

LEASE

BURGERIM OR BURGERIM: ALWAYS MORE THAN ONE  
TRADE NAME

IRWANTIO, INC.  
TENANT

FSUI  
KIOSK NUMBER

*Westfield*®

HORTON PLAZA  
URBAN PARK

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EXHIBITS - See Data Sheet

## HORTON PLAZA URBAN PARK

City of San Diego  
County of San Diego  
State of California

### LEASE

THIS LEASE ("Lease") is made as of this 11 day of May, 2017, by and between CITY OF SAN DIEGO, a California municipal corporation ("City" or "Owner"), hereinafter, by and through its agent HORTON PLAZA SERVICES, INC., a Delaware corporation, whose address is: 2049 Century Park East, 41<sup>st</sup> Floor, Los Angeles, California 90067 ("Landlord") and IRWANTIO, INC., a California corporation, whose address is: 851 Monte Vista, Irvine, California 92602 ("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-7 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 |
|-----------|---------------|--------------|------------------------|
| FSU1      | Site          | Restaurant   | 748 square feet        |
| P-FSU1    | Site          | Patio        | 1,768 square feet      |
| S-FSU1    | Lower Level 1 | Storage Area | 126 square feet        |

### RECITALS

A. City holds 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 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") 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. As contemplated by the Cooperation Agreement, the Sales Parcel was conveyed to the City in May 2016.

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: September 1, 2017

Expiration Date of Term: August 31, 2027

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

Rental Commencement Date through August 31, 2018: \$ 112,200.00;  
September 1, 2018 through August 31, 2019: \$ 119,680.37;  
September 1, 2019 through August 31, 2020: \$ 123,270.79;  
September 1, 2020 through August 31, 2021: \$ 126,968.91;  
September 1, 2021 through August 31, 2022: \$ 130,777.98;  
September 1, 2022 through August 31, 2023: \$ 134,701.32;  
September 1, 2023 through August 31, 2024: \$ 138,742.35;  
September 1, 2024 through August 31, 2025: \$ 142,904.63;  
September 1, 2025 through August 31, 2026: \$ 147,191.76;  
and  
September 1, 2026 through the end of the Term: \$ 151,607.52.

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

(a) Percentage Rental Rate: Eight percent (8%).

(b) Annual Breakpoint(s) as follows:

Rental Commencement Date through August 31, 2018: \$ 1,402,500.00;  
September 1, 2018 through August 31, 2019: \$ 1,496,004.58;  
September 1, 2019 through August 31, 2020: \$ 1,540,884.32;  
September 1, 2020 through August 31, 2021: \$ 1,587,111.36;  
September 1, 2021 through August 31, 2022: \$ 1,634,724.70;  
September 1, 2022 through August 31, 2023: \$ 1,683,766.44;  
September 1, 2023 through August 31, 2024: \$ 1,734,279.43;  
September 1, 2024 through August 31, 2025: \$ 1,786,307.82;  
September 1, 2025 through August 31, 2026: \$ 1,839,897.05;  
and  
September 1, 2026 through the end of the Term: \$ 1,895,093.96.

(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 operation of a quick service restaurant serving hamburgers, French fries, onion rings, and chicken wings as more fully described on the menu attached hereto as Exhibit "E", as well as non-alcoholic beverages for both on-Premises and carry-out consumption. Tenant shall also be permitted to engage in the sale of alcoholic beverages for on-Premises consumption only (provided Tenant, in connection with the sale of alcoholic beverages, shall at all times: (i) maintain, at its sole cost, all licenses, permits, governmental authorizations and approvals in connection therewith, Landlord making no representation or warranty hereunder with respect to Tenant's ability to obtain the same; and (ii) obtain and maintain, at its sole cost, any additional insurance as may be required pursuant to this Lease for the sale, serving, and consumption of said alcoholic beverages by customers of Tenant). As incidental thereto, Tenant may also sell miscellaneous promotional novelties, apparel and other such merchandise related to "Burgerim," so long as such items do not conflict with any other use permitted by Landlord at the Shopping Center. The Premises shall be used solely for the use stated above and for no other use or purpose.
- (8) **Section 16.01: Trade Name:** BURGERIM or BURGERIM: ALWAYS MORE THAN ONE.
- (9) **Section 16.02: Promotional Program:** \$4.20 psf per annum.  
Initial Assessment: None
- (10) **Section 26.01: Section 26.01: Security Deposit:** \$20,000.00
- (11) **Section 27.05: Legal Notice Address:**
- |                                                                                                                                                 |                                                                                                      |
|-------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|
| Landlord:                                                                                                                                       | Tenant: To the Premises and:                                                                         |
| Horton Plaza Services, Inc.<br>2049 Century Park East<br>41 <sup>st</sup> Floor<br>Los Angeles, California 90067<br>Attention: Legal Department | IRWANTIO, Inc.<br>851 Monte Vista<br>Irvine, California 92602<br>Attn: Oren Loni                     |
| Owner:<br>c/o City of San Diego<br>1200 Third Street, Suite 1700<br>San Diego, CA 92101<br>Attn: Director, Real Estate Assets Dept.             | Billing Address:<br>IRWANTIO, Inc.<br>851 Monte Vista<br>Irvine, California 92602<br>Attn: Oren Loni |
- With a copy to:
- Civic San Diego  
401 B Street, Suite 400  
San Diego, CA 92101-4298
- (12) **Exhibit B-1: Reimbursement for Cost of Construction:** \$100,000.00
- (13) **Guarantor:** OREN LONI, an individual, whose address is: 16861 Ventura Blvd., Suite 303, Encino, CA 91346, in accordance with the provisions of the Guaranty attached hereto.

ATTACHMENTS AND EXHIBITS

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

- EXHIBIT "A-1":.....SITE PLAN
- EXHIBIT "A-2":.....FLOOR PLAN
- EXHIBIT "A-3":.....LEGAL DESCRIPTION
- EXHIBIT "A-4":.....ACCESS TO PARK/PLAZA DEVELOPMENT AND PREMISES
- EXHIBIT "A-5":.....TRASH AREA
- EXHIBIT "A-6":.....STORAGE AREA
- EXHIBIT "A-7":.....PATIO AREA
- EXHIBIT "B" .....CONSTRUCTION OF PREMISES
- EXHIBIT "B-1":.....REIMBURSEMENT FOR COST OF CONSTRUCTION
- EXHIBIT "C":.....ADDITIONAL INSURED ENTITIES
- EXHIBIT "D":.....SATELLITE DISH RIGHTS
- EXHIBIT "E":.....TENANT'S MENU
- GUARANTY:.....OREN LONI

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**ARTICLE I**

**GRANT AND TERM**

**Section 1.01    CONDITIONS OF GRANT.**

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

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

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

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

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

**Section 1.02    TERM.**

The "Term" of this Lease shall commence on the date (the "Commencement Date") of the execution of this Lease by Landlord and Tenant. Tenant's obligation for payment of Minimum Annual Rental, 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 one hundred twenty (120) days following delivery ("Delivery Date") of the Premises to Tenant, said delivery and actual Delivery Date shall be as set forth in a written notice sent by Landlord to Tenant specifying same, or (c) September 1, 2017. 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.

1 For the purposes of this Lease, the first lease year shall be the period commencing on the Rental  
2 Commencement Date and ending on January 31 next following; after the first lease year, the term "lease  
3 year" shall mean a fiscal year of twelve (12) consecutive calendar months ending on January 31 of each  
4 calendar year.

5  
6 **Section 1.03 LATE OPENING.**

7 In the event Tenant shall fail to open its store for business by the Rental Commencement Date,  
8 the parties agree that it is and will be impracticable and extremely difficult to determine the actual  
9 damages suffered by Landlord. Therefore, the parties have agreed that in order to compensate Landlord  
10 for its loss, Tenant shall pay to Landlord as Additional Rent, upon demand, the sum of \$250.00 per day  
11 for each day Tenant delays its initial opening in accordance with Section 1.02 above, after and including  
12 the Rental Commencement Date. This remedy shall be in addition to any and all other remedies provided  
13 in this Lease or by law to Landlord in the event of default by Tenant. Such Additional Rent shall be  
14 deemed to be in lieu of Percentage Rental only (as that term is defined in Section 2.02) that might have  
15 been earned during the period of Tenant's failure to open. The amount has been determined based upon  
16 numerous considerations including the fact that Landlord will have expended considerable sums of  
17 money in reliance upon and based upon Tenant opening for business on the Rental Commencement Date.

18  
19 **ARTICLE II**

20  
21 **RENTAL**

22  
23 **Section 2.01 MINIMUM ANNUAL RENTAL.**

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

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

37  
38 **Section 2.02 PERCENTAGE RENTAL.**

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

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

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

1 adjusted proportionately for such partial lease year.

2  
3 (d) It is expressly understood and agreed that Landlord does not consider Minimum Annual  
4 Rental in itself a fair and adequate rental for the Premises and would not have entered into this Lease  
5 unless Tenant had obligated itself to pay Percentage Rental, which Landlord expects to supplement the  
6 Minimum Annual Rental and the Additional Rent to provide a fair and adequate rental return. Therefore,  
7 if Tenant fails to continuously operate its business in accordance with the terms of this Lease after written  
8 notice and an opportunity to cure as provided in Section 19.01, fails to keep the required store hours, or  
9 vacates the Premises prior to the expiration of the Term hereof, Landlord will suffer damages in an  
10 amount which is not readily ascertainable and thus Landlord, in any such event, shall have the right, at its  
11 option, to collect as Additional Rent, and not as a penalty, in addition to all other charges and Minimum  
12 Annual Rental due hereunder, one-thirtieth (1/30th) of an amount equal to the greater of (a) the amount of  
13 Minimum Annual Rental due for the month in which Tenant failed to operate as required by this Lease, or  
14 (b) the average monthly amount of Minimum Annual Rental and Percentage Rental payable for the  
15 immediately preceding lease year, for each day or portion thereof during which Tenant fails to operate as  
16 required by this Lease including, without limitation, Tenant's failure to maintain the required store hours,  
17 and, in addition, Landlord shall have the right to treat any of such events as a material default and breach  
18 of this Lease.

19  
20 **Section 2.03 GROSS SALES.**

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

41  
42 (b) Notwithstanding anything to the contrary contained in Section 2.03(a) above, Gross Sales  
43 shall not include the following:

44  
45 (1) The portion of the sales price of all merchandise returned by customers and  
46 accepted for credit to the extent of the credit;

47  
48 (2) Goods returned to sources, including shippers or manufacturers, or transferred to  
49 another store or warehouse owned by or affiliated with Tenant (where such exchange of goods or  
50 merchandise is made solely for the convenient operation of the business of Tenant and not for purposes of  
51 consummating a sale which has theretofore been made in or from the Premises and/or for the purpose of  
52 depriving Landlord of the benefit of a sale which otherwise would be made in or from the Premises);

53  
54 (3) Alteration workroom charges and delivery charges at Tenant's cost of sales;

55  
56 (4) Receipts from public telephones, stamp machines, public toilet locks, or vending  
57 machines installed solely for use by Tenant's employees;

58  
59 (5) Sales taxes, so-called luxury taxes; consumers' excise taxes, gross receipts taxes  
60 and other similar taxes now or hereafter imposed upon the sale of merchandise or services, but only if  
61 collected separately from the selling price of goods, merchandise or services and collected from  
62 customers; and

63  
64 (6) Sales of trade fixtures, equipment, or property which are not stock in trade.

65  
66 **Section 2.04 INTENTIONALLY DELETED.**

1           **Section 2.05    TRASH REMOVAL CHARGE.**

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

9  
10          (b)     Solid waste disposal contractors designated by Landlord shall remove trash from said  
11          receptacles at such intervals as Landlord may determine, in Landlord's sole discretion. The Data Sheet  
12          will set forth whether the Tenant will initially pay (i) the "Trash Removal Charge" as set forth on the Data  
13          Sheet, or (ii) directly to the solid waste disposal contractor designated by Landlord. Landlord shall have  
14          the right to change the method of payment at any time during the Term by providing Tenant thirty (30)  
15          days' prior written notice.

16  
17          (c)     In the event Landlord elects that Tenant pay a Trash Removal Charge, Tenant shall be  
18          solely responsible for and shall promptly pay, as Additional Rent hereunder, a sum reasonably determined  
19          by Landlord as the "Trash Removal Charge" for each lease year during the Term in equal consecutive  
20          monthly installments in advance on or before the first day of each month, without prior demand or notice.  
21          Such Trash Removal Charge payable by Tenant shall be adjusted annually commencing on the 1<sup>st</sup> day of  
22          January immediately following the date Landlord elects that Tenant pay the Trash Removal Charge and  
23          each January 1<sup>st</sup> thereafter by the annual percentage increase in the "Index" (as defined in Section 27.23)  
24          to the respective January or the closest subsequent month thereto that the Index is published; provided,  
25          however, in no event shall Tenant pay less than the Trash Removal Charge payable for the preceding  
26          year.

27  
28                 If Landlord elects that Tenant pay the solid waste disposal contractors directly, then  
29          Landlord shall instruct such contractor to bill its charges directly to Tenant, and Tenant shall pay such  
30          charges directly to the contractor, and no separate Trash Removal Charge shall be payable hereunder.

31  
32                 At any time during the Term, Landlord may, upon thirty (30) days' prior written notice to  
33          Tenant, discontinue furnishing trash removal services to the Premises without thereby affecting this Lease  
34          in any manner or otherwise incurring any liability to Tenant except that Landlord will no longer be  
35          required to furnish trash removal services to the Premises. If Landlord does not provide such services and  
36          if Landlord has elected not to retain a third party to provide such services, Tenant shall arrange for the  
37          regular pickup of all trash, garbage and other solid waste with a contractor and upon terms approved in  
38          writing by Landlord, such approval not to be unreasonably withheld.

39  
40           **Section 2.06    ADDITIONAL RENT.**

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

51  
52           **Section 2.07    LATE CHARGE.**

53           All Rental or other charges required to be paid by Tenant pursuant to this Lease shall be due and  
54           payable without any notice from Landlord and without any deductions or offsets whatsoever. The parties  
55           hereby agree that late payment by Tenant of any Rental owing under this Lease will cause Landlord to  
56           incur certain costs and expenses not contemplated under this Lease, the exact amount of which costs are  
57           extremely difficult and impracticable to fix. Such costs and expenses may include, for example,  
58           administrative and collection costs, and processing and accounting expenses. Therefore, in the event  
59           Tenant fails to pay any monthly installment of Rental within five (5) days after said payment is due, then  
60           Tenant shall pay a late charge of five percent (5%) of such amount as Additional Rent. The parties  
61           hereby agree that such late charge represents a fair and reasonable estimate of the costs and expenses  
62           Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord  
63           shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent  
64           Landlord from exercising any of the other rights and remedies granted in this Lease. In the event Tenant  
65           pays the late charge set forth hereunder but fails to pay contemporaneously therewith all unpaid amounts  
66           of Rental, Landlord's acceptance of this late charge payment shall not constitute a waiver of Tenant's

1 default with respect to Tenant's nonpayment nor prevent Landlord from exercising all other rights and  
2 remedies available to Landlord under this Lease, at law or in equity.

3  
4 **Section 2.08 TENANT'S PAYMENT OBLIGATIONS.**

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

13  
14 (b) Tenant covenants to pay all charges under this Lease, including, without limitation,  
15 Minimum Annual Rental, Percentage Rental and Additional Rent and other charges, independent of any  
16 obligation of Landlord. No breach of this Lease by Landlord shall relieve Tenant of its obligation and  
17 duty to pay all such charges when due under the terms of this Article II.

