburse Owner and Landlord for Owner's and Landlord's reasonable attorneys'
65 and administrative fees incurred in the processing of, and documentation for, each such requested
66 Transfer, whether or not the Transfer is consummated.

1 **Section 14.05 TRANSFER OF STOCK OR PARTNERSHIP INTEREST.**

2 If Tenant is a corporation which, under the current laws, rules or guidelines promulgated by the
3 governmental body or agency having jurisdiction and authority to promulgate the same, is not deemed a
4 public corporation, or is an unincorporated association or partnership, the transfer, assignment or
5 hypothecation, in the aggregate of more than a controlling interest of the total outstanding stock or
6 interest in such corporation, association or partnership shall be deemed a Transfer within the meaning and
7 provisions of this Lease.
8

9 **Section 14.06 ASSIGNMENT AND SUBLEASE RENTALS.**

10 The following terms and conditions shall apply to any subletting by Tenant of all or any part of
11 the Premises and shall be included in all subleases under this Lease:
12

13 (a) Tenant hereby assigns and transfers to Landlord all of Tenant's interest in all rentals and
14 income arising from any sublease of all or a portion of the Premises heretofore or hereafter made by
15 Tenant, and Landlord may collect such rent and income and apply same toward Tenant's obligations
16 under this Lease; provided, however, that until a breach shall occur in the performance of Tenant's
17 obligations under this Lease, Tenant may, except as otherwise provided in this Lease, receive, collect and
18 enjoy the rents accruing under such sublease. Landlord shall not, by reason of this or any other
19 assignment of such sublease to Landlord, nor by reason of the collection of the rents from a subtenant, be
20 deemed liable to the subtenant for any failure of Tenant to perform and comply with any of Tenant's
21 obligations to such subtenant under such sublease. Tenant hereby irrevocably authorizes and directs any
22 such subtenant, upon receipt of a written notice from Landlord stating that a breach exists in the
23 performance of Tenant's obligations under this Lease, to pay to Landlord the rents and other charges due
24 and to become due under the sublease. The subtenant shall rely upon any such statement and request
25 from Landlord and shall pay such rents and other charges to Landlord without any obligation or right to
26 inquire as to whether such breach exists and notwithstanding any notice from or claim from Tenant to the
27 contrary. Tenant shall have no right or claim against said subtenant, or, until the breach has been cured,
28 against Landlord, for any such rents and other charges so paid by said subtenant to Landlord.
29

30 (b) In the event of a breach by Tenant in the performance of its obligations under this Lease,
31 Landlord, at its option and without any obligation to do so, may require any subtenant to attorn to
32 Landlord, in which event Landlord shall undertake the obligations of the sublandlord under such sublease
33 from the time of the exercise of said option to the expiration of such sublease; provided, however,
34 Landlord shall not be liable for any prepaid rents or security deposit paid by such subtenant to Tenant or
35 for any other prior defaults or breaches of Tenant as sublandlord under such sublease.
36

37 **ARTICLE XV**

38 **WASTE OR NUISANCE**

39 **Section 15.01 WASTE OR NUISANCE.**

40 Tenant shall not commit nor permit any of its employees, invitees, contractors, subcontractors,
41 licensees, subtenants, or agents to commit any waste upon the Premises and shall not place a load upon
42 the floor of the Premises which exceeds the floor load per square foot which such floor was designed to
43 carry. Tenant shall not commit nor permit any of its employees, invitees, contractors, subcontractors,
44 licensees, subtenants or agents to commit any nuisance or other act or thing which may impact Landlord's
45 operation of the Park/Plaza Development or disturb the quiet enjoyment of any other occupant or tenant
46 of the Park/Plaza Development. Tenant shall not use or permit to be used any medium that might
47 constitute a nuisance, such as loudspeakers, sound amplifiers, tape decks, compact disc players, radios,
48 televisions, or any other sound producing or other device which will carry sound or odors outside the
49 Premises and, upon written notice from Landlord, Tenant shall cause any such noise or odors to cease.
50 Tenant agrees that business machines and mechanical equipment used by Tenant which cause vibration or
51 noise that may be transmitted to the building or buildings comprising the Park/Plaza Development or to
52 the Premises to such a degree as to be reasonably objectionable to Landlord or to any occupant, shall be
53 placed and maintained by Tenant at its expense in a manner sufficient to eliminate such vibrations or
54 noise, such as by cork, rubber or spring-type vibration isolators. Tenant shall not allow any use of the
55 Premises or any other portion of the Park/Plaza Development in a manner which is a source of annoyance,
56 disturbance or embarrassment to Owner, Landlord or to the other tenants of the Park/Plaza Development
57 or which is deemed by Landlord, in its sole discretion, as not in keeping with the character of the
58 Park/Plaza Development. The Premises shall not be used for any unlawful, immoral, or other purpose
59 deemed improper by Landlord.
60
61
62
63
64
65
66

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66

ARTICLE XVI

TRADE NAME; PROMOTIONAL PROGRAM

Section 16.01 TRADE NAME.

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

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

Section 16.02 PROMOTIONAL PROGRAM.

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

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

ARTICLE XVII

DAMAGE AND DESTRUCTION

Section 17.01 RECONSTRUCTION OF DAMAGED PREMISES.

Unless this Lease is terminated as provided for below, if fire, the elements, or other casualty damages the leasehold improvements (as defined in Exhibit B), Tenant shall promptly repair the Premises ("Restoration Work") to its condition just prior to the damage. Tenant's obligation for Rental shall not be abated because of destruction or damage to the Premises. Tenant agrees to diligently pursue issuance of all building and other permits required for such Restoration Work. If Tenant has not completed the Restoration Work within one hundred twenty (120) days from the date Tenant receives all its required building and other permits for such work (for which permits Tenant shall make prompt application following such destruction or damage and shall diligently pursue thereafter), or within such additional period of time which may be needed for Tenant to complete such Restoration Work provided Tenant has diligently commenced and is pursuing such Restoration Work to completion, Landlord shall have the right to take over and complete such work at Tenant's cost; provided, however, Landlord shall first utilize the funds available from Tenant's insurance proceeds for the Restoration Work.

Section 17.02 INSURANCE PROCEEDS.

All insurance proceeds payable and received at any time, or from time to time, as a result of casualty to the leasehold improvements (as defined in Exhibit B) on the Premises, shall be made payable to Landlord and Tenant jointly and shall be deposited with the holder of the first Mortgage on the Premises, or a bank, trust company, or title insurance company designated by Tenant and approved by Landlord (the "Insurance Trustee"), in trust, for purposes of the Restoration Work. The Insurance Trustee shall disburse the proceeds of such insurance from time to time as progress payments proportioned to the

percentage of completion of the Restoration Work and on such terms as may be customary for advances under institutionally financed building loan provisions (exclusive of retainage provisions). Except as otherwise set forth herein, any excess proceeds shall be payable to Tenant.

Section 17.03 TOTAL OR PARTIAL DESTRUCTION OF PREMISES.

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

Section 17.04 CASUALTY DURING LAST LEASE YEAR.

If fifty percent (50%) or more of the replacement cost of the Premises is damaged by fire, the elements or other casualty, during the last lease year of the Term, Landlord or, provided Tenant is not in default hereunder, Tenant, may terminate this Lease as of the date of the damage by written notice to the other party within thirty (30) days after said date. If this Lease is terminated under this Section 17.04, all of the insurance proceeds payable for the leasehold improvements (as defined in Exhibit B) shall be paid directly to Landlord. If the insurance proceeds are less than the full replacement value of the leasehold improvements (as defined in Exhibit B), Tenant shall pay to the Landlord the difference between the full replacement value and the amount of the insurance coverage.

Section 17.05 NOTICE OF CASUALTY.

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

ARTICLE XVIII

EMINENT DOMAIN

Section 18.01 TOTAL CONDEMNATION OF PREMISES.

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

Section 18.02 PARTIAL CONDEMNATION.

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

Section 18.03 ADJUSTMENTS IN MINIMUM ANNUAL RENTAL AND ADDITIONAL RENT.

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

Section 18.04 PAYMENT OF PROCEEDS AWARD.

In the event of any such Condemnation, Owner, Landlord and Tenant shall be allowed to make a claim for an award of their interest(s) in the Premises, and the proceeds shall be paid as applicable to those claims, subject to the following: (i) Owner shall be entitled to receive such portion of said award or proceeds as shall represent compensation for the Rental, and the value of its land, or the part thereof so taken, and the value of the Premises; (ii) Landlord shall be entitled to receive such portion of said award or proceeds as shall represent compensation for rental of its privately-owned property, and the value its land, or the part thereof so taken; and (iii) Tenant shall be entitled to receive the unamortized value of any improvements by Tenant made at the Premises or portion thereof taken and any amount for removal or relocation costs, damages to Tenant's business, or personal property of Tenant. The remainder of any such award or proceeds, if any, shall be paid to Owner. Tenant, Landlord and Owner shall each have the right, at its own expense, to appear in any condemnation proceedings and to participate in any and all hearings, trials, and appeals therein. In the event any party to this Lease shall receive notice of any proposed or pending condemnation affecting the Premises, the party receiving such notice shall promptly notify the other party of the receipt and contents thereof.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52

ARTICLE XIX

DEFAULT

53
54
55
56
57
58
59
60
61
62
63
64
65
66

Section 19.01 RIGHTS UPON DEFAULT.