18  
19 **ARTICLE III**

20  
21 **RECORDS AND BOOKS OF ACCOUNT**

22  
23 **Section 3.01 TENANT'S RECORDS.**

24 Tenant shall prepare and keep full, complete and proper books and source documents, in  
25 accordance with Generally Accepted Accounting Principles, of the Gross Sales, whether for cash, credit  
26 or otherwise, of each separate department at any time operated within the Premises and of the operations  
27 of each subtenant, concessionaire, licensee and/or assignee, and shall require and cause all such parties to  
28 prepare and keep books, source documents, records and accounts sufficient to substantiate those kept by  
29 Tenant ("Records"). The Records to be kept by Tenant shall include, without limitation, true copies of all  
30 state and local sales and use tax returns and reports, records of inventories and receipts of merchandise,  
31 records of bank deposits of the entire receipts from transactions at the Premises, daily receipts from all  
32 sales (including those from mail or telephone orders), and other pertinent sales records and records of any  
33 other transactions conducted in or from the Premises by Tenant and any other persons conducting  
34 business from the Premises. Pertinent sales records shall include, without limitation, a point of sale  
35 system of record keeping and such other reasonable documentation which would normally be examined  
36 by an independent accountant pursuant to Generally Accepted Auditing Standards in performing an audit  
37 of Tenant's sales sufficient to provide determination and verification of Gross Sales and the exclusions  
38 and deductions therefrom. Tenant's Records shall be preserved by Tenant at the Premises for at least three  
39 (3) years after expiration of each lease year or partial lease year (or, if less than three (3) lease years  
40 remain in the Term, until one (1) year following the expiration of the Term). All of books, source  
41 documents, records and documentation maintained pursuant hereto shall at all reasonable times be open to  
42 the inspection of, and may be copied or extracted from, in whole or in part, by Landlord or Landlord's  
43 authorized representative or agent for a period of at least four (4) years after the expiration of each lease  
44 year (or, if less than four (4) lease years remain in the Term, until one (1) year following the expiration of  
45 the Term), provided that such inspection or copying does not occur more than once every 12 calendar  
46 months.

47  
48 **Section 3.02 REPORTS BY TENANT.**

49 On or before the fifteenth (15th) day of each month, Tenant shall submit to Landlord, at the  
50 address specified in this Lease, a written statement certified by Tenant showing Tenant's Gross Sales for  
51 the preceding calendar month (the "Monthly Gross Sales Statement"). Within thirty (30) days after the  
52 end of each lease year, Tenant shall deliver to Landlord a written statement signed by a certified public  
53 accountant, or an officer of Tenant, setting forth the amount of Tenant's Gross Sales for such lease year  
54 (the "Annual Gross Sales Statement"). In the event that Tenant fails to furnish to Landlord any Monthly  
55 or Annual Gross Sales Statement when due, Landlord, in addition to any other rights and remedies that  
56 Landlord may have under this Lease, or at law or in equity, shall be entitled to assess an administrative  
57 charge of \$100.00 for each such delinquent Gross Sales Statement to help defray additional expenses.

58  
59 **ARTICLE IV**

60  
61 **AUDIT**

62  
63 **Section 4.01 RIGHT TO EXAMINE BOOKS.**

64 Notwithstanding the acceptance by Landlord of payments of Minimum Annual Rental or  
65 Percentage Rental or installments thereof, Landlord shall have the right to audit all rentals and other  
66 charges actually due hereunder. Within ten (10) days following Landlord's request, Tenant shall make

1 available to Landlord at the Premises or at Tenant's principal business office in the United States for  
2 examination, extracting and/or copying all books, source documents, accounts, records and sales tax  
3 reports of Tenant and any subtenants, concessionaires, licensees and/or assignees, including Tenant's  
4 state and federal income tax returns, in order to verify the amount of Gross Sales made in and from the  
5 Premises, provided that such audit does not occur more than once every 12 calendar months.

6  
7 **Section 4.02 AUDIT.**

8 (a) At its option, Landlord may at any time upon ten (10) days' prior written notice to  
9 Tenant, cause a complete audit (including a physical inventory) to be made by an auditor selected by  
10 Landlord of the entire records and operations of Tenant and/or any subtenants, concessionaires, licensees  
11 and/or assignees relating to the Premises for the period covered by any statement issued or required to be  
12 issued by Tenant or a concessionaire as above set forth in Article III. Tenant shall make available to  
13 Landlord's auditor at the Premises or at Tenant's principal business office in the United States, within  
14 thirty (30) days following Landlord's notice requiring such audit, all of the books, source documents,  
15 accounts, records and sales tax reports of Tenant and any of its concessionaires which such auditor deems  
16 necessary or desirable for the purpose of making such audit, including Tenant's state and federal income  
17 tax returns. If such audit discloses that Tenant's Gross Sales as previously reported for the period audited  
18 were understated, Tenant shall immediately pay to Landlord the additional percentage rental due for the  
19 period audited. Further, if such understatement was in excess of three percent (3%) of Tenant's actual  
20 Gross Sales as disclosed by such audit, Tenant shall immediately pay to Landlord the cost of such audit,  
21 and if such understatement was in excess of ten percent (10%) of Tenant's Gross Sales as disclosed by  
22 such audit, Landlord may declare this Lease terminated and the Term ended, in which event this Lease  
23 shall cease and terminate on the date specified in such notice (which notice shall be no less than thirty  
24 (30) days) with the same force and effect as though the date set forth in such notice were the date set forth  
25 in this Lease for expiration of the Term, and Tenant shall vacate and surrender the Premises on or before  
26 such date in the condition required by this Lease for surrender upon the expiration of the Term.

27  
28 (b) If upon examination or audit Landlord's accountant or representative reasonably  
29 determines that sufficient documentation is not maintained, retained, recorded or available to verify  
30 Tenant's actual Gross Sales, and, should Landlord deem it necessary, Tenant shall reconstruct, at its sole  
31 cost and expense, all Records for the determination of Gross Sales for any period being audited and  
32 Tenant shall pay for the cost of the second audit.

33  
34 If such audit shall disclose that the Records, in Landlord's reasonable determination, are  
35 inadequate to disclose such Gross Sales, Landlord shall be entitled to collect as Additional Rent an  
36 amount equal to five percent (5%) of the Minimum Annual Rental payable by Tenant during the period in  
37 question.

38  
39 (c) If Tenant subleases, licenses, or in any manner allows the Premises to be used by another  
40 party (the "Subtenant"), Tenant is responsible for ensuring that the Subtenant's Records conform to the  
41 requirements of this Lease. The failure of Subtenant to maintain its Records as required under this Lease,  
42 or to correctly report Gross Sales, will be deemed a failure on the part of Tenant to conform to the  
43 requirements of this Lease and shall subject Tenant to the remedies set forth in Section 4.02(a) or Section  
44 4.02(b) above, including termination of this Lease.

45  
46 **ARTICLE V**

47  
48 **CONSTRUCTION OF PREMISES**

49  
50 **Section 5.01 CONSTRUCTION OF PREMISES.**

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

56  
57 (b) Without limiting the generality of the incorporation by reference of all exhibits and/or  
58 addenda to this Lease, Tenant's failure to furnish the plans and specifications required pursuant to Exhibit  
59 B ("Plans and Specifications") to Landlord and Owner within the time periods and in the form required  
60 by Exhibit B, or failure to perform any other obligation under Exhibit B, shall constitute a default under  
61 this Lease pursuant to Article XIX below, which shall entitle Landlord to all remedies set forth in Article  
62 XIX below. In addition, if Landlord determines that Landlord and Tenant are unable to agree upon the  
63 Plans and Specifications, Landlord may at its option, terminate this Lease upon ten (10) days' notice to  
64 Tenant, in which event this Lease shall terminate on the date specified in such notice and Tenant shall  
65 remain liable as provided in this Lease. No deviation from the final Plans and Specifications, once  
66 approved by Landlord and Owner, shall be made by Tenant without Landlord's and Owner's prior written

1 consent. Approval of the final Plans and Specifications by Landlord and Owner shall not constitute the  
2 assumption of any responsibility by Landlord or Owner for their accuracy, efficacy, or sufficiency, and  
3 Tenant shall be solely responsible for such items. Any occupancy of the Premises by Tenant prior to the  
4 Rental Commencement Date shall be solely for the purpose of inspection, measurement and obtaining  
5 information necessary to prepare Plans and Specifications and to construct its leasehold improvements,  
6 and shall be subject to all terms and conditions of this Lease applicable to such entry prior to the Rental  
7 Commencement Date pursuant to Section 1.02 above.

8  
9 **Section 5.02 CERTIFICATE OF OCCUPANCY.**

10 Within the earlier of (a) fifteen (15) days after completion of construction of Tenant's Work in  
11 accordance with the final Plans and Specifications as approved by Landlord and Owner (as described in  
12 Section 5.01 and Exhibit B); or (b) fifteen (15) days after Tenant opens the Premises for business, Tenant  
13 shall deliver to Landlord and Owner the original of the Certificate of Occupancy for the Premises issued  
14 by the appropriate governmental agency (or functional equivalent provided by the authority having  
15 jurisdiction), original execution copies of all mechanics' lien releases or other lien releases on account of  
16 Tenant's Work, notarized and unconditional, in such form as Landlord shall have approved, copies of all  
17 building permits indicating inspection and approval by the issuer of said permits, and an architect's  
18 certification that Tenant's Work has been constructed in accordance with the final Plans and  
19 Specifications and is fully complete in accordance with Exhibit B.

20  
21 **Section 5.03 CONDITION OF PREMISES.**

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

40  
41 **Section 5.04 ULTIMATE RENTAL COMMENCEMENT DATE.**

42 Notwithstanding anything to the contrary contained herein, if for any reason whatsoever  
43 (including, without limitation, excusable delay), the Rental Commencement Date shall not have  
44 commenced prior to such date as shall be eighteen (18) months from the Commencement Date, then this  
45 Lease shall be automatically terminated without further act of either party hereto and each of the parties  
46 hereto shall be released from any further obligation hereunder.

47  
48 **Section 5.05 REQUIRED IMPROVEMENTS.**

49 In the event the total length of the Term and any extended term (if applicable) is for a period of  
50 nine (9) lease years or more, Tenant shall, at its sole cost and expense, be responsible for performing a  
51 cosmetic refurbishment of the interior of the Premises to "like new" condition such work to include new  
52 paint, ceilings, wall and floor coverings (hereinafter "Required Improvements"). The Required  
53 Improvements shall be performed during the first three (3) months of the sixth (6th) lease year of the  
54 Term and every five (5) lease years thereafter, if applicable. The Required Improvements shall be  
55 performed in accordance with the provisions contained in this Article V and Exhibit B.

56  
57 **ARTICLE VI**

58  
59 **ALTERATIONS, CHANGES AND ADDITIONS**

60  
61 **Section 6.01 ALTERATIONS BY TENANT.**

62 Tenant shall not make or cause to be made any alterations, additions or improvements to the  
63 Premises without the prior written approval of Landlord and Owner (for example, but without limiting the  
64 generality of the foregoing, Tenant shall not install or cause to be installed any signs, floor covering,  
65 interior or exterior lighting, plumbing fixtures, shades, canopies, awnings, electronic detection devices,  
66 antennas, mechanical, electrical or sprinkler systems, or make any changes to the storefront). Tenant

1 shall present to Landlord and Owner Plans and Specifications for any other alterations, additions or  
2 improvements at the time approval is sought, in accordance with criteria and procedures as provided in  
3 **Exhibit B**. All alterations, decorations, additions, and improvements made by Tenant shall be deemed to  
4 have attached to the Premises and to have become the property of Owner upon such attachment.

5  
6 **Section 6.02 REMOVAL BY TENANT.**

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

28  
29 **Section 6.03 CHANGES AND ADDITIONS.**

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

38  
39 **Section 6.04 RIGHTS OF LANDLORD.**

40 (a) Landlord hereby reserves the right at any time following the Commencement Date to  
41 change the location of the Premises in the Park/Plaza Development, as the same may be expanded from  
42 time to time; provided such relocated premises shall contain approximately the same number of square  
43 feet as the original Premises. In the event Landlord elects to exercise such right, it shall so advise Tenant  
44 by sixty (60) days prior written notice, and Tenant hereby agrees to be bound by such election and to  
45 execute, upon receipt from Landlord, whatever amendments or other instruments as may be required to  
46 correctly reflect the foregoing. Landlord shall pay the costs of renovating the relocated Premises so that  
47 the same are reasonably comparable to the original Premises (including leasehold improvements) and of  
48 moving and reinstalling Tenant's trade fixtures and storefront sign. Landlord shall have no liability for  
49 such relocation or the closing of the Premises other than as specifically set forth in this paragraph and  
50 Tenant waives any such claims including, without limitation, claims for lost profits. Further, Tenant shall  
51 not be required to close its business in the Shopping Center for more than five (5) days to effect such  
52 relocation. During such period as Tenant is required to be closed, Rental shall be abated during any  
53 period of such closure.

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55 (b) Intentionally Deleted.  
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**ARTICLE VII**

**CONDUCT OF BUSINESS BY TENANT**

**Section 7.01 PERMITTED USE.**

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

**Section 7.02 OPERATION OF BUSINESS.**

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

Tenant shall have the right to close the Premises for business to the public on Easter Sunday, Thanksgiving Day, and Christmas Day, and on any other day when the Park/Plaza Development is closed to the public.

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

No auction, liquidation, going out of business, fire, or bankruptcy sale may be conducted or advertised by sign or otherwise in the Premises. Tenant shall not permit the operation of any coin operated or vending machines or pay telephones in the Premises, other than in the areas reserved solely for the use of Tenant's employees. Tenant shall not use the areas adjacent to the Premises for business purposes or any other purpose. Tenant shall not store anything in service or exit corridors. All receiving and delivery of goods and merchandise for the Premises, and all removal of merchandise, supplies, equipment, trash and debris and all storage of trash and debris from the Premises shall be made only by way of or in the areas provided by Landlord. Tenant shall be solely responsible for prompt disposal within the Premises or in such areas as may be provided for such disposal by Landlord of all trash and debris from the Premises. Tenant shall not use or permit the use of any portion of the Premises as sleeping

1 quarters, lodging rooms, for any unlawful purpose, or for cooking, except as specifically permitted in  
2 Section 7.01. Tenant shall not install any radio, television, communication dish or other similar device or  
3 related equipment to the exterior to the Premises, shall not cause or make any penetration of the roof of  
4 the Premises or the building in which the Premises is located and shall not erect any aerial or antenna on  
5 the roof or exterior walls of any building within the Park/Plaza Development.

6  
7 If Tenant shall fail to comply with any of the provisions of this Section 7.02(b), then  
8 Tenant shall pay, within ten (10) days of demand therefor by Landlord, Additional Rent in the amount of  
9 \$100.00 per day until such time as Tenant is in compliance. This remedy shall be in addition to any and  
10 all other remedies provided in this Lease or by law to Landlord.

11  
12 (c) If Tenant is permitted pursuant to this Lease to engage in the sale of food and/or  
13 beverages from the Premises, whether in the area designated as a dining area or otherwise, the same shall  
14 be offered only pursuant to a menu approved in writing by the Landlord and attached as an exhibit to this  
15 Lease which shall not be changed without Landlord's prior written consent, provided that should Tenant's  
16 franchisor, Burgerim Group USA, Inc. ("Franchisor"), change the menu for all of its franchisees,  
17 Landlord shall approve such change as it applies to Tenant so long as such change does not materially  
18 alter the intended and approved use of the Premises as provided herein and does not violate any then  
19 existing exclusive in the Park/Plaza Development. Further, in such event, Tenant shall provide to  
20 Landlord upon demand proof satisfactory to Landlord that monthly cleaning and maintenance of all  
21 grease traps, pans and hood ventilators located in the Premises has been performed by a suitable  
22 contractor. A suitable contractor shall be one who is bondable and capable of performing Tenant's  
23 obligations hereunder. If Tenant is permitted to engage in the sale of food and/or beverages from the  
24 Premises and the Premises is not located within a dining area, Tenant shall be solely responsible for  
25 prompt collection of all trash and debris within the area depicted on Exhibit A-5 attached hereto and  
26 incorporated herein by this reference.

27  
28 (d) Tenant acknowledges that the Premises is located in the Park/Plaza Development and that  
29 Owner and Landlord shall have the rights to utilize the Park/Plaza Development for: (i) non-programmed  
30 passive and active public park recreational purposes ("Park Uses"); (ii) temporary pre-scheduled events  
31 (either with or without an admission fee) including, but not limited to: (A) arts and entertainment  
32 programs and events; (B) promotional programs and events; (C) concert and performance programs and  
33 events; (D) educational programs and events; (E) fairs, festivals, and market programs and events; (F)  
34 awareness and fundraising programs and events; (G) athletic, recreational and health programs and  
35 events; (H) holiday special programs and events; (I) exhibits and shows; and (J) private events. Tenant  
36 acknowledges and agrees that from time to time, the Park/Plaza Development may be used for a private  
37 Park Use or other private temporary pre-scheduled event that would require Tenant or event operator to  
38 erect a shielding so as to partially enclose the Premises and block visibility of said private Park Use or  
39 private temporary pre-scheduled event. Tenant further acknowledges and agrees that if the Park/Plaza  
40 Development is used for a private Park Use or private temporary pre-scheduled event, Landlord reserves  
41 the right to cause the Premises to be closed for no more than twenty-four (24) hours at any one time and  
42 no more than twelve (12) times per annum and Landlord shall pay Tenant an amount of \$1,500.00 per  
43 closure. Tenant shall have the right to close the Premises without being subject to any penalties as set  
44 forth in this Section. The remedy set forth in this subsection 7.02(d) shall be Tenant's sole remedy for a  
45 closure of the Premises under this Section 7.02(d).

46  
47 (e) Tenant acknowledges that its employees work in the Park/Plaza Development which are  
48 open to the public and will require its employees to be dressed and conduct themselves professionally.  
49 Tenant shall not permit any of its employees to call out to or aggressively approach any customers of the  
50 Park/Plaza Development or, by its manner of operation of business at the Park/Plaza Development,  
51 disturb the quiet enjoyment of any other occupant or tenant of the Park/Plaza Development. If Landlord  
52 receives three (3) or more complaints regarding the behavior of Tenant's salespeople and/or Tenant's  
53 sales practices more than once during the Term, then Tenant shall pay, within ten (10) days of demand  
54 therefor by Landlord, Additional Rent in the amount of \$250.00 for each additional complaint received by  
55 Landlord. Further, if Tenant violates the provisions of this paragraph more than three times during the  
56 Term, or if Landlord determines in its sole discretion that the standards of the operation of the Park/Plaza  
57 Development are not being maintained due to the manner of Tenant's operation of business, then  
58 Landlord shall have the right, at Landlord's sole option, to immediately terminate this Lease upon written  
59 notice to Tenant.

60  
61 (f) Exhibit D attached hereto and made a part hereof contains certain additional rights and  
62 obligations of Tenant concerning satellite dish equipment.

63  
64 **Section 7.03 HAZARDOUS MATERIALS.**

65 (a) For the purposes of this Section 7.03 the following terms shall have the following  
66 meanings: (i) the term "Hazardous Material" shall mean: (aa) any material or substance that, whether by

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

17  
18 (b) Tenant hereby represents and warrants to Landlord that it will ensure that (i) no  
19 Hazardous Material will be generated, manufactured, sold, transported or located at, on, in, under or about  
20 the Premises; (ii) no Hazardous Material will be generated, manufactured, sold, transported or located at,  
21 in, on, under or about the Premises in a manner which violates any Environmental Requirement, or which  
22 requires cleanup or corrective action of any kind under any Environmental Requirement and (iii) no  
23 Hazardous Material will be transported, released, emitted, sold, discharged, leached, dumped or disposed  
24 of from the Premises onto or into any other property. However, the above prohibition concerning  
25 Hazardous Materials shall not prevent Tenant from selling regular consumer products which contain  
26 small, safe amounts of such Hazardous Materials or maintaining small, safe amounts of cleaning solutions  
27 at the Premises.

28  
29 (c) Tenant shall comply and shall cause any other person on or about the Premises,  
30 including, without limitation, employees, invitees, contractors, subcontractors, licensees, subtenants or  
31 agents, to comply in all respects with all Environmental Requirements, and shall cause itself and its  
32 employees, invitees, contractors, subcontractors, licensees, subtenants or agents not to generate, store,  
33 handle, manufacture, process, sell, dispose of, transport or otherwise use Hazardous Materials at, in, on,  
34 under or about the Premises in a manner that could lead or potentially lead to the imposition on Landlord  
35 or the Park/Plaza Development of any liability or lien of any nature whatsoever.

36  
37 (d) Tenant shall (i) notify Landlord promptly in the event of any spill or other release of any  
38 Hazardous Material at, in, on, under or about the Premises which is required to be reported to a  
39 Governmental Authority under any Environmental Requirement; (ii) promptly forward to Landlord copies  
40 of any notices received by Tenant relating to the alleged violations of any Environmental Requirement;  
41 and (iii) promptly pay when due any fine or assessment against Tenant, Owner, Landlord or the  
42 Park/Plaza Development relating to any Environmental Requirement or the existence of Hazardous  
43 Materials at the Premises.

44  
45 (e) If, at any time, it is determined that the operation or use of the Premises violates any  
46 applicable Environmental Requirement, or that there are Hazardous Materials located at, in, on, under or  
47 about the Premises which require special handling in collection, storage, treatment or disposal, or any  
48 other form of cleanup or corrective action, Tenant shall within ten (10) days after receipt of notice thereof  
49 from any Governmental Authority or from Landlord take, at its sole cost and expense, such actions as  
50 may be necessary to fully comply in all respects with all Environmental Requirements; provided,  
51 however, that if such compliance cannot reasonably be completed within such ten (10) day period, Tenant  
52 shall commence such necessary action within such ten (10) day period and shall thereafter diligently and  
53 expeditiously proceed to fully comply in all respects and in a timely fashion with all Environmental  
54 Requirements. If Tenant fails to timely take, or to diligently and expeditiously proceed to complete in a  
55 timely fashion, any such action, Landlord may, in its sole and absolute discretion, make advances or  
56 payments towards the performance or satisfaction of the same, but shall in no event be under any  
57 obligation to do so. All sums so advanced or paid by Landlord (including, without limitation, counsel and  
58 consultant fees and expenses, investigation and laboratory fees and expenses, and fines or other penalty  
59 payments) and all sums advanced or paid in connection with any judicial or administrative investigation  
60 or proceeding relating thereto, will immediately, upon demand, become due and payable from Tenant. If  
61 Tenant fails to make such payment within fifteen (15) days of such demand, Tenant shall be in default  
62 under this Lease and Landlord may, without any further notice to Tenant terminate this Lease or resort to  
63 any other of its rights upon default set forth in Article XIX. Tenant will execute and deliver, promptly  
64 upon request, such instruments as Landlord may deem useful or necessary to permit Landlord to take such  
65 action, and such notes, mortgages, or other security as Landlord may require to secure all sums to be  
66 advanced or paid by Landlord.

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

11  
12 (g) If Landlord reasonably believes that (i) Tenant has permitted a Hazardous Material at the  
13 Premises, or (ii) that any other condition violates or threatens to violate any Environmental Requirement,  
14 Landlord may, at its option, cause an environmental site assessment of the Premises or portions thereof to  
15 be conducted to confirm Tenant's compliance with the provisions of this Section, then Tenant shall  
16 cooperate in all reasonable ways with Landlord in connection with any such environmental site  
17 assessment and, if such assessment confirms that either scenario (i) or (ii) specified above has occurred,  
18 Tenant shall pay all costs and expenses incurred in connection therewith.

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

43  
44 This indemnification shall, notwithstanding any exculpatory or other provision of any  
45 nature whatsoever to the contrary set forth in the Lease, or any other document or instrument now or  
46 hereafter executed between Owner, Landlord and Tenant, constitute the personal recourse undertaking,  
47 obligation and liability of the Tenant and any guarantor. The obligations set forth in this Section 7.03  
48 shall survive the termination of the Lease.

49  
50 (i) If the Lease is assigned to, or assumed by another party, or in the event of a sublease, it  
51 shall be a condition of such assignment, assumption or sublease that the assignee, party assuming or  
52 sublessee shall assume the obligations of this Section 7.03 in addition to such obligations of Tenant  
53 continuing after and surviving such sublease, assignment or assumption. The obligations and liabilities of  
54 Tenant under this Section 7.03 shall survive and continue in full force and effect and shall not be  
55 terminated, discharged or released, in whole or in part, irrespective of any assignment, sublease, or  
56 assumption and irrespective of any other fact or circumstance of any nature whatsoever.

57  
58 (j) Tenant shall surrender the Premises to Landlord upon the expiration or earlier termination  
59 of the Lease free of Hazardous Materials and free of any violation of any Environmental Requirement.  
60 Upon surrender, Tenant shall provide Landlord with a statement by an officer of Tenant certifying to  
61 Tenant's best knowledge that the Premises is free of Hazardous Materials.

#### 62 63 **Section 7.04 RADIUS.**

64 Tenant acknowledges that sales from a store owned by it or a related entity as described herein  
65 within a two (2) mile radius may reduce the Gross Sales that might otherwise be made from the Premises.  
66 If such a business is operated, the specific effect on Gross Sales may be difficult or impossible to

1 establish with certainty. Therefore, in order to provide Owner and Landlord with a fair and adequate  
2 rental for the Premises, in the event that during the Term hereof Tenant or any person, firm, corporation  
3 or other entity who or which controls or is controlled by Tenant, or by any person, firm, corporation or  
4 other entity who or which controls Tenant, shall directly, either individually or as a partner or stockholder  
5 or otherwise, own, operate or become financially interested in any business similar to or in competition  
6 with the business of Tenant described in the Data Sheet, within a radius of two (2) miles from the  
7 Park/Plaza Development, then the Gross Sales of any such business or businesses within said area shall be  
8 included in the Gross Sales made from the Premises and the Percentage Rental hereunder shall be  
9 computed upon the aggregate of the Gross Sales made from the Premises and by any such other business  
10 or businesses then conducted within said area. Tenant shall be obligated to provide Landlord with a  
11 statement of Tenant's Gross Sales for all such other businesses operated within such area, in accordance  
12 with the provisions of Article III and Landlord shall have a right to examine the books and to audit such  
13 other businesses in a manner as set forth in Article IV of this Lease.

14  
15 This Section 7.04 shall not apply to any such business or businesses open and in operation within  
16 said area as of the date of execution of this Lease. Owner, Landlord or Landlord's authorized  
17 representative or agent shall have the right at all reasonable times during the Term hereof and for a period  
18 of at least two (2) years after the expiration of the Term, to inspect, audit, copy and make extracts of the  
19 books, source documents, records and accounts pertaining to such other business or businesses for the  
20 purpose of determining or verifying the Additional Rent due to Owner/Landlord pursuant to this Section.

## 21 22 **ARTICLE VIII**

### 23 24 **COMMON AREAS**

#### 25 26 **Section 8.01 OPERATION AND MAINTENANCE OF COMMON AREAS.**

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

#### 31 32 **Section 8.02 USE OF COMMON AREAS.**

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

49  
50 Landlord shall have the right, but not the obligation, from time to time, to modify the Common  
51 Areas, remove portions of the Common Areas from common use, to permit entertainment events,  
52 advertising displays, educational displays and other displays in the Common Areas that in Landlord's  
53 judgment tend to attract the public, to erect buildings or other improvements on the Common Areas, to  
54 lease kiosks and to establish, modify and enforce reasonable rules and regulations with respect to all  
55 Common Areas. Tenant shall not be entitled to any credit for income earned by Landlord with respect to  
56 the Common Area.

57  
58 Owner or Landlord may at any time close all or any portion of the Common Area to make repairs  
59 or changes, to prevent the acquisition of public rights, and may do such other acts in and to the Common  
60 Areas as in its reasonable judgment may be desirable.

#### 61 62 **Section 8.03 COMMON AREA OPERATING COSTS AND EXPENSES.**

63 (a) From and after the Rental Commencement Date, Tenant shall pay to Landlord the  
64 Common Area Charge (as defined hereinbelow) as a contribution for the following (collectively  
65 "Operating Costs and Expenses"): all costs and expenses of every kind and nature paid or incurred by  
66 Landlord in managing, operating, equipping, policing and protecting, lighting, signing, cleaning, painting,

1 heating, ventilating, air conditioning, providing sanitation and sewer and other services, insuring,  
2 defending or prosecuting lawsuits (or other legal proceedings), repairing, replacing and maintaining (i)  
3 the Common Areas (including the parking facilities), (ii) all buildings and roofs within the Park/Plaza  
4 Development and (iii) all other areas, facilities, work and storage areas, leased or owned property, and  
5 buildings whether located within or outside of, the Park/Plaza Development.

6  
7 (b) The "Common Area Charge" shall initially mean an amount equal to \$44.22 per square  
8 foot of Floor Area of the Premises per annum. The Common Area Charge shall be payable for each year  
9 during the Term and shall be increased annually on a compounded basis at each January 1<sup>st</sup> following the  
10 Rental Commencement Date by five percent (5%). Landlord and Tenant hereby agree that the Common  
11 Area Charge has been freely negotiated and agreed upon by the parties and is not subject to dispute,  
12 review, or challenge by Tenant whether at law or in equity. Accordingly, Tenant expressly waives any  
13 and all rights it has or may have to inspect and/or audit Landlord's records relating to the  
14 Common Area Charge. The Common Area Charge shall be paid as Additional Rent to Landlord at the  
15 address shown on the Data Sheet in monthly installments on the first day of each calendar month, in  
16 advance, without demand, offset or reduction.