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

(b) If Landlord proceeds under Section 19.01(a)(D) above, upon such reletting all Rental and other sums received by Landlord from such reletting shall be applied, first, to the payment of any indebtedness other than Rental due hereunder from Tenant to Landlord; second, to the payment of any costs and expenses of such reletting, including reasonable brokerage fees and attorney fees and of costs of such alterations and repairs; third, to the payment of Rental due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future Minimum Annual Rental and Additional Rent payable by Tenant hereunder, as the same may become due and payable hereunder. If such Minimum Annual Rental, Additional Rent and other sums received from such reletting during any month are less than that to be paid during that month by Tenant hereunder, Tenant shall pay such deficiency to Landlord; if such rentals and sums shall be more, Tenant shall have no right to the excess. Such deficiency shall be calculated and paid monthly. No re-entry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Landlord may at any time thereafter

elect to terminate this Lease for such previous breach and shall have the remedies provided herein. Should Landlord at any time terminate this Lease for any breach, in addition to any other remedies it may have, it may recover from Tenant all damages it may incur by reason of such breach, including the cost of recovering the Premises, all of which amount shall be immediately due and payable from Tenant to Landlord. Landlord shall use its reasonable efforts to mitigate its damages hereunder; however, the failure or refusal of Landlord to relet the Premises shall not affect Tenant's liability. The terms "entry" and "re-entry" are not limited to their technical meanings. If Tenant shall default hereunder prior to the date fixed as the commencement of any renewal or extension of this Lease, Landlord may cancel and terminate such renewal or extension agreement by written notice. In the event of re-entry by Landlord, Landlord may remove all persons and property from the Premises and such property may be stored in a public warehouse or elsewhere at the cost of, and for the account of Tenant, without notice or resort to legal process and without Landlord being deemed guilty of trespass, conversion or becoming liable for any loss or damage which may be occasioned thereby. In the event Tenant shall not remove its property from the Premises within ten (10) days after Tenant has vacated the Premises, then such property shall be deemed abandoned by Tenant and Landlord may dispose of the same without Landlord having any liability to Tenant. If Landlord removes such property from the Premises and stores it at Tenant's risk and expense, and if Tenant fails to pay the cost of such removal and storage after written demand therefor and/or to pay any Rental then due, then after the property has been stored for a period of thirty (30) days or more Landlord may sell such property at public or private sale, in the manner and at such times and places as Landlord deems commercially reasonable following reasonable notice to Tenant of the time and place of such sale. The proceeds of any such sale shall be applied first to the payment of the expenses for removal and storage of the property, the preparation for the conducting of such sale, and for attorneys' fees and other legal expenses incurred by Landlord in connection therewith, and the balance shall be applied as provided in this Section 19.01(b).

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

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

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

ARTICLE XX

BANKRUPTCY OR INSOLVENCY

Section 20.01 TENANT'S INTEREST NOT TRANSFERABLE.

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

Section 20.02 TERMINATION.

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

1 surrender the Premises but shall remain liable as herein provided.

2
3 **Section 20.03 TENANT'S OBLIGATION TO AVOID CREDITORS' PROCEEDINGS.**

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

16
17 **Section 20.04 ELECTION TO ASSUME LEASE.**

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

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

34
35 **Section 20.05 SUBSEQUENT BANKRUPTCY.**

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

42
43 **Section 20.06 ASSIGNMENT.**

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

50
51 **Section 20.07 OCCUPANCY CHARGES.**

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

56
57 **Section 20.08 CONSENT.**

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

1 **Section 20.09 ATTORNEY FEES.**

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

9
10 **Section 20.10 OTHER LAWS.**

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

16
17 **ARTICLE XXI**

18
19 **ACCESS BY LANDLORD**

20
21 **Section 21.01 RIGHT OF ENTRY.**

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

37
38 **ARTICLE XXII**

39
40 **TENANT'S PROPERTY**

41
42 **Section 22.01 TAXES ON TENANT'S PROPERTY.**

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

59
60 (b) Tenant acknowledges that this Lease may create a possessory interest subject to property
61 taxation and that Tenant may be subject to the payment of taxes levied on that possessory interest; that
62 Tenant's payment of taxes, fees, and assessments shall not reduce any Rental due under this Lease; and
63 that Owner shall not assume any responsibility for any taxes whatsoever resulting from Tenant's
64 possession, use, or occupancy of the Premises. In the event Tenant is obligated to render a payment for
65 taxes levied on that possessory interest, then Landlord, shall reimburse Tenant for such taxes levied on
66 that possessory interest as set forth herein within thirty (30) days after receipt by Landlord from Tenant of

1 a statement setting forth the amount of such taxes levied on that possessory interest and accompanied by
2 reasonable back-up documents, including proof of Tenant's payment of such tax.

3
4 **Section 22.02 LOSS AND DAMAGE.**

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

11
12 **Section 22.03 NOTICE BY TENANT.**

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

16
17 **ARTICLE XXIII**

18
19 **HOLDING OVER**

20
21 **Section 23.01 HOLDING OVER.**

22 If possession of the Premises is not surrendered to Landlord on the Expiration Date or earlier
23 termination of this Lease, then Tenant shall pay to Landlord on account of use and occupancy of the
24 Premises, for each month (or any portion thereof) during which Tenant (or a Person claiming by, through
25 or under Tenant) holds over in the Premises after the Expiration Date, an amount equal to the greater of
26 one and one-half (1 ½) times (i) the aggregate Rental that was payable under this Lease during the last
27 month of the Term, and (ii) the then fair market rental value of the Premises plus the monthly Additional
28 Rent that was payable by Tenant during the last month of the Term. Landlord's right to collect such
29 amount from Tenant for use and occupancy shall be in addition to any other rights or remedies that
30 Landlord may have hereunder or at law or in equity. Nothing contained in this Section 23.01 shall permit
31 Tenant to retain possession of the Premises after the Expiration Date, or earlier termination date, or limit
32 in any manner Landlord's right to regain possession of the Premises, through summary proceedings or
33 otherwise. Landlord's acceptance of any payments from Tenant after the Expiration Date, or earlier
34 termination date, shall be deemed to be on account of the amount to be paid by Tenant in accordance with
35 the provisions of this Section 23.01. Tenant expressly waives, for itself and for any person claiming
36 through or under Tenant, any rights that Tenant or any such person may have under the provisions of
37 legal requirements, in connection with any holdover summary proceedings that Landlord may institute to
38 enforce the foregoing provisions of this Article. Tenant shall indemnify, defend and hold harmless
39 Owner and Landlord from and against any and all loss, claims, demands, liabilities, damages (including,
40 without limitation, consequential damages), costs and/or expenses (including, without limitation,
41 attorneys' fees and expenses) resulting from any failure by Tenant to surrender the Premises in the manner
42 and condition required by this Lease upon the expiration of the Term or earlier termination of this Lease,
43 including, without limitation, any claims made by any proposed 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 to the extent it does not conflict with the
64 Owner's regulations, ordinances and policies.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66

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.

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 either 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.

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

1 is duly authorized to execute this Lease on behalf of such corporation, partnership, or entity.

2
3 **Section 27.04 DELAYS; FORCE MAJEURE.**

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

28
29 **Section 27.05 NOTICES.**

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

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

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

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

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

55
56 **Section 27.08 INTENTIONALLY DELETED.**

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

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

1 controlling partnership interest if Tenant is a partnership. Landlord shall treat such financial statements
2 and information provided to it pursuant to Articles III and IV of this Lease confidentially, and shall not
3 disclose them except to Landlord's lenders or otherwise as reasonably necessary for the operation of the
4 Park/Plaza Development or administration of Landlord's business or unless disclosure is required by any
5 judicial or administrative order or ruling, to the extent permitted by law.
6

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

9 Landlord and Tenant agree that in any action brought by Owner or Landlord to obtain possession
10 of the Premises, the parties desire an expeditious resolution of such litigation. Accordingly, Tenant shall
11 not file and hereby waives the right to file any non-compulsory counterclaim in such action. Tenant also
12 shall not file and hereby waives the right to file any defense to such action for possession other than the
13 defense that the default alleged by Landlord did not occur.
14

15 **Section 27.11 INTENTIONALLY DELETED.**

16
17 **Section 27.12 FLOOR AREA.**

18 (a) "Floor Area" as used in this Lease means with respect to any leasable area (excluding
19 Tenant's Patio Area) in the Park/Plaza Development, the aggregate number of square feet of floor space
20 of all floor levels therein, including any mezzanine space, measured from (i) the outside faces of all
21 perimeter walls thereof other than any demising wall separating such premises from other leasable
22 premises, (ii) the center lines of any such demising wall, (iii) the outside face of any interior wall, and (iv)
23 the building and/or lease line adjacent to any entrance to such premises.
24

25 (b) For the purposes of this Lease, in determining the gross leasable Floor Area or the gross
26 leased and occupied Floor Area of the Park/Plaza Development, there shall be excluded therefrom any
27 premises leased for the operation of a U.S. Government Post Office facility or other governmental
28 facility, a child care center, community room, library, project offices and related rooms, movable retail
29 merchandising units and temporary uses or units located in the Common Areas. No deduction or
30 exclusion from Floor Area shall be made by reason of columns, ducts, stairs, elevators, escalators, shafts
31 or other interior construction or equipment. At the Commencement Date, the gross leased and occupied
32 Floor Area in effect for the whole of any lease year shall be the average gross leased and occupied Floor
33 Area in effect during such lease year. Landlord reserves the right during the Term to change the method
34 of computation to determine Floor Area on a monthly or quarterly "average" basis.
35

36 **Section 27.13 INTEREST ON PAST DUE OBLIGATIONS.**

37 Any amount due from Tenant to Landlord hereunder which is not paid when due (including,
38 without limitation, amounts due as reimbursement to Owner and/or Landlord for costs incurred by Owner
39 and/or Landlord in performing obligations of Tenant hereunder upon Tenant's failure to so perform) shall
40 bear interest at the lesser of (a) the "Prime Rate" as published in Wall Street Journal plus three percent
41 (3%); or (b) the highest rate then allowed under the usury laws of the state where the Park/Plaza
42 Development is located from the date due until paid, unless otherwise specifically provided herein, but
43 the payment of such interest shall not excuse or cure any default by Tenant under this Lease.
44

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

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

57 **Section 27.15 ACCORD AND SATISFACTION.**

58 Payment by Tenant or receipt by Landlord of a lesser amount than the Rental or other charges
59 herein stipulated shall be deemed to be on account of the earliest Rental or other charges due from Tenant
60 to Landlord. No endorsements or statement on any check or any letter accompanying any check or
61 payment as Rental or other charges shall be deemed an accord and satisfaction, and Landlord shall accept
62 such check or payment without prejudice to Landlord's right to recover the balance of any and all Rental
63 or other charges due from Tenant to Landlord or to pursue any other remedy provided in this Lease or by
64 law.
65
66

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

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

9 **Section 27.17 GOVERNING LAW.**

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

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

17 Landlord shall have the right to obtain specific performance of any and all covenants or
18 obligations of Tenant under this Lease, and nothing contained in this Lease shall be construed as or shall
19 have the effect of abridging such right.
20

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

22 All obligations of Tenant under this Lease which cannot be ascertained to have been fully
23 performed prior to the expiration or earlier termination of this Lease shall survive the expiration or earlier
24 termination of this Lease.
25