## 17 ARTICLE IX

### 18 SIGNS

#### 19 Section 9.01 TENANT'S SIGNS.

20  
21  
22 Tenant shall affix a sign to the exterior surface of the storefront of the Premises located inside the  
23 Park/Plaza Development. Tenant shall pay all costs of fabricating, constructing, operating, and  
24 maintaining such sign including, without limitation, all charges for electricity. Tenant shall keep said  
25 sign well lighted during Tenant's business hours and shall maintain said sign in good condition and repair  
26 during the entire Term of this Lease. Said sign shall conform to the criteria for signs contained in Exhibit  
27 B, and the size, content, design and location thereof shall be subject to the prior written approval of  
28 Landlord, which approval shall not be unreasonably withheld. Except as hereinabove mentioned, Tenant  
29 shall not place or cause to be placed, erected or maintained on any exterior door, wall, window or the roof  
30 of the Premises, or on the interior or exterior surface of the glass of any window or door of the Premises,  
31 or on any sidewalk or other location outside the Premises, or on or within any display window space in  
32 the Premises, whether or not there is display window space in the Premises, or within any entrance to the  
33 Premises, any sign (flashing, moving, hanging, handwritten, or otherwise), decal, placard, decoration,  
34 flashing, moving or hanging lights, lettering, or any other advertising matter of any kind or description;  
35 provided, however, that subject to the prior written approval of Landlord with respect to design and  
36 placement, Tenant may place decals for safety purposes on glass storefronts where warranted. No symbol,  
37 design, name, mark, or insignia adopted by Owner or Landlord for the Park/Plaza Development shall be  
38 used without the prior written consent of Landlord. No illuminated sign located in the interior of the  
39 Premises and visible from outside the Premises shall be permitted without the prior written approval of  
40 Landlord. All signs located in the interior of the Premises shall be in good taste so as not to detract from  
41 the general appearance of the Premises or the Park/Plaza Development. In the event Tenant shall be in  
42 default of this Section 9.01, Tenant shall pay as Additional Rent the sum of \$100.00 for each day of  
43 default in order to reimburse Landlord for the additional administrative expenses resulting therefrom.

## 44 ARTICLE X

### 45 MAINTENANCE OF PREMISES

#### 46 Section 10.01 TENANT'S OBLIGATIONS FOR MAINTENANCE.

47  
48 (a) Subject to all other terms and provisions of this Lease, Tenant shall, at its sole cost and  
49 expense, keep and maintain the Premises, including without limitation, the roof, foundation, HVAC  
50 systems, utility lines and systems exclusively serving the Premises wherever located, and building  
51 equipment, together with any and all alterations, additions and improvements therein or thereto  
52 permissible under this Lease, in order, condition and repair consistent with the prevailing practices in  
53 retail operations in the same proximate geographical area as the Park/Plaza Development, except for  
54 ordinary wear and tear, and shall, at Tenant's expense, make all repairs and replacements as may be  
55 necessary in order to keep and maintain said improvements in such order, condition and repair, including  
56 structural and non-structural and interior and exterior repairs and replacements, foreseen and unforeseen,  
57 ordinary and extraordinary, and regardless of the time remaining to the expiration of the term hereby  
58 granted. All such repairs and replacements shall be of good quality sufficient for the proper maintenance  
59 and operation of the Premises and shall be constructed and installed in compliance with all applicable  
60 laws and all directions, rules and regulations of the health officer, fire marshal, building inspector or other  
61 proper officials of the governmental agencies having jurisdiction, and Tenant shall comply with all  
62 requirements of law, ordinances and otherwise and insurance requirements. Tenant also agrees to comply  
63 with requirements of any insurance underwriters, inspection bureaus or a similar agency designated by  
64  
65  
66

1 Landlord with respect to the Premises. At the end of the Term, Tenant shall surrender the Premises in  
2 good order, condition, and repair, reasonable wear and tear excepted. Tenant, at its own expense, shall  
3 install and maintain such fire extinguishers and other fire protection devices as may be required from time  
4 to time by any agency having jurisdiction thereof or by the insurance underwriter insuring the building in  
5 which the Premises are located.

6  
7 (b) Tenant shall keep the Premises and all other parts of the Park/Plaza Development free  
8 from any and all liens arising out of any work performed, materials furnished, or obligations incurred by  
9 or on behalf of Tenant. Within twenty (20) days after written request therefor by Landlord, Tenant shall  
10 (a) bond against or discharge any mechanics' or materialmen's lien or (b) furnish Landlord with a copy of  
11 the recorded waiver of lien, recorded release of lien, or of the recorded bond discharging such lien.  
12 Tenant shall reimburse Landlord as Additional Rent for any and all costs and expenses including, without  
13 limitation, attorneys' fees, which may be incurred by Landlord by reason of the filing of any such liens  
14 and/or removal of same, such reimbursement to be made within twenty (20) days after receipt by Tenant  
15 from Landlord of a statement setting forth the amount of such costs and expenses such reimbursement to  
16 be paid to Landlord in the manner and at the place provided in this Lease. Tenant shall give Landlord at  
17 least fifteen (15) days' written notice prior to commencing or causing to be commenced any work on the  
18 Premises (whether prior or subsequent to the Commencement Date), so that Landlord shall have  
19 reasonable opportunity to file and post a notice of non-responsibility for Tenant's work.

20  
21 (c) In the event Tenant fails, refuses or neglects to maintain the Premises as required  
22 hereunder or to commence and complete repairs promptly and adequately, to remove or bond against any  
23 lien, to pay any cost or expense, to reimburse Landlord, or otherwise to perform any act or fulfill any  
24 obligation required of Tenant pursuant to this Section 10.02, Landlord may, but shall not be required to,  
25 perform such maintenance or to make or complete any such repairs, remove or bond against such lien,  
26 pay such cost or perform such act or the like without prior notice to, but at the sole cost and expense of  
27 Tenant. Tenant shall reimburse Landlord, as Additional Rent, for all cost and expense of Landlord  
28 thereby incurred within ten (10) days after receipt by Tenant from Landlord of a statement setting forth  
29 the amount of such cost and expense.

## 30 31 **ARTICLE XI**

### 32 **INSURANCE AND INDEMNITY**

#### 33 **Section 11.01 TENANT'S INSURANCE.**

34  
35 (a) Tenant, at its sole cost and expense, shall maintain during the Lease Term, property  
36 insurance against loss by fire and all other risks and perils included under a Special Form (formerly  
37 known as "all risk") coverage, as such term is known on the Commencement Date of this Lease,  
38 including a demolition cost endorsement and in Builder's Risk form when appropriate, in an amount not  
39 less than one hundred percent (100%) of the actual replacement cost of the leasehold improvements (as  
40 defined in Exhibit B) and Tenant's Personal Property, at the time in question (excluding cost of  
41 excavations, foundations, footings, underground pipes, conduits, flues and drains) and on an agreed value  
42 basis, without diminution of such cost for depreciation or obsolescence or changes in Legal  
43 Requirements, with responsible insurance companies (who are qualified to write insurance and conduct  
44 business in the State and has (have) at a minimum a rating of A-/VIII in Bests Rating Guide  
45 ("Responsible Insurance Companies"). In addition, Tenant, at its sole cost and expense, shall, during the  
46 entire Term hereof, procure and keep in force: (i) Commercial General Liability Insurance with respect to  
47 the Premises and the operations of Tenant in, on or about the Premises, in which the limits shall be not  
48 less than \$2,000,000.00 per occurrence combined single limit, and general aggregate limit of not less than  
49 \$3,000,000.00 and additional coverage under umbrella policies of at least \$5,000,000.00, broad  
50 form/extended bodily injury, death and property damage, and business automobile liability insurance  
51 covering all owned, non-owned and hired or borrowed vehicles of Tenant used in connection with the  
52 operation of its business from the Premises, in which the limits shall be not less than \$1,000,000.00 per  
53 occurrence combined single limit, insuring for bodily injury, death and property damage; (ii) plate glass  
54 insurance, at full replacement value; (iii) insurance against fire, extended coverage, vandalism, malicious  
55 mischief, water damage which does not exclude backup from sewers or drains and/or sprinkler leakage,  
56 and such other additional perils including earthquake and flood as now are or hereafter may be included  
57 in a standard extended coverage endorsement from time to time in general use in the county in which the  
58 Park/Plaza Development is located, insuring Tenant's merchandise, trade fixtures, furnishings, equipment  
59 and all other items of personal property of Tenant located on or in the Premises, including steam boiler  
60 insurance, if applicable, in an amount equal to the full replacement cost thereof; (iv) workers'  
61 compensation coverage as required by law and including Employer's Liability Insurance in the amount of  
62 \$2,000,000.00 each accident, \$2,000,000.00 each employee, by disease, \$2,000,000.00 policy aggregate  
63 by disease; (v) with respect to alterations, improvements and the like required or permitted to be made by  
64 Tenant under this Lease, contingent liability and builders' risk insurance, in an amount satisfactory to  
65 Owner and Landlord; (vi) the insurance required under Exhibit B, and (vii) product liability coverage  
66

1 (including, without limitation, if this Lease covers Premises in which food and/or beverages are sold  
2 and/or consumed, liquor liability coverage for acts arising out of the serving and/or consumption of food  
3 and/or alcoholic beverages on or obtained at the Premises, to the extent obtainable), for not less than  
4 \$2,000,000.00 combined single limit, bodily injury, death and property damage. In addition, if Owner or  
5 Landlord deems it necessary to increase the amounts or limits of insurance required to be carried by  
6 Tenant hereunder, Landlord may reasonably increase said amounts or limits, and Tenant shall so increase  
7 the amounts or limits of the insurance required to be carried by Tenant hereunder and shall provide  
8 Owner and Landlord with policies or certificates indicating the increased amounts or limits as provided in  
9 this Section 11.01; provided, however, Landlord shall not increase the amounts or limits of insurance  
10 required to be carried by Tenant hereunder except to the extent such increased limits are reasonable and  
11 customary for tenants in the same merchandising category as Tenant in similar shopping centers in the  
12 area in which the Park/Plaza Development is located.

13  
14 (b) All policies of insurance required to be carried by Tenant pursuant to this Section 11.01  
15 shall be written by insurance companies of adequate financial capacity satisfactory to Owner and  
16 Landlord with a Best's rating and Financial Size Category of not less than A-/VII and authorized to do  
17 business in the state in which the Park/Plaza Development is located. Any such insurance required of  
18 Tenant hereunder may be furnished by Tenant under any blanket policy carried by it or under a separate  
19 policy therefor. An insurance certificate (and endorsements where same become necessary) together  
20 with a copy of the policy declaration page from Tenant's insurer, certifying that such policy has been  
21 issued, provides the coverage required by this Section 11.01 and contains all of the provisions specified in  
22 this Section 11.01 (including, without limitation, naming of additional insured entities as required by  
23 Section 11.01(c) below), shall be delivered to Owner and Landlord, at the address set forth on the Data  
24 Sheet prior to the commencement of the Term of this Lease, and such insurance information shall also be  
25 provided in connection with all renewals, not less than thirty (30) days prior to the expiration of the term  
26 of each such policy. As often as any such policy shall expire or terminate, renewal or additional policies  
27 shall be procured and maintained by Tenant in like manner and to like extent. Landlord may, at any time,  
28 and from time to time, inspect and copy any and all insurance policies required to be procured by Tenant  
29 hereunder.

30  
31 (c) Each policy evidencing insurance required to be carried by Tenant pursuant to this  
32 Section 11.01 shall contain the following clauses and provisions: (i) a provision that such policy and the  
33 coverage evidenced thereby shall be primary and non-contributing with respect to any policies carried by  
34 Owner and Landlord and that any coverage carried by Owner and Landlord be excess insurance; (ii) a  
35 provision including Landlord and the parties set forth on Exhibit C of this Lease and any other parties  
36 designated by Owner and Landlord from time to time as additional insured entities; (iii) a waiver by the  
37 insurer of any right to subrogation against Owner and Landlord and other additional insured entities (as  
38 set forth on Exhibit C), their agents, employees and representatives, which arises or might arise by reason  
39 of any payment under such policy or by reason of any act or omission of Owner, Landlord, their agents,  
40 employees or representatives; (iv) a severability of interest clause or endorsement; (v) a provision that the  
41 insurer will not cancel or change the coverage provided by such policy without giving Landlord thirty  
42 (30) days' prior written notice; and (vi) such policy shall be an "occurrence form" policy. Any policy of  
43 insurance required to be carried by Tenant that names the parties set forth in this Section 11.01 (c) (ii) as  
44 additional insured entities shall not be subject to a deductible or self-insured retention, it being the intent  
45 of the parties that such insurance shall fully and completely insure such additional insured entities for all  
46 loss or expense.

47  
48 (d) In the event that Tenant fails to procure or to maintain, at the times and for the duration  
49 specified in this Section 11.01, any insurance required by this Section 11.01, or fails to carry insurance  
50 required by law or governmental regulation, Landlord may (but shall not be required to) at any time or  
51 from time to time, and without notice to Tenant, procure such insurance and pay the premiums therefor,  
52 and the cost of same, plus a fifteen percent (15%) administrative fee shall be deemed Additional Rent and  
53 shall be payable upon Landlord's demand.

54  
55 (e) Tenant will not do or suffer to be done, or keep or suffer to be kept, anything in, upon or  
56 about the Premises which will violate Owner's and Landlord's policies of hazard or liability insurance or  
57 which will prevent Owner and Landlord from procuring such policies in companies acceptable to Owner  
58 and Landlord. If anything done, omitted to be done or suffered by Tenant to be kept in, upon or about the  
59 Premises shall cause the rate of fire or other insurance on the Premises or on other property of Landlord  
60 or of others within the Park/Plaza Development to be increased beyond the minimum rate from time to  
61 time applicable to the Premises or to any property for the use or uses made thereof, Tenant will pay, as  
62 Additional Rent, the amount of any such increase upon Landlord's demand.

63  
64 Landlord acknowledges that Tenant's Use does not violate Landlord's current insurance  
65 policies or, at the time of the execution of this Lease, increase the insurance rates for the Park/Plaza  
66 Development.

1           **Section 11.02   OWNER'S/LANDLORD'S INSURANCE.**

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

11  
12           **Section 11.03   COVENANT TO HOLD HARMLESS.**

13           Tenant covenants to defend and indemnify Landlord, the City of San Diego, a California  
14 municipal corporation, and Civic San Diego, a nonprofit public benefit corporation, and all of their  
15 affiliates, parent corporation, subsidiaries, partners, members, management company, successors, and  
16 assigns, and elected officials, the employees, agents, officers, directors, shareholders, members, advisers,  
17 trustees and fiduciaries of any of them, (collectively referred to as the "Indemnified Parties"), save them  
18 harmless (except to the extent of loss or damage resulting from the intentional or willful acts or omissions  
19 or the gross negligence of the Indemnified Parties) from and against any and all claims, actions, demands,  
20 judgments, awards, fines, mechanics' liens or other liens, losses, damages, liability and expense, including  
21 attorneys' fees and court costs, in connection with all losses, including loss of life, personal injury and/or  
22 damage to property, arising from or out of any occurrence (or arising from or out of Tenant's failure to  
23 comply with any provision of this Lease) caused wholly or in part by any act or omission of Tenant, its  
24 concessionaires, agents, contractors, suppliers, employees, servants, customers or licensees and including  
25 any product liability claim or any labor dispute involving Tenant or its contractors and agents. In case  
26 Landlord, Owner, or any other party so indemnified shall be made a party to any litigation commenced by  
27 or against Tenant, then Tenant shall defend, indemnify, protect and save them harmless and shall pay, as  
28 the same becomes due and payable, all costs, expenses and reasonable attorneys' fees and court costs  
29 incurred or paid by them in connection with such litigation. The Indemnified Parties reserve to  
30 themselves, at their sole option, the right to appoint or approve of counsel to defend their separate  
31 interests in any action where it or its related entity is a named party.

32  
33           **Section 11.04   WAIVER OF RIGHT OF RECOVERY.**

34           Except as otherwise provided in this Lease, neither Owner, Landlord nor Tenant shall be liable to  
35 the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for  
36 any loss or damage to any building, structure or other tangible property, or any resulting loss of income,  
37 or losses under worker's compensation laws and benefits, even though such loss or damage might have  
38 been occasioned by the negligence of such party, its agents or employees. The provisions of this Section  
39 11.04 shall not limit the indemnification for liability to third parties pursuant to Section 11.03.

40  
41                                   **ARTICLE XII**

42                                   **UTILITIES**

43  
44           **Section 12.01   UTILITY CHARGES.**

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

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

63  
64           (b)       Except to the extent of Owner's or Landlord's gross negligence, in no event shall Owner  
65 or Landlord be liable for damages or otherwise for any interruption, reduction, disruption, curtailment or  
66 failure in the supply, quality or character of electricity, services from a central utility plant or any other  
67 utility or other service, or if either the quantity, quality or character thereof supplied to or by Landlord is  
68 changed or is no longer available for Tenant's requirements, nor shall any such interruption, reduction,

1 disruption, curtailment, failure or change in quantity, quality or character constitute or be deemed to  
2 constitute constructive eviction of Tenant, or excuse or relieve Tenant from its obligations under this  
3 Lease, including but not limited to the payment of Rental.  
4

5 If, as a direct result of the negligence or breach of this Lease by Landlord, there is an  
6 interruption or discontinuance in any utility supplied to the Premises by Landlord which results in a  
7 substantial and material interference with Tenant's ability to conduct its business in the Premises, and as a  
8 result thereof Tenant is forced to close its business in the Premises for a period in excess of five (5) days,  
9 then the payment of Minimum Annual Rental only shall abate from the expiration of such 5-day period  
10 until the earlier of (i) such utility service is restored, or (ii) Tenant is able to reopen the Premises for  
11 business.  
12

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

33 (d) Notwithstanding any other provisions of this Article, to the extent utilities provided by  
34 Landlord are utilities which could be supplied to Tenant as a direct customer of a public utility, the value  
35 of such utility used by Tenant shall be computed for the purposes of this Article so as not to exceed the  
36 rate schedules which would be applicable if Tenant were at the time a direct customer of such public  
37 utility corporation.  
38

39 (e) Any obligation of Landlord to furnish light, power, and services from a central utility  
40 plant shall be conditioned upon the availability of adequate energy sources. Landlord shall have the right  
41 to reduce heating, cooling, and lighting within the Premises and the Common Areas as required by any  
42 mandatory or voluntary fuel or energy saving allocation, or similar statute, regulation, order or program.  
43

44 (f) Tenant shall operate its heating, ventilating, and air conditioning ("HVAC") system(s)  
45 serving the Premises so as to maintain comfortable conditions during regular Park/Plaza Development  
46 business hours. Tenant's obligation to connect to the services supplied by Landlord, as set forth in this  
47 Section 12.01 and Exhibit B, as well as Tenant's installation, operation and maintenance of its HVAC  
48 system(s) within the Premises, shall be as set forth herein, in Exhibit B and in any related exhibit(s).  
49

50 (g) If Tenant desires to install any equipment which shall exceed the capacity of any utility  
51 facilities or which shall require additional utility facilities, Tenant shall not have the right to do so without  
52 Landlord's prior written approval of Tenant's Plans and Specifications and specifications therefor. If such  
53 installation is approved by Landlord, and if Landlord provides such additional facilities to accommodate  
54 Tenant's installation, Tenant agrees to pay Landlord, on demand, the cost of providing such additional  
55 utility facilities or utility facilities of greater capacity. Tenant shall in no event use any of the utility  
56 facilities in any way which shall overload or overburden the utility systems.  
57

## 58 ARTICLE XIII

### 59 ESTOPPEL STATEMENT, ATTORNMEN, AND SUBORDINATION

#### 60 Section 13.01 ESTOPPEL STATEMENT.

61  
62 Within ten (10) days after request therefor by Owner and/or Landlord (which request may not be  
63 given more often than one (1) time during any twelve (12) month period, unless requested by Landlord's  
64 mortgagee or required in connection with a financing or sale of the Park/Plaza Development), Tenant  
65 shall execute, in recordable form, and deliver to Landlord a statement, in writing, certifying (a) that this  
66

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

#### 12 13 **Section 13.02 ATTORNMENT.**

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

#### 21 22 **Section 13.03 SUBORDINATION.**

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

#### 32 33 **Section 13.04 REMEDIES.**

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

### 37 38 **ARTICLE XIV**

#### 39 40 **ASSIGNMENT AND SUBLETTING**

#### 41 42 **Section 14.01 RESTRICTIONS ON TRANSFER.**

43 (a) Tenant shall not assign or sublet the whole or any part of the Premises without the prior  
44 written consent of Landlord and Owner, which may be granted or withheld in Landlord's reasonable  
45 discretion. In the event that Landlord does not object to such assignment or subletting within ten (10)  
46 business days following Landlord's receipt of written notice from Tenant, then Landlord's consent shall  
47 be deemed approved.

### 48 49 **ARTICLE XV**

#### 50 51 **WASTE OR NUISANCE**

#### 52 53 **Section 15.01 WASTE OR NUISANCE.**

54 Tenant shall not commit nor permit any of its employees, invitees, contractors, subcontractors,  
55 licensees, subtenants, or agents to commit any waste upon the Premises and shall not place a load upon  
56 the floor of the Premises which exceeds the floor load per square foot which such floor was designed to  
57 carry. Tenant shall not commit nor permit any of its employees, invitees, contractors, subcontractors,  
58 licensees, subtenants or agents to commit any nuisance or other act or thing which may impact Landlord's  
59 operation of the Park/Plaza Development or disturb the quiet enjoyment of any other occupant or tenant  
60 of the Park/Plaza Development. Tenant shall not use or permit to be used any medium that might  
61 constitute a nuisance, such as loudspeakers, sound amplifiers, tape decks, compact disc players, radios,  
62 televisions, or any other sound producing or other device which will carry sound or odors outside the  
63 Premises and, upon written notice from Landlord, Tenant shall cause any such noise or odors to cease.  
64 Tenant agrees that business machines and mechanical equipment used by Tenant which cause vibration or  
65 noise that may be transmitted to the building or buildings comprising the Park/Plaza Development or to  
66 the Premises to such a degree as to be reasonably objectionable to Landlord or to any occupant, shall be

1 placed and maintained by Tenant at its expense in a manner sufficient to eliminate such vibrations or  
2 noise, such as by cork, rubber or spring-type vibration isolators. Tenant shall not allow any use of the  
3 Premises or any other portion of the Park/Plaza Development in a manner which is a source of annoyance,  
4 disturbance or embarrassment to Owner, Landlord or to the other tenants of the Park/Plaza Development  
5 or which is deemed by Landlord, in its sole discretion, as not in keeping with the character of the  
6 Park/Plaza Development. The Premises shall not be used for any unlawful, immoral, or other purpose  
7 reasonably deemed improper by Landlord.

## 8 9 **ARTICLE XVI**

### 10 11 **TRADE NAME; PROMOTIONAL PROGRAM**

#### 12 13 **Section 16.01 TRADE NAME.**

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

18  
19 (b) Tenant shall use "Horton Plaza Urban Park" (or such other name as Landlord shall  
20 designate during the Term as provided by written notice to Tenant) to describe the location of the  
21 Premises for all advertising, promotional and marketing materials which refer to the location of the  
22 Premises. This will include all television, radio, print, or collateral materials which are used to promote  
23 Tenant's location. However, Tenant shall obtain the approval for the Park/Plaza Development logo or  
24 representations from the Marketing Director of the Park/Plaza Development prior to using such logo or  
25 representations, which approval shall not be unreasonably withheld or delayed.

#### 26 27 **Section 16.02 PROMOTIONAL PROGRAM.**

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

37  
38 (b) Tenant shall pay to Landlord, as Tenant's share of the cost of the Promotional Program,  
39 an annual promotional charge ("Promotional Charge") which originally shall equal the amount set forth in  
40 the Data Sheet. All payments, charges, dues and assessments payable under this Section shall be payable  
41 in monthly installments on the first day of each month as Additional Rent. Such Promotional Charge  
42 payable by Tenant shall be increased annually commencing on the January 1st immediately succeeding  
43 the Rental Commencement Date and annually thereafter by five percent (5%) of the amount due and  
44 payable by Tenant for the prior year. In the event the Premises is located within an expansion and/or  
45 specially constructed area within the Park/Plaza Development where a grand opening date shall be set by  
46 Landlord, then Tenant shall also pay an initial assessment in the amount set forth in the Data Sheet in  
47 addition to the Promotional Charge, such initial assessment payable in one lump sum within thirty (30)  
48 days after the Rental Commencement Date.

## 49 50 **ARTICLE XVII**

### 51 52 **DAMAGE AND DESTRUCTION**

#### 53 54 **Section 17.01 RECONSTRUCTION OF DAMAGED PREMISES.**

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

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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.

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.

**Section 17.05 NOTICE OF CASUALTY.**

## ARTICLE XVIII

## EMINENT DOMAIN

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.

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.

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.

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

1 taken, and the value of the Premises; (ii) Landlord shall be entitled to receive such portion of said award  
2 or proceeds as shall represent compensation for rental of its privately-owned property, and the value its  
3 land, or the part thereof so taken; and (iii) Tenant shall be entitled to receive the unamortized value of any  
4 improvements by Tenant made at the Premises or portion thereof taken and any amount for removal or  
5 relocation costs, damages to Tenant's business, or personal property of Tenant. The remainder of any  
6 such award or proceeds, if any, shall be paid to Owner. Tenant, Landlord and Owner shall each have the  
7 right, at its own expense, to appear in any condemnation proceedings and to participate in any and all  
8 hearings, trials, and appeals therein. In the event any party to this Lease shall receive notice of any  
9 proposed or pending condemnation affecting the Premises, the party receiving such notice shall promptly  
10 notify the other party of the receipt and contents thereof.

## 11 12 **ARTICLE XIX**

### 13 14 **DEFAULT**

#### 15 16 **Section 19.01 RIGHTS UPON DEFAULT.**

17 (a) Notwithstanding any provision herein to the contrary and irrespective of whether all or  
18 any rights conferred upon Owner and Landlord by this Article XIX are expressly or by implication  
19 conferred upon Landlord elsewhere in this Lease, in the event of (i) any failure of Tenant to pay any  
20 Minimum Annual Rental, Percentage Rental or Additional Rent or any other charges or sums whatsoever  
21 due hereunder (including without limitation, amounts due as reimbursement to Landlord for costs  
22 incurred by Landlord in performing obligations of Tenant hereunder upon Tenant's failure so to perform)  
23 for more than five (5) days after written notice from Landlord to Tenant that such rental or any other  
24 charges or sums whatsoever due hereunder were not received on the date required for payment pursuant  
25 to this Lease, provided that such notice from Landlord shall be in lieu of, and not in addition to, any  
26 notice of default required by applicable laws, or (ii) any default or failure by Tenant to perform any other  
27 of the terms, conditions, or covenants of this Lease to be observed or performed by Tenant for more than  
28 thirty (30) days after written notice from Landlord to Tenant of such default (unless such default cannot  
29 be cured within said thirty (30) days in which event Tenant shall not be deemed to be in default hereunder  
30 if Tenant shall have commenced to cure said default promptly within thirty (30) days and shall thereafter  
31 proceed to prosecute such cure to completion with all reasonable dispatch and diligence, provided that in  
32 no event shall such cure period extend beyond one hundred fifty (150) days), provided that such notice  
33 from Landlord shall be in lieu of, and not in addition to, any notice of default required by applicable laws,  
34 or (iii) any failure by Tenant to move into the Premises and to initially open for business on or before the  
35 Rental Commencement Date (unless such delay is not caused by any reason not within the reasonable  
36 control of Tenant), or (iv) any failure by Tenant to operate continuously in the manner and during the  
37 hours established by Landlord pursuant to Section 7.02(a) hereof or for the purpose specified in the Data  
38 Sheet (the Permitted Use) (unless such delay is not caused by any reason not within the reasonable control  
39 of Tenant), or (v) Tenant's abandonment of the Premises, or permitting this Lease to be taken under any  
40 writ of execution or similar writ or order, then Landlord, in addition to or in lieu of other rights or  
41 remedies it may have under this Lease or by law, shall have the following rights: Landlord may at its sole  
42 discretion: (A) immediately terminate this Lease and Tenant's right to possession of the Premises by  
43 giving Tenant written notice that this Lease is terminated, in which event, upon such termination,  
44 Landlord shall have the right to recover from Tenant the sum of (1) the worth at the time of award of the  
45 unpaid rental which had been earned at the time of termination; (2) the worth at the time of award of the  
46 amount by which the unpaid rental which would have been earned after termination until the time of  
47 award exceeds the amount of such rental loss that Tenant affirmatively proves could have been  
48 reasonably avoided; (3) the worth at the time of award of the amount by which the unpaid rental for the  
49 balance of the Term after the time of award exceeds the amount of such rental loss that Tenant  
50 affirmatively proves could be reasonably avoided; (4) any other amount necessary to compensate  
51 Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations  
52 under this Lease or which in the ordinary course of things would be likely to result therefrom; and (5) all  
53 such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under  
54 applicable law; or (B) have this Lease continue in effect for so long as Landlord does not terminate this  
55 Lease and Tenant's right to possession of the Premises, in which event Landlord shall have the right to  
56 enforce all of Owner's and Landlord's rights and remedies under this Lease including the right to recover  
57 the Minimum Annual Rental, Percentage Rental, Additional Rent and other charges payable by Tenant  
58 under this Lease as they become due under this Lease; or (C) without terminating this Lease, Landlord  
59 may pay or discharge any breach or violation hereof which amount so expended shall be added to the next  
60 monthly incremental payment of Minimum Annual Rent, Percentage Rental and Additional Rent due and  
61 treated in the same manner as Rental hereunder; or (D) without terminating this Lease, make such  
62 alterations and repairs as may be necessary in order to relet the Premises, and relet the Premises or any  
63 part thereof for such term or terms (which may be for a term extending beyond the Term) at such rental or  
64 rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable.

65  
66 (b) If Landlord proceeds under Section 19.01(a)(D) above, upon such reletting all Rental and

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

38  
39 (c) At any time that Tenant has either failed to pay Rental or other charges within five (5)  
40 days after the same shall be due or shall have delivered checks to Landlord for payments pursuant to this  
41 Lease which shall have on at least three (3) occasions during the Term of this Lease (whether consecutive  
42 or not or whether involving the same check or different checks) been returned by Landlord's bank for any  
43 reason, Landlord shall not be obligated to accept any payment from Tenant unless such payment is made  
44 by cashier's check or in bank certified funds.

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

57  
58 (e) Anything to the contrary notwithstanding, Landlord shall not be required to give notice  
59 for the same type of default under this Article XIX more than twice in any consecutive twelve month  
60 period.  
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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 surrender the Premises but shall remain liable as herein provided.

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

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

**Section 20.04 ELECTION TO ASSUME LEASE.**

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

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

**Section 20.05 SUBSEQUENT BANKRUPTCY.**

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

**Section 20.06 ASSIGNMENT.**

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

1 of future performance" of all of the terms, covenants and conditions of this Lease to be performed by  
2 Tenant.