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

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

41 **Section 27.21 CONFIDENTIALITY.**

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

52 **Section 27.22 ATTORNEY FEES.**

53 If at any time after the date that this Lease has been executed by the parties hereto, any of the
54 parties institutes any action or proceeding against the other relating to the provisions of this Lease or any
55 default hereunder, the non-prevailing party in such action or proceeding shall reimburse the prevailing
56 party for the reasonable expenses of attorneys' fees and all costs and disbursements incurred therein by
57 the prevailing party, including, without limitation, any such fees, costs or disbursements incurred on any
58 appeal from such action or proceeding. As used in this Agreement, the term prevailing party means that
59 party whose position is upheld in a final judgment rendered in any litigation, or, if the final judgment is
60 appealed, that party whose position is upheld by the decision of the final appellate body that considers the
61 appeal. Subject to the provisions of local law, the prevailing party shall recover all such fees, costs, or
62 disbursements as costs taxable by the court or arbiter in the action or proceeding itself without the
63 necessity for a cross-action by the prevailing party.
64

65 Notwithstanding anything to the contrary contained herein, if Owner and/or Landlord is
66 compelled to engage the services of attorneys (either outside counsel or in-house counsel) to enforce the

1 provisions of this Lease, to the extent that Owner and/or Landlord incurs any cost or expense (including
2 such reasonable attorney fees for outside counsel or payroll and overhead expenses for in-house counsel,
3 as the case may be) in connection with such enforcement, including instituting, prosecuting or defending
4 its rights in any action, proceeding or dispute by reason of any default by Tenant, or as otherwise set forth
5 in this Section 27.22 or elsewhere in this Lease, the sum or sums so paid or billed to Owner and/or
6 Landlord, together with all interest, costs and disbursements, shall be deemed Additional Rent and shall
7 be due from Tenant immediately upon receipt of an invoice therefor following the occurrence of such
8 expenses.

9
10 **Section 27.23 INDEX.**

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

21
22 **Section 27.24 WAIVER OF TRIAL BY JURY.**

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

31
32 **Section 27.25 MORTGAGEE CHANGES.**

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

38
39 **Section 27.26 REAL ESTATE INVESTMENT TRUST.**

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

51
52 **Section 27.27 EQUAL EMPLOYMENT OPPORTUNITY.**

53 It has been determined that Landlord qualifies as a Federal Contractor. If applicable, during the
54 performance of this Lease, the parties hereto hereby incorporate by reference the provisions set forth in 41
55 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
56 Subpart A, which provisions apply to all nonexempt contractors and vendors.

57
58 **Section 27.28 STORAGE AREA.**

59 As part of this Lease, Landlord also leases to Tenant that certain storage space known as Space
60 No.SFSU3 containing approximately 100 square feet of Floor Area and shown on **Exhibit A-7** attached
61 to the Lease, for the storage of Tenant's merchandise and supplies for use in the Premises ("Storage
62 Area"). Tenant shall pay Landlord the sum of \$55.00 per square foot per annum as Minimum Annual
63 Rental for such dry Storage Area, payable in equal consecutive monthly installments ("Storage Rental").
64 Landlord shall provide electric service to the Premises, at a cost to be determined by Landlord, which
65 amount shall be paid monthly by Tenant as Additional Rent pursuant to this Agreement. Tenant shall
66 also pay for any other utilities, if any, for the Storage Area. Commencing January 1, 2016, and on each

1 January 1st thereafter during the Term, the amount payable by Tenant for Storage Rental shall be
2 increased by two percent (2%) of the amount payable for the immediately preceding lease year. Tenant
3 hereby accepts possession of the Storage Area in its then existing "as-is" condition. Tenant, at Tenant's
4 sole cost and expense, shall perform any and all work necessary to prepare the Storage Area for Tenant's
5 use, which work shall be completed in accordance with the provisions of this Lease. Tenant may install
6 freezers in the Storage Area, but same may not be walk-in units. The term of Tenant's occupancy of the
7 Storage Area shall at all times coincide with the Term of this Lease. Such Storage Area shall be
8 considered a part of the Premises and shall be subject to all of the terms and conditions of this Lease,
9 including Insurance as set forth in Section 11.01. Further, Landlord shall have the right to relocate the
10 Storage Area to another storage space in the Park/Plaza Development upon thirty (30) days written notice
11 to Tenant.
12

13 **Section 27.29 PATIO AREA.**

14 (a) Subject to the applicable laws, ordinances, codes and regulations of any governmental
15 authorities having jurisdiction over the Premises, Tenant shall also be entitled to utilize, as a part of the
16 Premises, and in a manner set forth below, the area immediately adjacent to the store structure of the
17 Premises for the use and purpose as a patio (hereinafter "Patio Area"). The Patio Area shall contain
18 approximately sixteen (16) tables and thirty two (32) chairs as shown on Exhibit "A-8," which is
19 attached hereto and incorporated herein by this reference.
20

21 (b) Tenant agrees and acknowledges that: (i) Landlord, as Landlord's Work and at
22 Landlord's sole cost and expense, shall provide a finished stone paving surface area beneath the extents of
23 the trellis structure, matching the stone, style, and pattern in the surrounding stone paving area, level to
24 industry standards; (ii) Tenant shall construct any and all improvements at its sole cost in accordance with
25 the requirements set forth in Exhibit "B" attached hereto and receives Owner's and Landlord's prior
26 consent to plans and specifications therefor (including furniture and fixtures); (iii) Tenant shall maintain
27 such improvements to a standard consistent with the maintenance required to be performed to the
28 Premises as set forth herein; and, (iv) the insurance requirements set forth in the Lease shall also apply to
29 the business operations of Tenant in the Patio Area and Tenant's insurance policy shall specifically cover
30 the Patio Area. Except as set forth above, Owner and Landlord shall not be required to perform any other
31 Landlord Work to the Patio Area or ground underneath.
32

33 (c) Landlord shall provide, at Tenant's cost and expense, the 16 tables and 32 chairs, and
34 Tenant shall provide, at Tenant's cost and expense, any related furniture and other movable fixtures for
35 use on the Patio Area (the "Facilities"). The Facilities shall require the prior approval of Landlord, which
36 approval shall not be unreasonably withheld, conditioned, or delayed. Tenant acknowledges and agrees
37 that any destruction, damage, theft, or vandalism of or to, the Facilities shall be the sole responsibility of
38 Tenant and Tenant agrees to promptly repair or replace same immediately following such event. Tenant
39 acknowledges and agrees that it shall lock and/or secure the Facilities when the Premises is closed for
40 business to the public. Upon the Expiration Date, or earlier termination of this Lease, all tables and chairs
41 located on the Patio Area shall become the property of Landlord.
42

43 Tenant shall make a check payable to an affiliate of Landlord, Westfield Development,
44 Inc., for the cost of the tables and chairs and send such check to 2049 Century Park East, 41st Floor, Los
45 Angeles, CA 90067, Attention: Kim Brewer.
46

47 (d) Tenant is obligated perform maintenance so as to keep the Patio Area in a neat and clean
48 condition; such maintenance to be performed during all hours when the Park/Plaza Development is open
49 to the public. If Tenant fails to perform such maintenance, Landlord may perform the maintenance and
50 charge the cost therefor directly to Tenant and Tenant shall pay such cost to Landlord as Additional Rent,
51 within thirty (30) days after Landlord's delivery of the invoice therefor.
52

53 (e) The Patio Area shall not be included as part of the Floor Area of the Premises for the
54 purposes of the calculation of Minimum Annual Rental, or Additional Rent. Further, the Patio Area shall
55 be subject to all other terms and conditions of the Lease including, without limitation, Article X, Article
56 XI and Article XIX.
57

58 (f) Landlord reserves the right to recapture all or a portion of the Patio Area in the event of a
59 renovation, remodel, or expansion of the Park/Plaza Development. Except as otherwise provided
60 hereinabove, the Patio Area shall be considered as a part of the Premises for all purposes under the Lease,
61 including without limitation the provisions of Article XVIII of this Lease. Notwithstanding anything to
62 the contrary contained in Article XIV of the Lease, the right to use the Patio Area is personal to Tenant
63 and may not be assigned in connection with any assignment of this Lease requiring the consent of
64 Landlord.
65
66
67

1 **Section 27.30 EQUAL OPPORTUNITY AND CONTRACTING.**

2 Tenant shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders
3 11246, 11375, and 12086; the California Fair Employment Practices Act; and all other laws, rules and
4 regulations of competent governmental authority. Tenant shall not discriminate against any employee or
5 applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation,
6 disability, medical condition or place of birth. Tenant shall cause the foregoing provisions to be inserted
7 in all commercial subleases and all contracts for any work covered by this Lease so that such provisions
8 will be binding upon each commercial sublessee and contractor. Tenant shall fully cooperate with any
9 investigation conducted by Owner, in its governmental capacity, pursuant to its Nondiscrimination in
10 Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517, as amended from time to
11 time], and upon Owner's request, Tenant shall submit a current Workforce Report. Tenant acknowledges
12 that failure to comply with the requirements of this section and/or submitting false information in
13 response to these requirements may result in termination of this Lease and debarment from participating
14 in Owner contracts for a period of not less than one (1) year.

15
16 Any conflict resulting from the requirements as set forth in this Lease section and the requirements
17 as set forth in the applicable San Diego Municipal Code section(s) shall be resolved in favor of the
18 requirements as set forth in the applicable San Diego Municipal Code section(s).

19
20 **Section 27.31 EQUAL BENEFITS.**

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

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

30
31 **Section 27.32 DISABLED ACCESS COMPLIANCE.**

32 Tenant shall, as applicable to the Premises and Tenant's possession, use and occupancy thereof,
33 comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of
34 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable
35 state and federal laws and regulations hereafter enacted protecting the rights of people with
36 disabilities. Tenant's compliance shall include but not necessarily be limited to the following:

37
38 (a) Tenant shall not discriminate against qualified persons with disabilities in any aspects of
39 employment, including recruitment, hiring, promotions, conditions and privileges of employment,
40 training, compensation, benefits, discipline, layoffs, and termination of employment.

41
42 (b) No qualified individual with a disability may be excluded on the basis of disability from
43 participation in, or be denied the benefits of, services, programs, or activities of Tenant.

44
45 (c) Tenant shall post a statement addressing the requirements of the ADA in a prominent
46 place at the work site.