3  
4 **Section 20.07 OCCUPANCY CHARGES.**

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

9  
10 **Section 20.08 CONSENT.**

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

18  
19 **Section 20.09 ATTORNEY FEES.**

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

27  
28 **Section 20.10 OTHER LAWS.**

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

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35  
36 **ARTICLE XXI**

37  
38 **ACCESS BY LANDLORD**

39  
40 **Section 21.01 RIGHT OF ENTRY.**

41 Landlord and Landlord's agents shall have the right to enter the Premises during normal business  
42 hours (except in the event of emergency) for any reasonable purpose upon twenty-four (24) hours'  
43 advance notice to Tenant (except in the event of emergency). Landlord shall have the further right to  
44 enter the Premises to make such repairs, alterations, improvements or additions as Landlord may  
45 reasonably deem necessary, and Landlord shall be allowed to take all material into and upon the Premises  
46 that may be required therefor without the same constituting an eviction of Tenant in whole or in part, and  
47 Minimum Annual Rental, Percentage Rental, Additional Rent and other charges reserved hereunder shall  
48 not abate while said repairs, alterations, improvements or additions are being made, by reason of loss or  
49 interruption of business of Tenant, or otherwise. In exercising such right of entry, Landlord shall use  
50 every reasonable effort not to disrupt Tenant's business in the Premises. Landlord or Landlord's agents  
51 shall have the further right to enter the Premises at any time without notice in the event of emergency.  
52 During the six (6) months prior to the expiration of the Term of this Lease, Landlord may exhibit the  
53 Premises to prospective tenants and their representatives, including brokers, for purposes including but  
54 not limited to the inspection and measurement of the Premises.

55  
56 If, as a direct result of the exercise of Landlord's rights hereunder (except to the extent the same  
57 result from the breach of this Lease, breach of legal requirements, or the negligence or willful misconduct  
58 of Tenant or anyone claiming under Tenant or any of their employees, agents or contractors), there is  
59 substantial and material interference with Tenant's ability to conduct its business in the Premises and as a  
60 result, Tenant is forced to close its business in the Premises for a period in excess of five (5) consecutive  
61 days, then after the expiration of such 5-day period, the payment of Minimum Annual Rental only shall  
62 abate until such time as Landlord ceases the exercise of such rights or Tenant is able to reopen the  
63 Premises for business, whichever shall first occur.

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**ARTICLE XXII**

**TENANT'S PROPERTY**

**Section 22.01 TAXES.**

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

(b) Tenant shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon Tenant or the Premises during the Term, including the land and any buildings, structures, machinery, equipment, appliances or other improvements or property of any nature whatsoever erected, installed or maintained by Tenant, or levied by reason of Tenant's occupancy, use, development, maintenance or restoration of the Premises, including without limitation licensing and permitting costs and fees. Tenant acknowledges that this Lease may create a possessory interest subject to property taxation, and that Tenant may be subject to the payment of taxes levied on that interest. Tenant shall pay all such possessory interest taxes. Tenant's payment for such taxes, fees and assessments shall not reduce any Rental due under this Lease; and that Owner shall not assume any responsibility for any taxes whatsoever resulting from Tenant's possession, use, or occupancy of the Premises.

If the local tax authority bills Tenant for any such tax for Tenant's possession, use, or occupancy of the Premises (hereinafter referred to as "Tax Charge(s)"), then Tenant shall, at its expense, pay all Tax Charges directly to the tax authority. However, if Landlord, receives an invoice from the local tax authority for Tenant's Tax Charge, Tenant shall pay to Landlord the Tax Charge. Upon receipt of all tax bills pertaining to the Tax Charge payable by Tenant, Landlord shall furnish Tenant with a written statement of the actual amount of Tenant's Tax Charge for such tax year. A copy of a tax bill or statement or assessment notice submitted by Landlord to Tenant shall at all times be sufficient evidence of the amount of Tax Charges assessed or levied against the property to which such bill relates. Tenant's Tax Charge, once determined, shall be deemed Additional Rent.

Notwithstanding the foregoing, the Tax Charge is estimated to be \$27.00 per square foot of Floor Area in the Premises per annum, subject to adjustment and reconciliation as provided above.

**Section 22.02 LOSS AND DAMAGE.**

Except to the extent of Landlord's, its agents, employees or contractors' gross negligence or willful misconduct directly related to such an alleged claim of loss or damage, Landlord shall not be responsible or liable to Tenant for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying premises or any part of the premises adjacent to or connected with the Premises or any part of the building of which the Premises are a part, or any other area in the Park/Plaza Development, or for any loss or damage resulting to Tenant or its property from bursting, stoppage or leaking of water, gas, sewer or steam pipes, or (without limiting the foregoing) for any damage or loss of property within the Premises from any cause whatsoever.

**Section 22.03 NOTICE BY TENANT.**

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

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**ARTICLE XXIII**

**HOLDING OVER**

**Section 23.01 HOLDING OVER.**

If possession of the Premises is not surrendered to Landlord on the Expiration Date or earlier termination of this Lease, then Tenant shall pay to Landlord on account of use and occupancy of the Premises, for each month (or any portion thereof) during which Tenant (or a Person claiming by, through or under Tenant) holds over in the Premises after the Expiration Date, an amount equal to the greater of one and one-half (1.5) times: (i) the aggregate Rental that was payable under this Lease during the last month of the Term; and (ii) the then fair market rental value of the Premises plus the monthly Additional Rent that was payable by Tenant during the last month of the Term. Landlord's right to collect such amount from Tenant for use and occupancy shall be in addition to any other rights or remedies that Landlord may have hereunder or at law or in equity. Nothing contained in this Section 23.01 shall permit Tenant to retain possession of the Premises after the Expiration Date, or earlier termination date, or limit in any manner Landlord's right to regain possession of the Premises, through summary proceedings or otherwise. Landlord's acceptance of any payments from Tenant after the Expiration Date, or earlier termination date, shall be deemed to be on account of the amount to be paid by Tenant in accordance with the provisions of this Section 23.01. Tenant expressly waives, for itself and for any person claiming through or under Tenant, any rights that Tenant or any such person may have under the provisions of legal requirements, in connection with any holdover summary proceedings that Landlord may institute to enforce the foregoing provisions of this Article. Tenant shall indemnify, defend and hold harmless Owner and Landlord from and against any and all loss, claims, demands, liabilities, damages (including, without limitation, consequential damages), costs and/or expenses (including, without limitation, attorneys' fees and expenses) resulting from any failure by Tenant to surrender the Premises in the manner and condition required by this Lease upon the expiration of the Term or earlier termination of this Lease, including, without limitation, any claims made by any proposed new tenant founded upon such failure.

**Section 23.02 SUCCESSORS.**

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

**ARTICLE XXIV**

**RULES AND REGULATIONS**

**Section 24.01 RULES AND REGULATIONS.**

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

**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**

**SECURITY DEPOSIT**

1           **Section 26.01    DEPOSIT.**

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

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

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

40                                   **ARTICLE XXVII**

41                                   **MISCELLANEOUS**

42           **Section 27.01    WAIVER; ELECTION OF REMEDIES.**

43           One or more waivers of any covenant or condition by Landlord shall not be construed as a waiver  
44 of a subsequent breach of the same covenant or condition, and the consent or approval by Landlord to or  
45 of any act by Tenant requiring Landlord's consent or approval shall not be deemed to render unnecessary  
46 Landlord's consent or approval to or of any subsequent similar act by Tenant. No breach by Tenant of a  
47 covenant or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver  
48 is in writing signed by Landlord. The rights and remedies of Landlord under this Lease or under any  
49 specific Section, subsection or clause hereof shall be cumulative and in addition to any and all other rights  
50 and remedies which Landlord has or may have elsewhere under this Lease or at law or equity, whether or  
51 not such Section, subsection or clause expressly so states.  
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55           **Section 27.02    ENTIRE AGREEMENT.**

56           The Data Sheet and all attachments, exhibits and/or addendum(s), and/or rider(s), if any, attached  
57 to this Lease are hereby made a part of this Lease, with full force and effect as if set forth herein. This  
58 Lease supersedes all prior agreements between the parties and sets forth all the covenants, promises,  
59 agreements and conditions, and understandings between Owner, Landlord and Tenant concerning the  
60 Premises and there are no actual or implied covenants, promises, agreements, conditions or  
61 understandings, either oral or written, between them other than as are set forth herein and none thereof  
62 shall be used to interpret, construe, supplement or contradict this Lease. Owner and Landlord have made  
63 no representations or warranties regarding the profitability of the Premises or the Park/Plaza  
64 Development, and Tenant has not entered into this Lease in reliance on any such representations,  
65 warranties or financial projections prepared or furnished to Tenant by Owner or Landlord. Although the  
66 printed provisions of this Lease were drawn by Owner and Landlord, the parties hereto agree that this

1 circumstance alone shall not create any presumption, canon of construction or implication favoring the  
2 position of either Owner, Landlord or Tenant. The parties agree that any deletion of language from this  
3 Lease prior to its mutual execution by Owner, Landlord and Tenant shall not be construed to have any  
4 particular meaning or to raise any presumption, canon of construction or implication, including, without  
5 limitation, any implication that the parties intended thereby to state the converse, obverse or opposite of  
6 the deleted language. No alteration, amendment, change, or addition to this Lease shall be binding upon  
7 Owner, Landlord or Tenant unless reduced to writing and signed by each party. Tenant shall pay all of  
8 Owner's and Landlord's costs, expenses and reasonable fees of its attorney(s) in connection with any  
9 assignment of this Lease, subletting of the Premises or amendment, change or addition to this Lease made  
10 at the request of or to accommodate Tenant.

11  
12 **Section 27.03 INTERPRETATION; USE OF PRONOUNS; AUTHORITY.**

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

22  
23 **Section 27.04 DELAYS; FORCE MAJEURE.**

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

48  
49 **Section 27.05 NOTICES.**

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

64  
65 **Section 27.06 CAPTIONS AND SECTION NUMBERS.**

66 The captions, section numbers, article numbers, and index appearing in this Lease are inserted

only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles of this Lease nor in any way affect this Lease.

**Section 27.07 BROKER'S COMMISSION.**

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

The parties acknowledge that Stefan Siegel (the "Broker") has been enlisted as the broker for this transaction. The brokerage commission shall be paid by Landlord to Broker upon written request therefor and in accordance with a commission agreement signed by the parties.

**Section 27.08 INTENTIONALLY DELETED.**

**Section 27.09 FURNISHING OF FINANCIAL STATEMENTS.**

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

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

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

**Section 27.11 INTENTIONALLY DELETED.**

**Section 27.12 FLOOR AREA.**

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

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

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

Any amount due from Tenant to Landlord hereunder which is not paid when due (including, without limitation, amounts due as reimbursement to Owner and/or Landlord for costs incurred by Owner and/or Landlord in performing obligations of Tenant hereunder upon Tenant's failure to so perform) shall bear interest at the lesser of (a) the "Prime Rate" as published in Wall Street Journal plus three percent (3%); or (b) the highest rate then allowed under the usury laws of the state where the Park/Plaza

1 Development is located from the date due until paid, unless otherwise specifically provided herein, but  
2 the payment of such interest shall not excuse or cure any default by Tenant under this Lease.

3  
4 **Section 27.14 LIABILITY OF OWNER/LANDLORD.**

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

15  
16 **Section 27.15 ACCORD AND SATISFACTION.**

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

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

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

32  
33 **Section 27.17 GOVERNING LAW; VENUE.**

34 This Lease shall be governed by and construed in accordance with laws of the state where the  
35 Premises is situated. If any provision of this Lease or the application thereof to any person or  
36 circumstances shall, to any extent be invalid or unenforceable, such provision shall be adjusted rather than  
37 voided, if possible, in order to achieve the intent of the parties, to the extent possible; in any event, all  
38 other provisions of this Lease shall be deemed valid and enforceable to the full extent. Any dispute arising  
39 out of or related to this Lease shall be adjudicated solely in the City of San Diego, County of San Diego,  
40 State of California.

41  
42 **Section 27.18 SPECIFIC PERFORMANCE OF RIGHTS.**

43 Either party shall have the right to obtain specific performance of any and all covenants or  
44 obligations of the other party under this Lease, and nothing contained in this Lease shall be construed as  
45 or shall have the effect of abridging such right.

46  
47 **Section 27.19 SURVIVAL OF TENANT'S OBLIGATIONS.**

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

51  
52 **Section 27.20 CERTAIN RULES OF CONSTRUCTION.**

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

1           **Section 27.21   CONFIDENTIALITY.**

2           To the extent permitted by law, any and all information contained in this Lease or provided to or  
3 by Tenant, Owner and/or Landlord by reason of the covenants and conditions of this Lease, economic or  
4 otherwise, shall remain confidential between Owner, Landlord and Tenant and shall not be divulged to  
5 third parties; provided, however Owner and Landlord shall be permitted to divulge the contents of  
6 statements and reports derived and received in connection with the provisions of Article III and Article IV  
7 in connection with any contemplated sales, transfers, assignments, encumbrances or financing  
8 arrangements of Owner's and/or Landlord's interest in the Park/Plaza Development or in connection with  
9 any administrative or judicial proceedings in which Owner and/or Landlord is involved where Owner  
10 and/or Landlord may be required to divulge such information.  
11

12           **Section 27.22   ATTORNEY FEES.**

13           If at any time after the date that this Lease has been executed by the parties hereto, any of the  
14 parties institutes any action or proceeding against the other relating to the provisions of this Lease or any  
15 default hereunder, the non-prevailing party in such action or proceeding shall reimburse the prevailing  
16 party for the reasonable expenses of attorneys' fees and all costs and disbursements incurred therein by  
17 the prevailing party, including, without limitation, any such fees, costs or disbursements incurred on any  
18 appeal from such action or proceeding. As used in this Agreement, the term prevailing party means that  
19 party whose position is upheld in a final judgment rendered in any litigation, or, if the final judgment is  
20 appealed, that party whose position is upheld by the decision of the final appellate body that considers the  
21 appeal. Subject to the provisions of local law, the prevailing party shall recover all such fees, costs, or  
22 disbursements as costs taxable by the court or arbiter in the action or proceeding itself without the  
23 necessity for a cross-action by the prevailing party.  
24

25           **Section 27.23   INDEX.**

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

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

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

47           **Section 27.25   MORTGAGEE CHANGES.**

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

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

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

1           **Section 27.27 EQUAL EMPLOYMENT OPPORTUNITY.**

2           It has been determined that Landlord qualifies as a Federal Contractor. If applicable, during the  
3 performance of this Lease, the parties hereto hereby incorporate by reference the provisions set forth in 41  
4 C.F.R. § 60-1.4, § 60-250.5 and § 60-741.5 and those set forth in 29 C.F.R. Part 471, Appendix A to  
5 Subpart A, which provisions apply to all nonexempt contractors and vendors.  
6

7           **Section 27.28 STORAGE AREA.**

8           As part of this Lease, Landlord also leases to Tenant that certain storage space known as Space  
9 No. SFSUI containing approximately one hundred twenty six (126) square feet of Floor Area and shown  
10 on Exhibit A-6 attached to the Lease, for the storage of Tenant's merchandise and supplies for use in the  
11 Premises ("Storage Area"). Tenant shall pay Landlord the sum of zero (\$0.00) per square foot per annum  
12 as Minimum Annual Rental for such dry Storage Area, payable in equal consecutive monthly installments  
13 ("Storage Rental"). Landlord shall provide electric service to the Premises, at a cost to be determined by  
14 Landlord, which amount shall be paid monthly by Tenant as Additional Rent pursuant to this Agreement.  
15 Tenant shall also pay for any other utilities, if any, for the Storage Area. Tenant hereby accepts  
16 possession of the Storage Area in its then existing "as-is" condition. Tenant, at Tenant's sole cost and  
17 expense, shall perform any and all work necessary to prepare the Storage Area for Tenant's use, which  
18 work shall be completed in accordance with the provisions of this Lease. The term of Tenant's  
19 occupancy of the Storage Area shall at all times coincide with the Term of this Lease. Such Storage Area  
20 shall be considered a part of the Premises and shall be subject to all of the terms and conditions of this  
21 Lease, including Insurance as set forth in Section 11.01. Further, Landlord shall have the right to relocate  
22 the Storage Area to another storage space in the Park/Plaza Development upon thirty (30) days written  
23 notice to Tenant.  
24