47
48 (d) Where required by law, any improvements made to the Premises by Tenant shall comply
49 with municipal disabled access requirements by bringing up to code and making accessible any areas of
50 the Premises which deny access to disabled persons. All improvements and alterations shall be at the sole
51 cost of Tenant.

52
53 (e) Tenant shall include language in each sublease agreement which indicates the sublessee's
54 agreement to abide by the foregoing provisions. Tenant and sublessees shall be individually responsible
55 for their own ADA employment programs.

56
57 (f) Tenant understands that failure to comply with the above requirements and/or submitting
58 false information in response to these requirements shall constitute a default under this Lease.

59
60 **Section 27.33 ACCESSABILITY ASSESSMENT.**

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

63
64 **Section 27.34 DRUG-FREE WORKPLACE.**

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

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

4
5 (b) Establish a drug-free awareness program to inform employees about all of the following:

6
7 (i) The dangers of drug abuse in the workplace;

8
9 (ii) Tenant's policy of maintaining a drug-free workplace;

10
11 (iii) Any available drug counseling, rehabilitation, and employee assistance programs;

12 and

13
14 (iv) The penalties that may be imposed upon employees for drug abuse violations.

15
16 (c) Tenant shall include in each of its sublicenses and contracts related to this Permit
17 language obligating each sublicensee and contractor to comply with the provisions of this section to
18 maintain a drug-free workplace. Tenant, and each of its sublicensees and contractors, shall be
19 individually responsible for their own drug-free workplace program.

20
21 **Section 27.35 INTENTIONALLY DELETED.**

22
23 **Section 27.36 LOCAL BUSINESS AND EMPLOYMENT.**

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

29
30 **Section 27.37 WATER QUALITY – BEST MANAGEMENT PRACTICES.**

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

36
37 Therefore, Tenant shall, at a minimum, implement and comply, as applicable, with the BMPs for
38 industrial and commercial facilities adopted under the San Diego Municipal Code Section 43.0307 (a).

39
40 It is ultimately the Tenant's responsibility to prevent pollutant discharges to the storm drain system.
41 Therefore, the Tenant will identify and implement any additional BMPs that may be required to avoid the
42 discharge of pollutants to the storm drain system."

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 27.38 NONDISCRIMINATION.**

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

55
56 **Section 27.39 STANDARD OF EMPLOYEES.**

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

59 **Section 27.40 CONSENT.**

60 Except as set forth in Sections 1.01(b), 9.01, 20.06, 20.08, 27.02, 27.29 (b) and 27.29(c), in the
61 event that in this Lease it is provided that the exercise of any right by Tenant or the performance of any
62 obligation of Tenant shall be subject to the consent or approval of Landlord and/or Owner, Landlord is
63 deemed the agent of Owner for said consent or approval. Any such consent or approval shall be: (a) in
64 accordance with Section 27.04; and (b) sent to Landlord at the address set forth in the Data Sheet.

1 **Section 27.41 SUCCESSOR AGENCY'S ROLE.** The parties acknowledge that the Successor
2 Agency currently owns the Sales Parcel (which includes the Premises or a portion thereof), but will
3 convey ownership of the Sales Parcel to the City upon the Successor Agency's imminent completion of
4 improvements on the Park Property consistent with the Cooperation Agreement described in Recital B
5 above (expected to occur by early 2016). Given the temporary nature of the Successor Agency's
6 continued ownership of the Sales Parcel, the Successor Agency is included as a party to this Lease only to
7 provide Tenant with access to the Premises for Tenant's construction of improvements to the Premises in
8 accordance with Article V of the Lease. The Successor Agency undertakes no obligations in connection
9 with this Lease other than to provide physical access to the Premises for Tenant's construction of the
10 improvements to the Premises. Upon the City's acquisition of the Sales Parcel from the Successor
11 Agency, the definition of "Owner" under this Lease shall be modified automatically, without the need for
12 any further documentation, to include only the City and not the Successor Agency.
13

14 [BALANCE OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE FOLLOWS]

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.

HORTON FUN LAND, LLC,
a California limited liability company

By: _____

Print Name: Ali Hajisattari

Its Manager

By: _____

Print Name: _____

Its: _____

TENANT

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

By: _____

John Kim
Assistant Secretary

LANDLORD

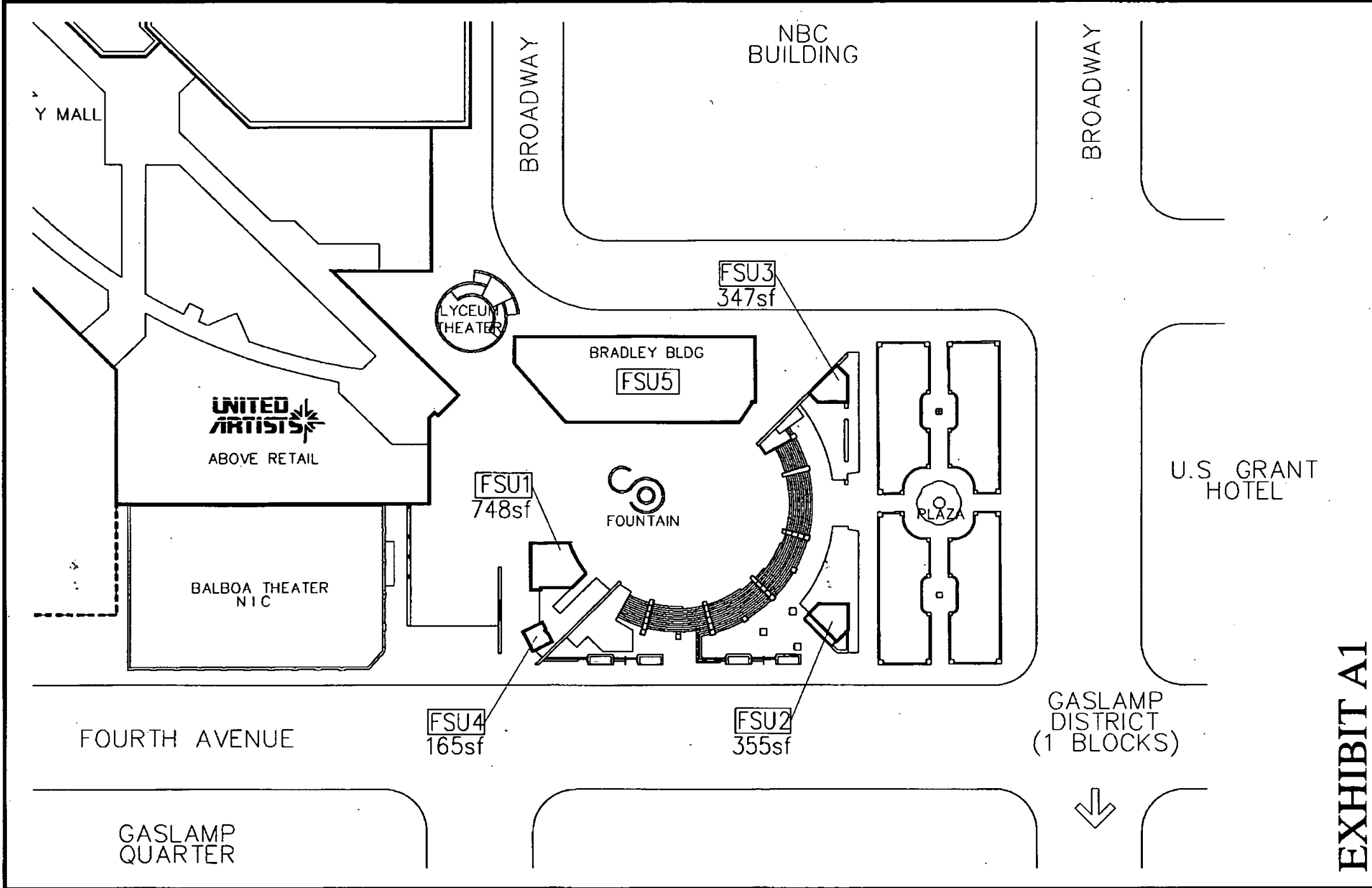


EXHIBIT A1

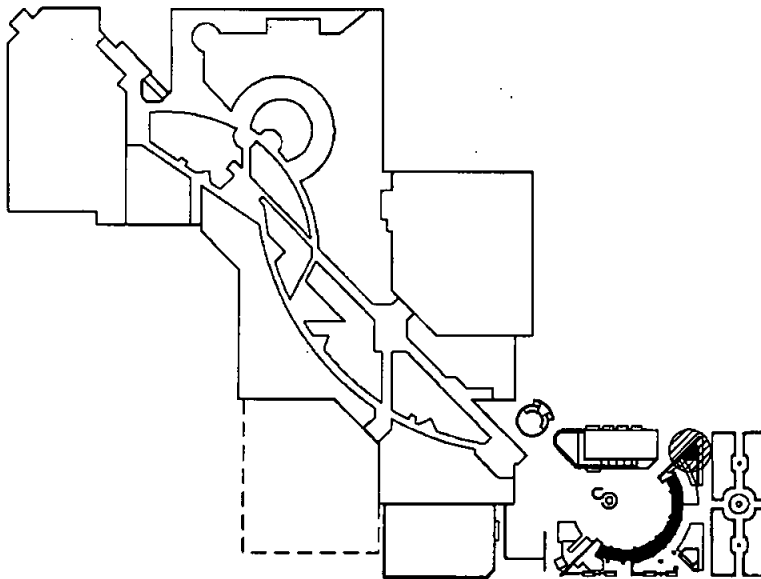
This drawing is diagrammatic and shows only approximate conditions, locations, quantities and proposed elements. The size, location, identity or existence of any element or specific occupant may be added, eliminated or modified at the sole and absolute discretion of the Landlord. Failure to verify actual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

Westfield
 Horton Plaza Urban Park
 324 HORTON PLAZA, SAN DIEGO, CALIFORNIA 92101-2481 W1912294180

HORTON PLAZA
 Jul 06, 2015
A1

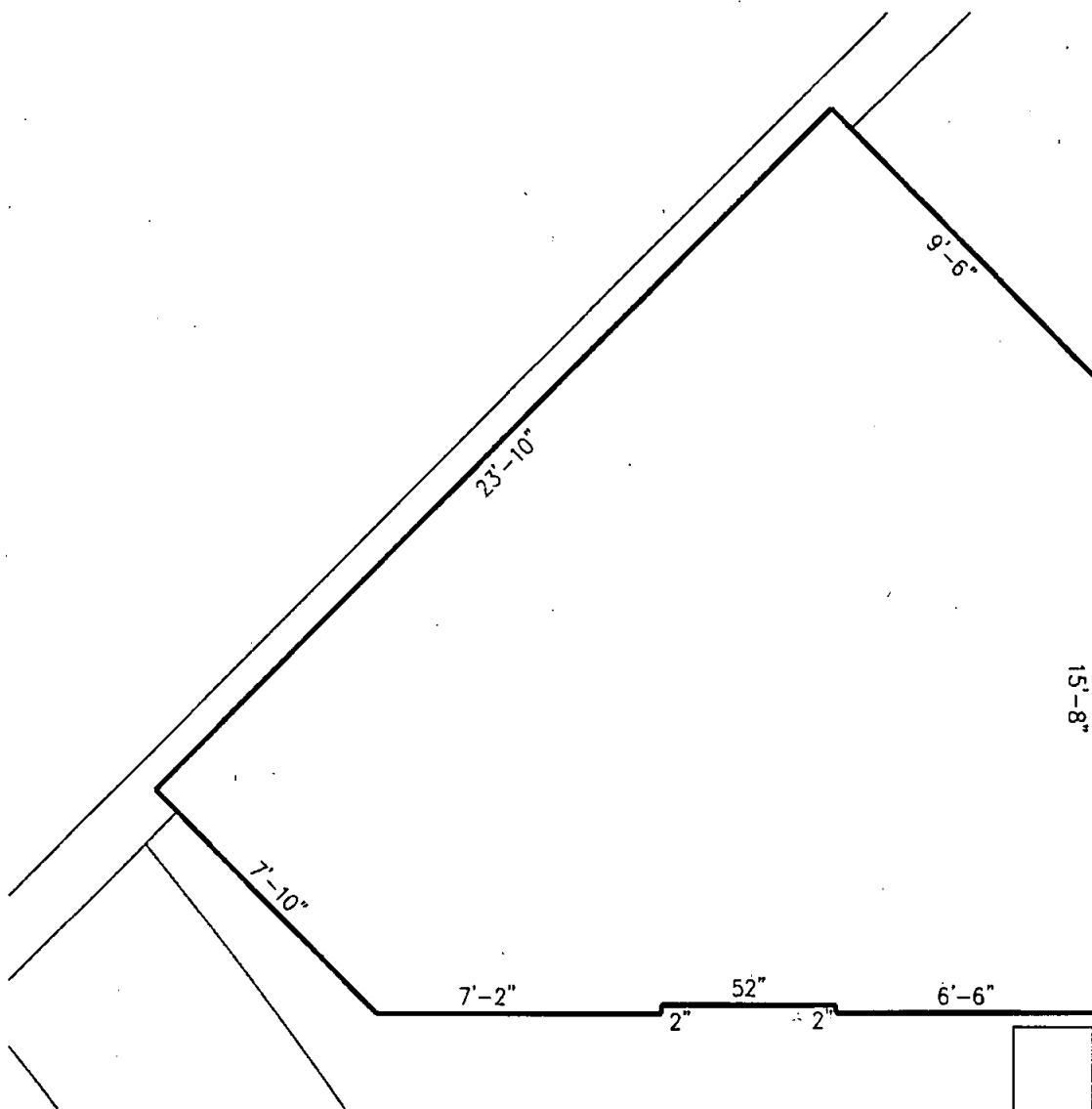
SITE PLAN

N.T.S
SCALE



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



EXHIBIT
A2

SITE

01/05/15

FSU3

SLOAN'S

347 SF

EXHIBIT A-3

LEGAL DESCRIPTION

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

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

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

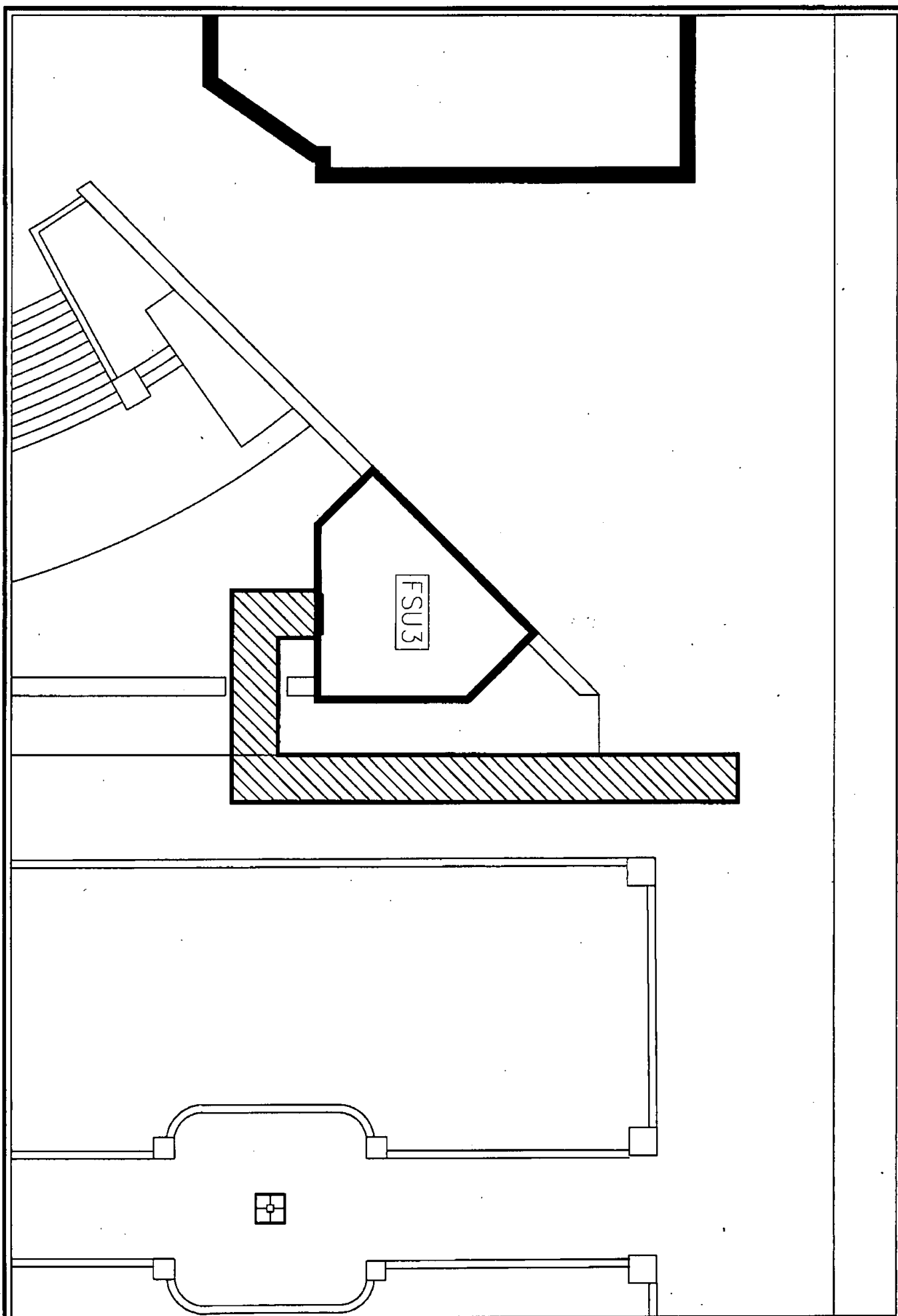


EXHIBIT A4 - ACCESS TO PARK / PLAZA DEVELOPMENT & PREMISES

SPACE: FSU3
SLOAN'S

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

124 HORTON PLAZA SAN DIEGO CALIFORNIA 92101-6461 (619) 533-8180