25           **Section 27.29 PATIO AREA.**

26           (a) Subject to the applicable laws, ordinances, codes and regulations of any governmental  
27 authorities having jurisdiction over the Premises, Tenant shall also be entitled to utilize, as a part of the  
28 Premises, and in a manner set forth below, the area immediately adjacent to the store structure of the  
29 Premises for the use and purpose as a patio (hereinafter "Patio Area"). The Patio Area shall contain  
30 approximately thirty-six (36) tables and eighty-two (82) chairs as shown on Exhibit "A-7," which is  
31 attached hereto and incorporated herein by this reference.  
32

33           (b) Tenant agrees and acknowledges that: (i) Landlord, as Landlord's Work and at  
34 Landlord's sole cost and expense, shall provide a finished stone paving surface area beneath the extents of  
35 the trellis structure, matching the stone, style, and pattern in the surrounding stone paving area, level to  
36 industry standards; (ii) Tenant shall construct any and all improvements at its sole cost in accordance with  
37 the requirements set forth in Exhibit "B" attached hereto and receives Owner's and Landlord's prior  
38 consent to plans and specifications therefor (including furniture and fixtures); (iii) Tenant shall maintain  
39 such improvements to a standard consistent with the maintenance required to be performed to the  
40 Premises as set forth herein; and, (iv) the insurance requirements set forth in the Lease shall also apply to  
41 the business operations of Tenant in the Patio Area and Tenant's insurance policy shall specifically cover  
42 the Patio Area. Except as set forth above, Owner and Landlord shall not be required to perform any other  
43 Landlord Work to the Patio Area or ground underneath.  
44

45           (c) Landlord shall provide, at Tenant's cost and expense, the thirty-six (36) tables and  
46 eighty-two (82) chairs, and Tenant shall provide, at Tenant's cost and expense, any related furniture and  
47 other movable fixtures for use on the Patio Area (the "Facilities"). The Facilities shall require the prior  
48 approval of Landlord, which approval shall not be unreasonably withheld, conditioned, or delayed.  
49 Tenant acknowledges and agrees that any destruction, damage, theft, or vandalism of or to, the Facilities  
50 shall be the sole responsibility of Tenant and Tenant agrees to promptly repair or replace same  
51 immediately following such event. Tenant acknowledges and agrees that it shall lock and/or secure the  
52 Facilities when the Premises is closed for business to the public. Upon the Expiration Date, or earlier  
53 termination of this Lease, all tables and chairs located on the Patio Area shall become the property of  
54 Landlord.  
55

56           Tenant shall make a check payable to an affiliate of Landlord, Westfield Development,  
57 Inc., for the cost of the tables and chairs and send such check to 2049 Century Park East, 41<sup>st</sup> Floor, Los  
58 Angeles, CA 90067, Attention: Kim Brewer.  
59

60           (d) Tenant is obligated perform maintenance so as to keep the Patio Area in a neat and clean  
61 condition; such maintenance to be performed during all hours when the Park/Plaza Development is open  
62 to the public. If Tenant fails to perform such maintenance, Landlord may perform the maintenance and  
63 charge the cost therefor directly to Tenant and Tenant shall pay such cost to Landlord as Additional Rent,  
64 within thirty (30) days after Landlord's delivery of the invoice therefor.  
65

66           (e) The Patio Area shall not be included as part of the Floor Area of the Premises for the  
67 purposes of the calculation of Minimum Annual Rental, or Additional Rent. Further, the Patio Area shall

1 be subject to all other terms and conditions of the Lease including, without limitation, Article X, Article  
2 XI and Article XIX.

3  
4 (f) Landlord reserves the right to recapture all or a portion of the Patio Area in the event of a  
5 renovation, remodel, or expansion of the Park/Plaza Development. In the event that Landlord recaptures  
6 the Patio Area as set forth herein, Landlord agrees to reimburse Tenant for the unamortized costs of any  
7 Facilities paid for by Tenant.

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

14  
15 **Section 27.30 EQUAL OPPORTUNITY AND CONTRACTING.**

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

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

33  
34 **Section 27.31 EQUAL BENEFITS.**

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

40  
41 Any conflict resulting from the requirements as set forth in this Lease section and the  
42 requirements as set forth in the applicable San Diego Municipal Code section(s) shall be resolved in favor  
43 of the requirements as set forth in the applicable San Diego Municipal Code section(s).

44  
45 **Section 27.32 DISABLED ACCESS COMPLIANCE.**

46 Tenant shall, as applicable to the Premises and Tenant's possession, use and occupancy thereof,  
47 comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of  
48 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable  
49 state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities.  
50 Tenant's compliance shall include but not necessarily be limited to the following:

51  
52 (a) Tenant shall not discriminate against qualified persons with disabilities in any aspects of  
53 employment, including recruitment, hiring, promotions, conditions and privileges of employment,  
54 training, compensation, benefits, discipline, layoffs, and termination of employment.

55  
56 (b) No qualified individual with a disability may be excluded on the basis of disability from  
57 participation in, or be denied the benefits of, services, programs, or activities of Tenant.

58  
59 (c) Tenant shall post a statement addressing the requirements of the ADA in a prominent  
60 place at the work site.

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

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

4  
5 (f) Tenant understands that failure to comply with the above requirements and/or submitting  
6 false information in response to these requirements shall constitute a default under this Lease.

7  
8 **Section 27.33 ACCESSABILITY ASSESSMENT.**

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

11  
12 **Section 27.34 DRUG-FREE WORKPLACE.**

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

15  
16 (a) Publish a statement notifying employees that the unlawful manufacture, distribution,  
17 dispensation, possession, or use of controlled substances are prohibited on the Permit Area and specifying  
18 the actions that will be taken against employees for violations of the prohibition; and.

19  
20 (b) Establish a drug-free awareness program to inform employees about all of the following:

21  
22 (i) The dangers of drug abuse in the workplace;

23  
24 (ii) Tenant's policy of maintaining a drug-free workplace;

25  
26 (iii) Any available drug counseling, rehabilitation, and employee assistance programs;  
27 and

28  
29 (iv) The penalties that may be imposed upon employees for drug abuse violations.

30  
31 (c) Tenant shall include in each of its sublicenses and contracts related to this Permit  
32 language obligating each sublicensee and contractor to comply with the provisions of this section to  
33 maintain a drug-free workplace. Tenant, and each of its sub-licensees and contractors, shall be  
34 individually responsible for their own drug-free workplace program.

35  
36 **Section 27.35 INTENTIONALLY DELETED.**

37  
38 **Section 27.36 LOCAL BUSINESS AND EMPLOYMENT.**

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

44  
45 **Section 27.37 WATER QUALITY – BEST MANAGEMENT PRACTICES.**

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

51  
52 Therefore, Tenant shall, at a minimum, implement and comply, as applicable, with the BMPs for  
53 industrial and commercial facilities adopted under the San Diego Municipal Code Section 43.0307 (a).

54  
55 It is ultimately the Tenant's responsibility to prevent pollutant discharges to the storm drain  
56 system. Therefore, the Tenant will identify and implement any additional BMPs that may be required to  
57 avoid the discharge of pollutants to the storm drain system."

58  
59 Any conflict resulting from the requirements as set forth in this Lease section and the  
60 requirements as set forth in the applicable San Diego Municipal Code section(s) shall be resolved in favor  
61 of the requirements as set forth in the applicable San Diego Municipal Code section(s).

62  
63 **Section 27.38 NONDISCRIMINATION.**

64 This Lease is made and accepted upon and subject to the covenant and condition, which shall run  
65 with the land, that Tenant or any person claiming under or through Tenant shall not establish or allow any  
66 discrimination against or segregation of any person or group of persons on account of race, color,

1 religion, gender, disability, sexual orientation, marital status, national origin, ancestry, familial status, or  
2 source of income in the possession, use and occupancy of the Premises or in the selection, location,  
3 number, use or occupancy of tenants, subtenants or vendees in the Premises.

4  
5 **Section 27.39 STANDARD OF EMPLOYEES.**

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

8  
9 **Section 27.40 CONSENT.**

10 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  
11 event that in this Lease it is provided that the exercise of any right by Tenant or the performance of any  
12 obligation of Tenant shall be subject to the consent or approval of Landlord and/or Owner, Landlord is  
13 deemed the agent of Owner for said consent or approval. Any such consent or approval shall be: (a) in  
14 accordance with Section 27.04; and (b) sent to Landlord at the address set forth in the Data Sheet.

15  
16  
17  
18 *[REMAINDER 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.

IRWANTIO, INC.,  
a California corporation

By: [Signature]

Print Name: Djulianto Irwanto

Its: CEO

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

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

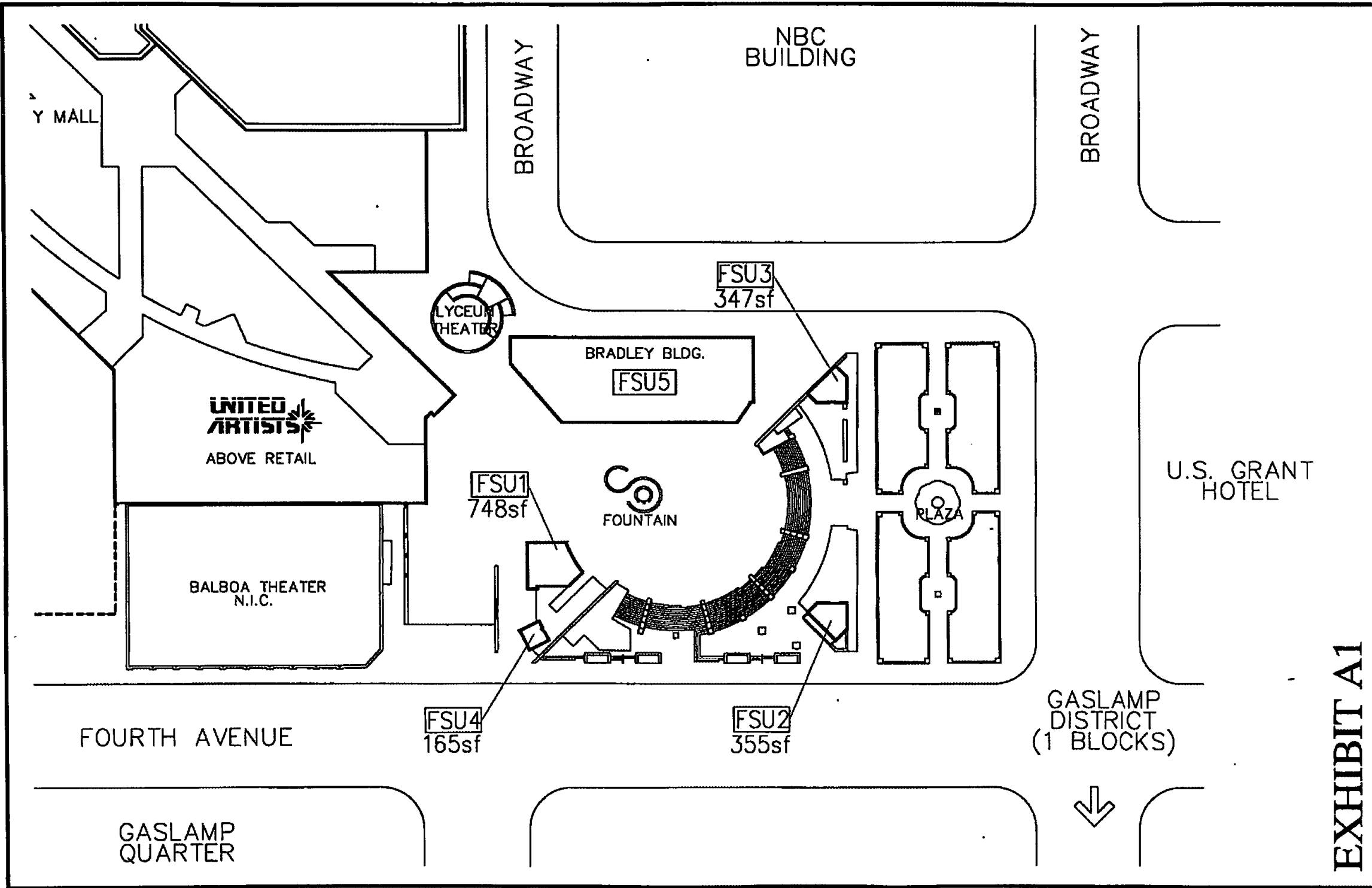
TENANT

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

By: [Signature]

Nicholas Dierman  
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.