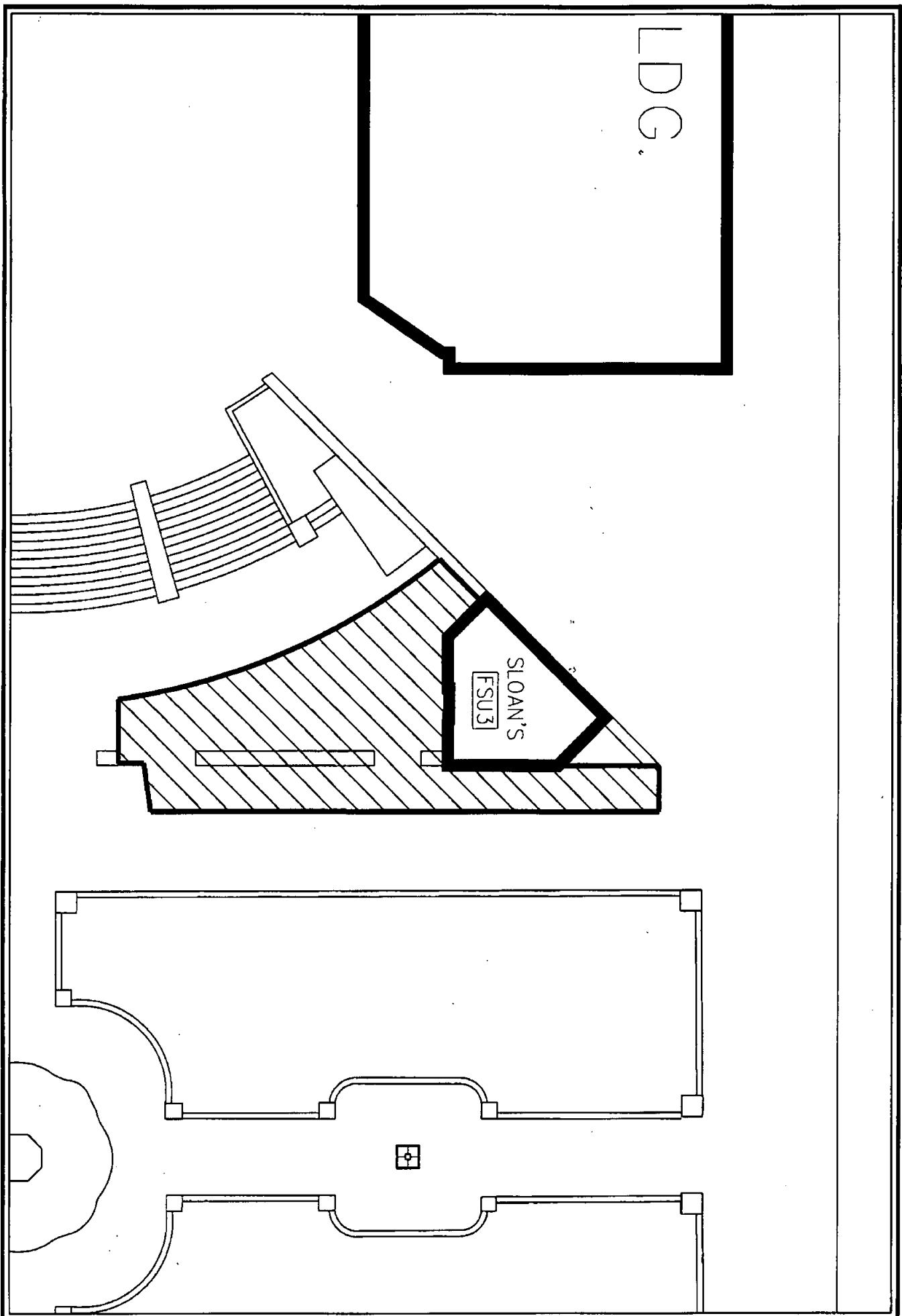


HORTON PLAZA
Jul 07, 2015

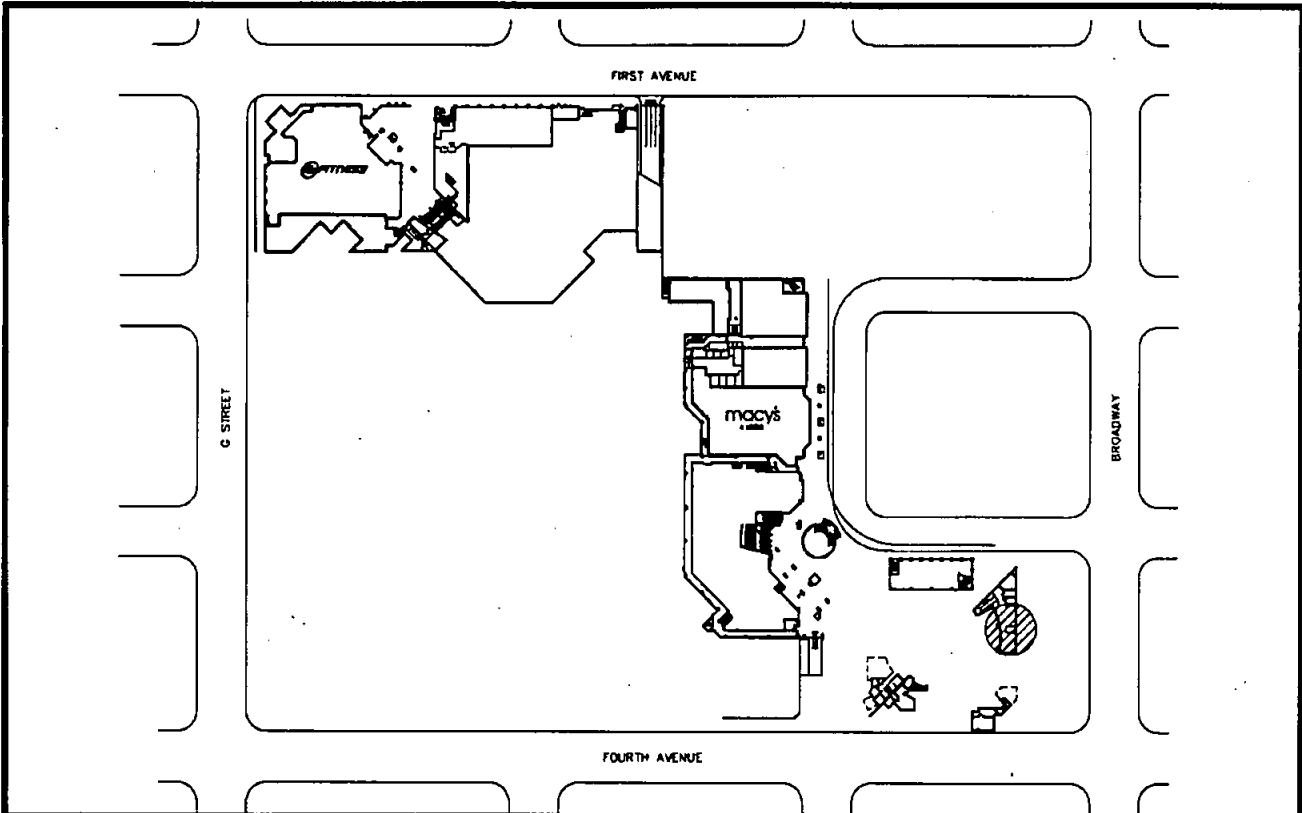
A4

EXHIBIT A-5

INTENTIONALLY DELETED



SPACE: FSU3 SLOAN'S	
EXHIBIT A6 - TRASH AREA	
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	 Horton Plaza Urban Park 324 HORTON PLAZA SAN DIEGO, CALIFORNIA 92101-9481 619-738-6180 HORTON PLAZA Jul 07, 2015 A6 SITE
LEASE PLAN	N.T.S SCALE



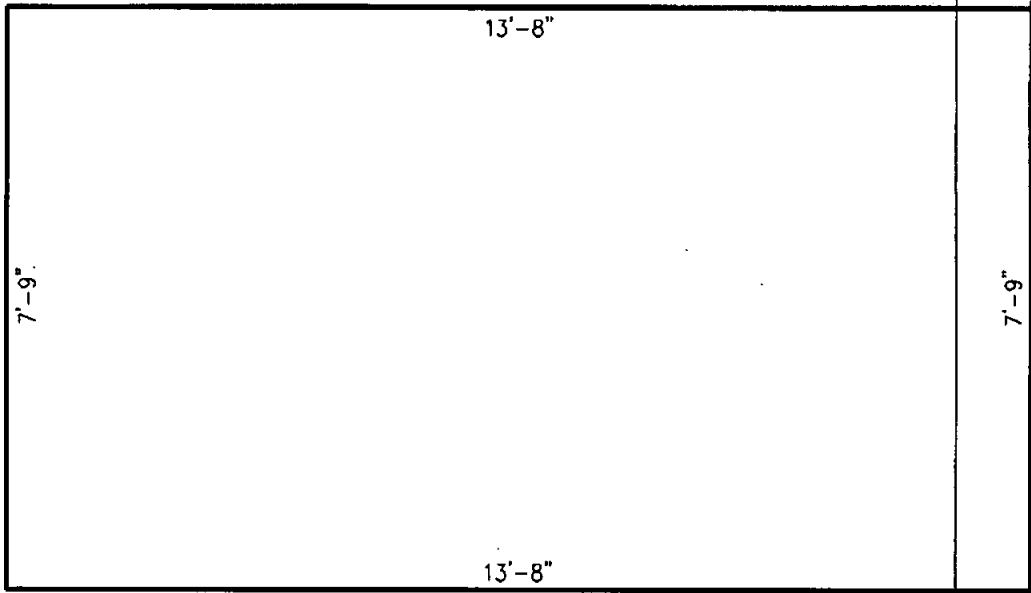
This LOD was produced prior to 100% CD phase and/or during development of an expansion. Layout/GLA subject to change per Base Building updates.



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 E



HORTON PLAZA URBAN PARK

324 HORTON PLAZA, SAN DIEGO, CALIFORNIA 92101-5481



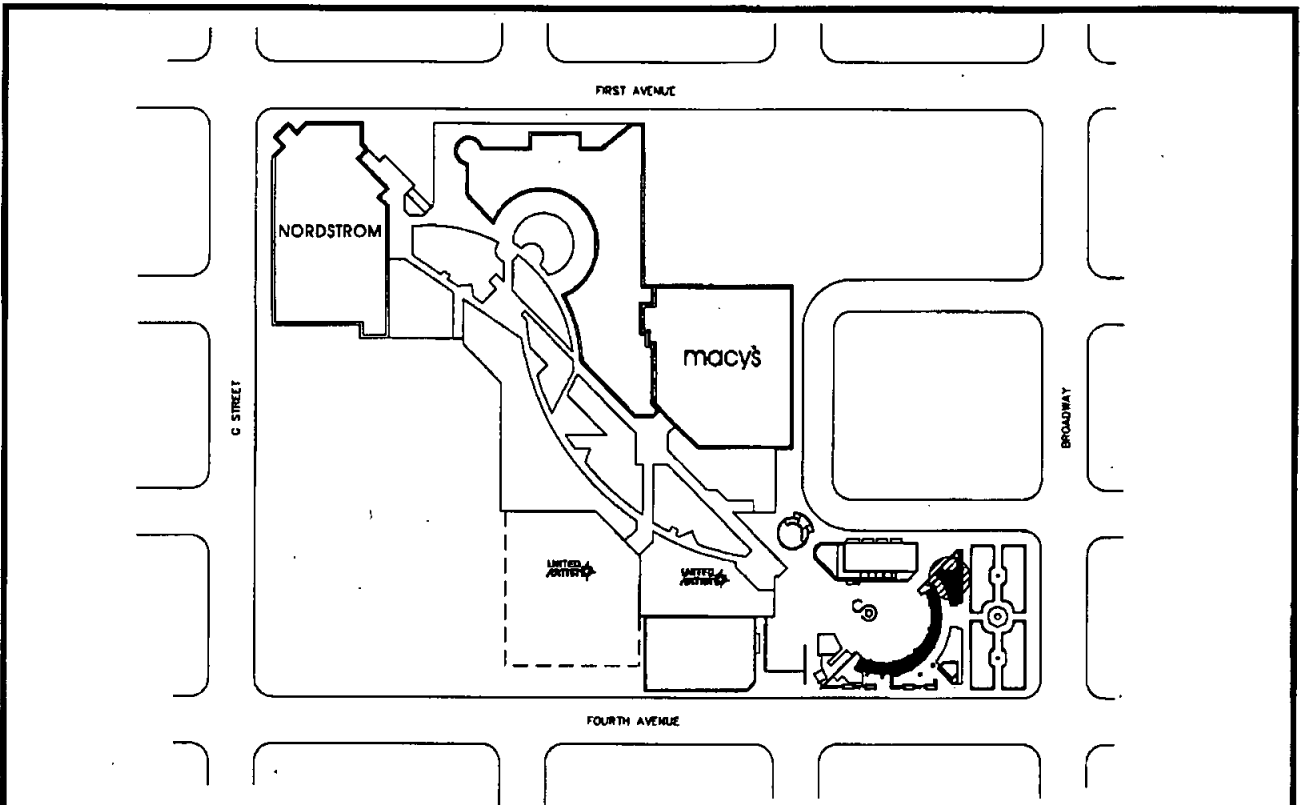
Lower Lvl 1

07/24/15

SFSU3 SLOAN'S--STORAGE AREA

106 SF

EXHIBIT
A7



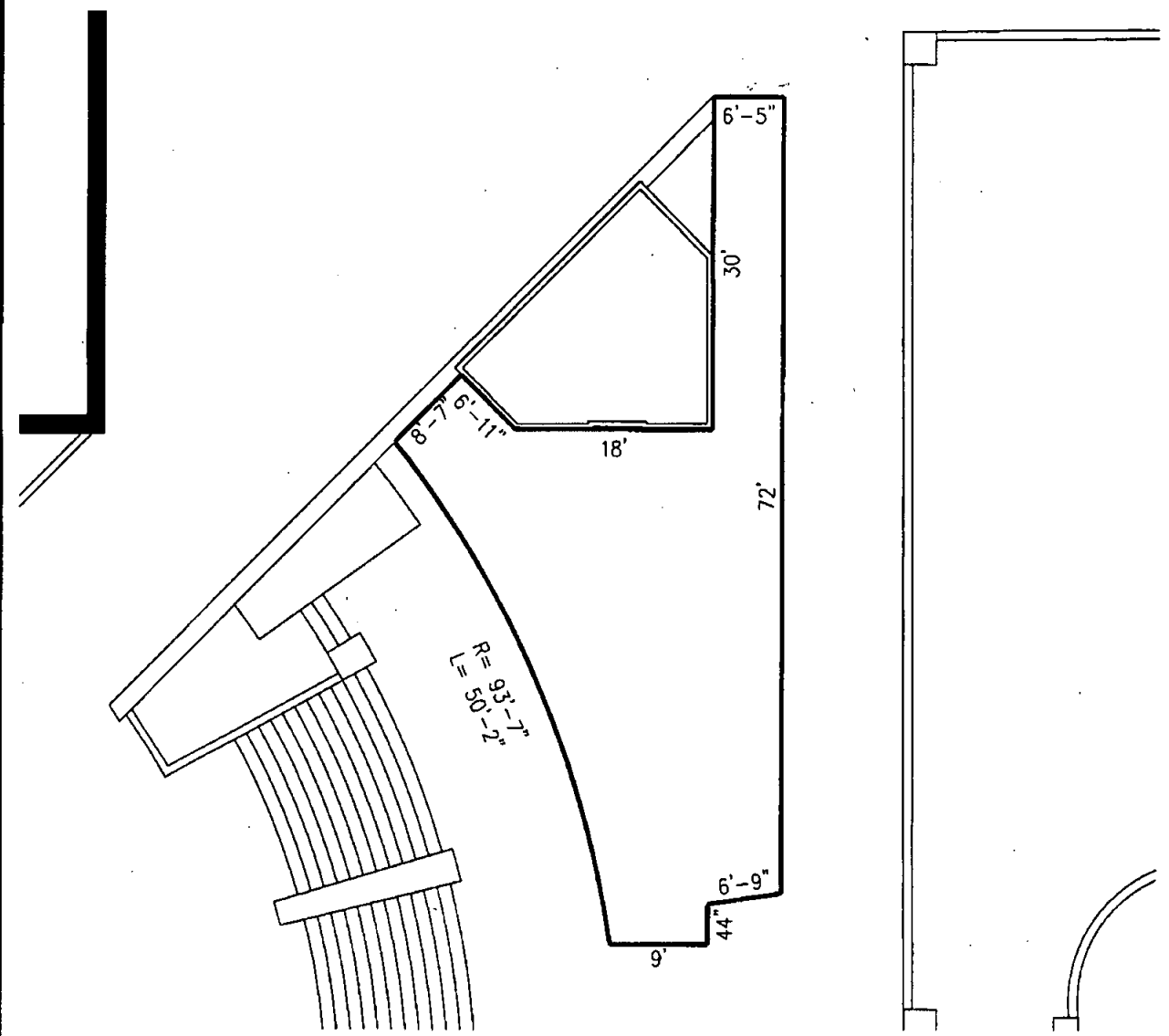
This LOD was produced prior to 100% CD phase and/or during development of an expansion. Layout/GLA subject to change per Base Building updates.



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 A



HORTON PLAZA URBAN PARK

324 HORTON PLAZA SAN DIEGO, CALIFORNIA 92101-5481

SITE

02/13/15

PFSU3

SLOAN'S-PATIO AREA



1,279 SF

EXHIBIT
A8

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 kiosks, with finished Common Areas, constructed of such materials as are permitted by the governing codes.
2. Tenant area will be provided with a structural concrete floor slab and topping in broom-swept condition.
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-7 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
 - 1. A remote electrical service area outside the Storage Area with common sub-panel with 120/208 3ph 4w supply.
 - 12. Intentionally deleted
- g. Intentionally deleted.

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 be 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 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 must install a waterproof membrane to waterproof all floor/slab and slab penetrations in all kitchens, and similar water prone areas where water is used for food preparation or cleaning. Perimeter walls of such areas must be waterproofed to a point of no less than twelve inches (12") above the slab. In addition, Tenant must slope floor surfaces to an area drain to prevent the passage of water, waste and other liquids out of such areas.
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 40 decibels (dB) from the Premises. Tenant agrees that the 40 dB sound level may be verified by Landlord through the use of a portable sound level meter, and, in the event Landlord determines that Tenant is transmitting sound or noise outside the Premises in excess of the 40 dB level, Tenant will immediately resolve this condition in a manner approved by Landlord.
 - c. Those premises located below or immediately adjacent to a theater which is located within the Park/Plaza Development 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 Owner and Landlord for the Park/Plaza Development.
- 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 (not to exceed \$25,000.00). 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-7 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 shall provide, as required, a conduit and feeders to power outlets and lighting with switch per code compliance.
 - 6. 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"

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 Park/Plaza Development or any other work, and Tenant further agrees

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

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

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

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

With a copy to:

City of San Diego
1200 Third Street, Suite 1700
San Diego, California 92101
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. 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 Park/Plaza Development is located to provide evidence of compliance with all applicable building and fire codes and all other government requirements;
 2. Landlord shall have inspected the Premises to determine whether Tenant's Work is complete in accordance with the requirements of the Lease and Landlord shall have approved all such work;
 3. Tenant or Tenant's General Contractor shall have paid Landlord all outstanding amounts for work completed by Landlord on behalf of Tenant to include, but not be limited to, the work and services itemized in this Exhibit B; and
 4. Tenant shall have paid to Landlord all Minimum Annual Rental and Additional Rent which has then accrued under the Lease.

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

- B. Within fifteen (5) business days after completion of Tenant's Work, Tenant shall deliver to Landlord the following:
1. The final notarized original affidavit of Tenant's General Contractor performing Tenant's Work stating that Tenant's Work has been completed in accordance with the Final Working Drawings and that all subcontractors, laborers and material suppliers engaged in furnishing materials or rendering services for Tenant's Work have been paid in full.
 2. A final notarized original, unconditional waiver of lien with respect to the Premises executed by Tenant's General Contractor and final notarized original, unconditional waiver of liens executed by each subcontractor, laborer and material supplier engaged in or supplying materials or services for Tenant's Work. All waivers of lien documents must contain, in every circumstance, a totally unconditional release.
- C. After Landlord's inspection of Tenant's Work in the Premises, Landlord shall issue a punch list indicating those items not in compliance with the Standards. Within fifteen (15) business days of receipt of said punch list, Tenant or Tenant's General Contractor shall perform such work and notify Landlord of its completion.

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

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
HORTON PLAZA URBAN PARK
SATELLITE DISH RIGHTS

A. SCOPE OF RIGHTS.

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

B. COMPLIANCE WITH LAW.

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

C. INSTALLATION PROCEDURES.

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

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

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

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

(v) In the event a zoning variance is required in connection with the installation or modification of the Satellite Dish Equipment, Tenant may, with Landlord's good faith, diligent cooperation, seek to obtain such variance at Tenant's sole cost and expense, provided however, that such variance and/or the conditions under which such variance would be granted shall in no way impair or

affect the zoning otherwise affecting the Park/Plaza Development or any part thereof, including without limitation the land on which the Premises is located.

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

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

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

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

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

D. INTERFERENCE.

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

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

E. MAINTENANCE AND REMOVAL OF THE SATELLITE DISH EQUIPMENT.

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

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

F. INDEMNIFICATION.

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

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

G. TAXES.

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

EXHIBIT D

ADDITIONAL INSURED ENTITIES

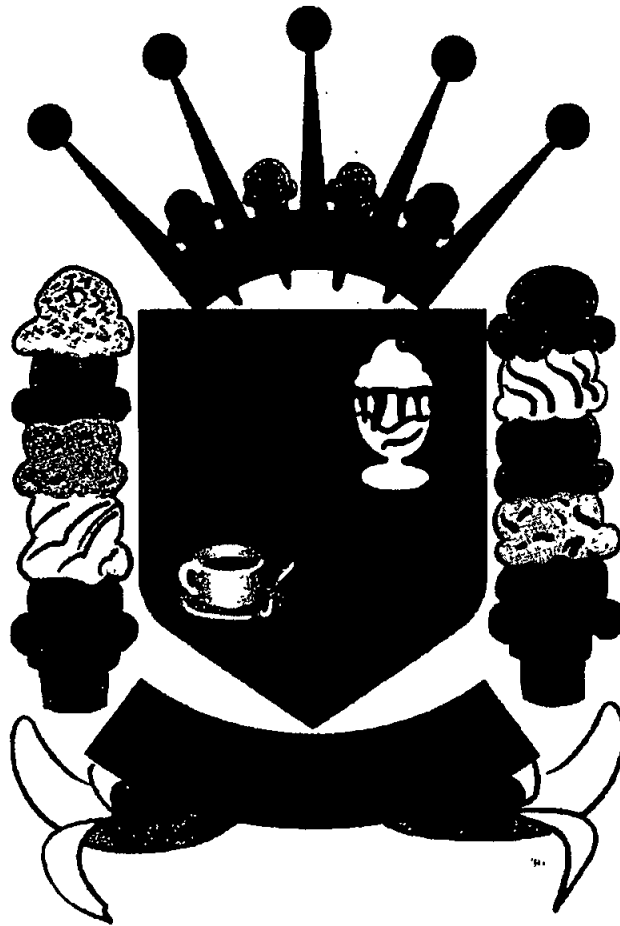
HORTON PLAZA URBAN PARK

- (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 F

TENANT'S MENU



Horton Plaza Menu

EXHIBIT F

TENANT'S MENU

ICE CREAM FLAVORS

Availability of flavors can vary by store.

Small \$4.99 Large \$5.99

Waffle Cone \$.99 extra, Designer Cone \$1.89 extra

AMAZING CHOCOLATE CHUNK

vanilla with lots of dark chocolate chunks

CHUNKY PEANUT BUTTER CUP

with reese's peanut butter cups and lots of peanut butter swirls

CIRCUS

cotton candy ice cream loaded with gummy bears

COCONUT STORM

creamy coconut ice cream with shredded coconut

COFFEE BEAN

incredible blend of coffees make this the ultimate "cup of coffee"

COOKIE MONSTER

oreos and homemade chocolate chip cookies

DAD'S MILK CHOCOLATE

smooth and creamy milk chocolate

DULCE DE LECHE

incredible caramel ice cream

FRESH STRAWBERRY

made with tons of strawberries

LUSCIOUS SLOAN'S WHITE

vanilla ice cream with brownies, pecans, almonds, peanuts, toffee, and caramel

LUSCIOUS SLOAN'S DARK

chocolate ice cream with brownies, pecans, almonds, peanuts, toffee, and caramel

MINT CHOCOLATE CHUNK

mint ice cream with dark chocolate chunks

PEPPERMINT PATTIE CHUNK

mint chocolate chunk ice cream with york peppermint patties

NUTTY PISTACHIO

loaded with pistachios

SLOAN'S CHOCOLATE

dark chocolate ice cream

EXHIBIT F

TENANT'S MENU

SNICKERS

chopped up snickers bars and caramel

SOUTHERN BUTTER PECAN

with lots of fresh roasted pecans

ALMOND JOY

coconut ice cream with fudge, chocolate covered almonds and shredded coconut

BANANA

tons of ripe, fresh bananas

CHERRIES JUBILEE

cherry ice cream with chocolate chunks and sweet black cherries

CHOCOLATE CHOCOLATE CHUNK

dark chocolate with dark chocolate chunks

CHOCOLATE FUDGE BROWNIE

dark chocolate ice cream with brownies, fudge and walnuts

MOM'S APPLE PIE

apple pie ice cream with lots of pieces of homemade apple pie

MONT BLANC

white chocolate with belgian white chocolate chunks

MUD PIE

coffee ice cream with fudge and graham crackers

PEPPERMINT STICK

peppermint stick ice cream with lots of peppermint stick pieces

PRALINES & CREAM

with praline pecans and swirls of caramel

RICHARD'S RIOT

coffee ice cream with toasted almonds, chocolate chunks and toffee

STRAWBERRY CHEESECAKE

with strawberry swirls and crumbled graham crackers

CHOCOLATE PEANUT BUTTER CUP

chocolate with reese's peanut butter cups and lots of peanut butter swirls

BIRTHDAY

with pieces of buttercream frosted chocolate and yellow birthday cake...fabulous!!!

ELVIS' FAVORITE

peanut butter and banana ice cream

CHECKER BOY'S RUM RAISIN

made with myer's dark rum...and lots of it!

EXHIBIT F

TENANT'S MENU

CINNAMON STIX

spicy cinnamon ice cream

EXTRAORDINARY VANILLA

made with the finest vanilla...truly extraordinary!

BLACK & WHITE MALT

old fashioned black & white malted milkshake flavor with lots of malt balls

COFFEE & DOUGHNUTS

creamy coffee ice cream with loads of krispy kreme glazed doughnuts...need we say more?

RASPBERRY

made with lots and lots of fresh raspberries...fabulous!!!

RASPBERRY CHOCOLATE CHUNK

our fresh raspberry ice cream with dark chocolate chunks

PUMPKIN PIE

made with tons of fresh pumpkin pies

SCOUT'S HONOR

mint ice cream with tons of girl scout thin mint cookies and chocolate chunks

VINCENZO'S NUTELLA VANILLA

our vanilla with vincenzo's favorite, nutella!!!

MINNIE & INDY'S FLUFFY ROAD

packed with lots and lots of marshmallow swirls, mini marshmallows, walnuts and chocolate chunks...outrageous!!

GINGER SNAPPY

loaded with lots of ginger snap cookies...delicious!!!

CARROT CAKE

carrot cake ice cream with chunks of carrot cake, cream cheese frosting and walnuts

S'MORES

s'mores ice cream made with graham crackers, hershey's milk chocolate bars and toasted marshmallows...incredible!!!

TRACY'S SCRUMPTIOUS PRETZEL

caramel ice cream with milk chocolate covered salty pretzels and peanut butter swirls

EXHIBIT F

**TENANT'S MENU
SOFT SERVE ICE CREAM FLAVORS**

NONFAT CAPPUCCINO

NONFAT CHOCOLATE

NONFAT COOKIES & CREAM

NONFAT FRENCH VANILLA

SUGAR FREE VANILLA

SUGAR FREE CHOCOLATE

SUGAR FREE COFFEE

LOW FAT PEANUT BUTTER

LOW FAT FUDGE BROWNIE

MANGO TANGO SORBET

VERY BERRY SORBET

POMEGRANATE & RASPBERRIES SORBET

EXHIBIT F

TENANT'S MENU

SUNDAES



CLASSIC SUNDAE

3 scoops with 1 wet & 1 dry topping of your choice with whipped cream & a cherry



BROWNIE HOT FUDGE

Sloan's brownie with 3 scoops of ice cream, heathbar, hot fudge, whipped cream & a cherry



CIRCUS BOX SUNDAE

treasure box with a scoop of circus ice cream, hot fudge, gummy bears, sprinkles whipped cream & a cherry



S'MORES SUNDAE

3 scoops with hot fudge, marshmallow, crumbled graham crackers, whipped cream & a cherry



SANDCASTLE SUNDAE

a real beach sand pail and shovel filled with 5 scoops of ice cream, hot fudge, caramel, wet walnuts, any 2 dry toppings and cream with caramel sauce, pecans, whipped cream & a cherry



MOM'S APPLE PIE

3 scoops of mom's apple pie ice cream with caramel sauce, pecans, whipped cream & a cherry



PEANUT BUTTER CUP

3 scoops of peanut butter cup ice cream with chopped peanut butter cups, hot fudge, peanuts, whipped cream & a cherry



KILIMANJARO

3 scoops of coconut storm ice cream with hot fudge, shredded coconut, whipped cream & a cherry

EXHIBIT F

TENANT'S MENU



LUXURY SAMPLER

9 sample size scoops of whatever flavors your heart desires



TRACY'S KITCHEN SINK

the ultimate sundae with everything including the kitchen sink
- 18 scoops of ice cream and all of our toppings, 4 chocolate
chip cookies, 4 brownies, gobs of whipped cream & cherries -
all served in a real sink!



COOKIEWICH

a scoop of our homemade ice
cream sandwiched between 2
freshly baked chocolate chip
cookies



FLOWER CHILD

real flower pot planted with 3
scoops of ice cream, hot fudge,
marshmallow & whipped cream -
all buried under fresh oreo soil

EXHIBIT F

TENANT'S MENU

Shakes, Smoothies, & Ice Cream Sodas

Availability of items can vary by store.



MILK SHAKES
Super Thick Shake
Mudslide Shake
Caramel Shake



SMOOTHIES
Strawberry
Strawberry Banana
Mango

ICE CREAM SODAS
Old Fashioned Ice Cream Soda
Double Chocolate Float
Strawberry Fields

Coffees and Teas

Availability of items can vary by store.

Café Glacé
A delicious blend of Ice cream and coffee. The European favorite!

Coffee
Iced Coffee
Tea
Iced Tea
Milk Tea

EXHIBIT F

TENANT'S MENU

Bakery

Availability of Items can vary by store.



Giant Chocolate Chip Cookies
Brownies
Doughnuts
Homemade Fudge
Candy/Chocolate Apples

GUARANTY

THIS GUARANTY (the "Guaranty") is made this 5th day of November, 2015, by the undersigned ("Guarantor") to and for the benefit of the **CITY OF SAN DIEGO**, a municipal corporation ("Owner"), by its agent **HORTON PLAZA SERVICES, INC.**, a Delaware corporation ("Landlord").

WHEREAS, Landlord and **HORTON FUN LAND, LLC**, a California limited liability company ("Tenant") have entered into that certain Lease dated the 5th of November, 2015 (the "Lease") for Premises located in **HORTON PLAZA URBAN PARK**, City of San Diego, State of California as more fully described in the Lease; and

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

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

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

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

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

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

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

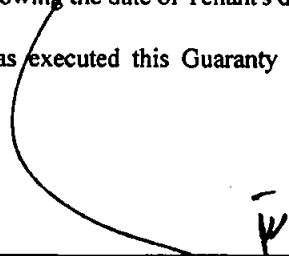
F. If this Guaranty is signed by more than one party, their obligations shall be joint and several, and the release of one of such guarantors shall not release any other of such guarantors. If this Guaranty is signed on behalf of a corporation, partnership or other entity, the signer is duly authorized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

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

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

I. Notwithstanding anything to the contrary herein, Guarantor shall be fully responsible under this Guaranty from the beginning of the Term until the last day of the twenty-fourth (24th) month following the Rental Commencement Date. Thereafter, for the remaining portion of the Term, Guarantor's obligations under this Guaranty shall not exceed one (1) years' worth of Rental (calculated based upon the Rental payable under the Lease for the one (1) year period following the date of Tenant's default).

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



ALI HAJISATARI

Home Address:	12848 Harwick Lane
(or principal place	San Diego, California 92130
of business, if	
corporate guarantor)	