SITE PLAN

N.T.S. SCALE

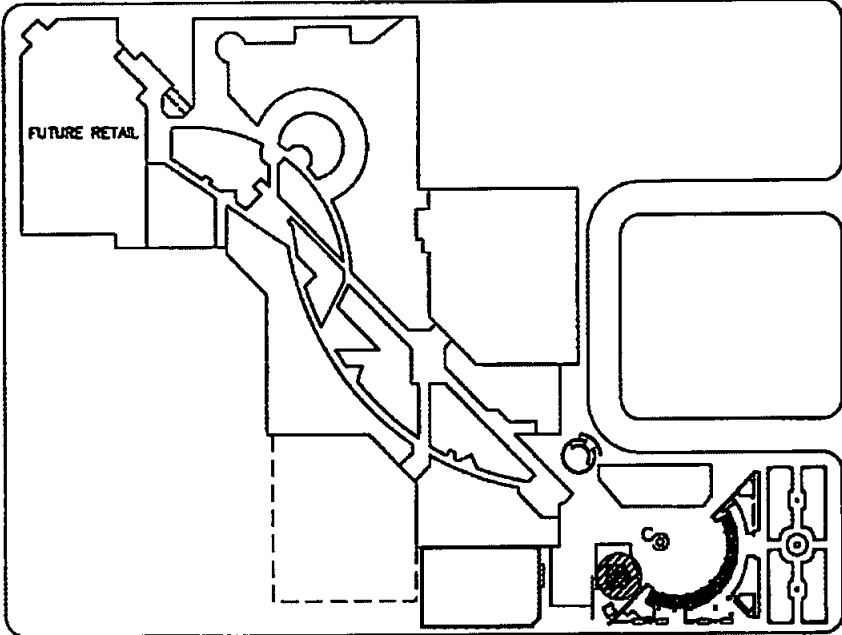
**Westfield**

Horton Plaza Urban Park



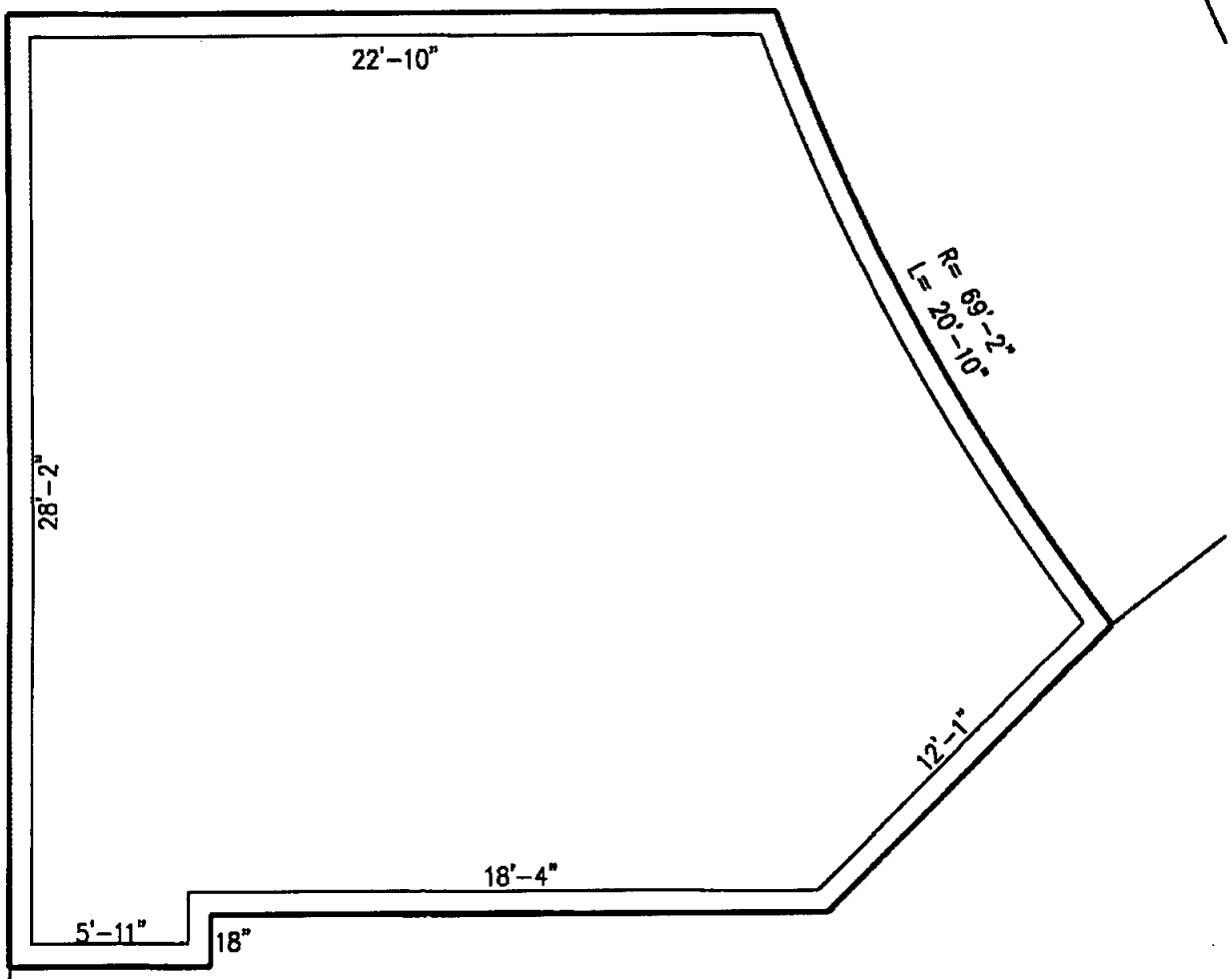
HORTON PLAZA  
JUL 06, 2015

A1



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     | FSU1 | BURGERIM | 748 S.F. |
| 12/25/16 |      |          |          |

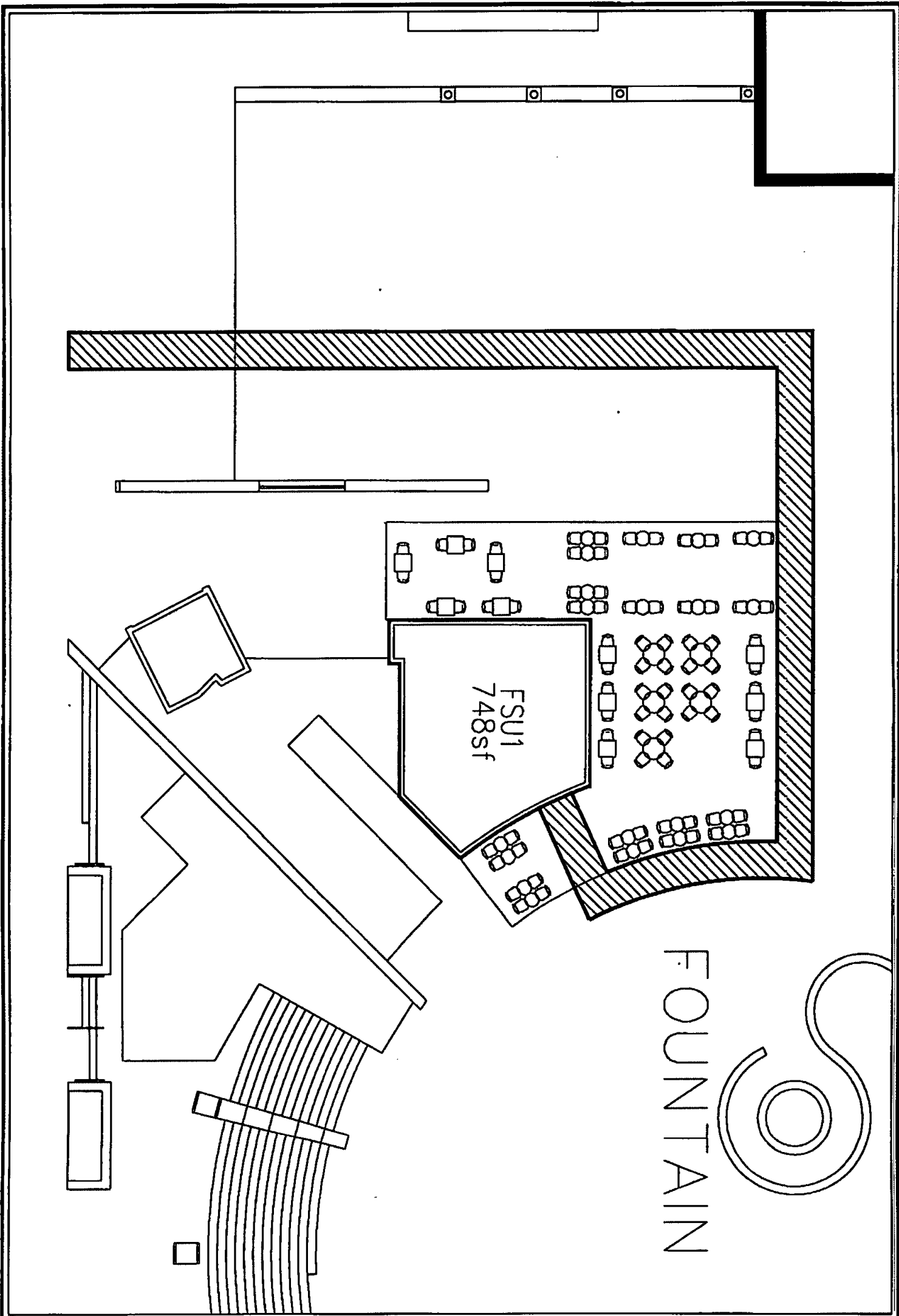
## **EXHIBIT A-3**

### **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**

**SPACE: FSU1  
BURGERIM**

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**

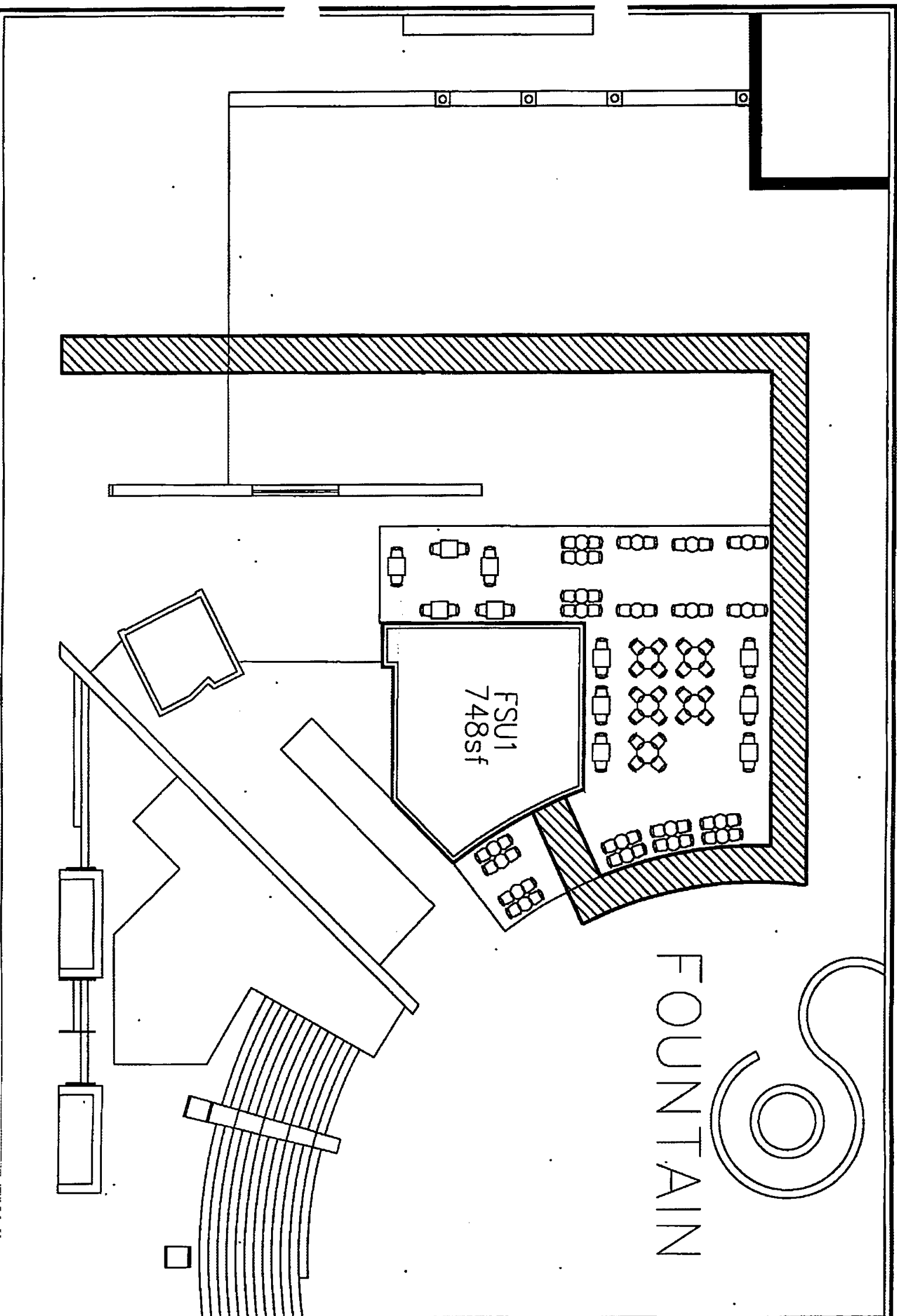
**Horton Plaza Urban Park**

834 HORTON PLAZA SAN DIEGO, CALIFORNIA 92101-5481 (212) 728-4100



**HORTON PLAZA  
Jan 20, 2017**

**A4**



**EXHIBIT A4 - ACCESS TO  
PARK/PLAZA DEVELOPMENT**

**SPACE: FSU1  
BURGERIM OR BURGERIM:  
ALWAYS MORE THAN ONE**

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.

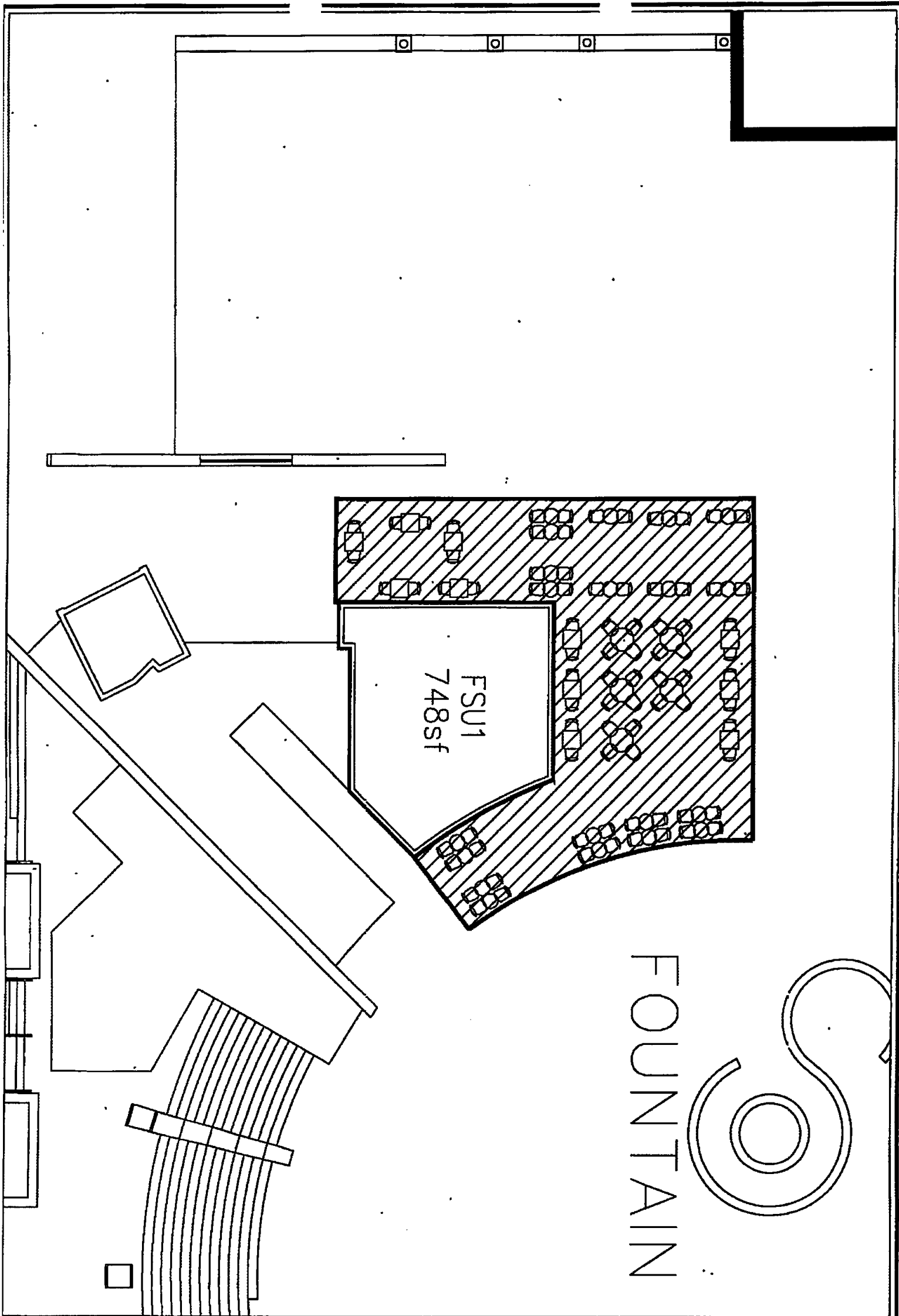
**LEASE PLAN**

**N.T.S  
SCALE**

**Westfield**  
**Horton Plaza Urban Park**  
224 HORTON PLAZA SAN DIEGO, CALIFORNIA 92101-5421 HPH 208-8180



**HORTON PLAZA**  
May 11, 2017  
**A4**



**EXHIBIT A5 - TRASH AREA**

**SPACE: FSU1  
BURGERIM OR BURGERIM:  
ALWAYS MORE THAN ONE**

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**

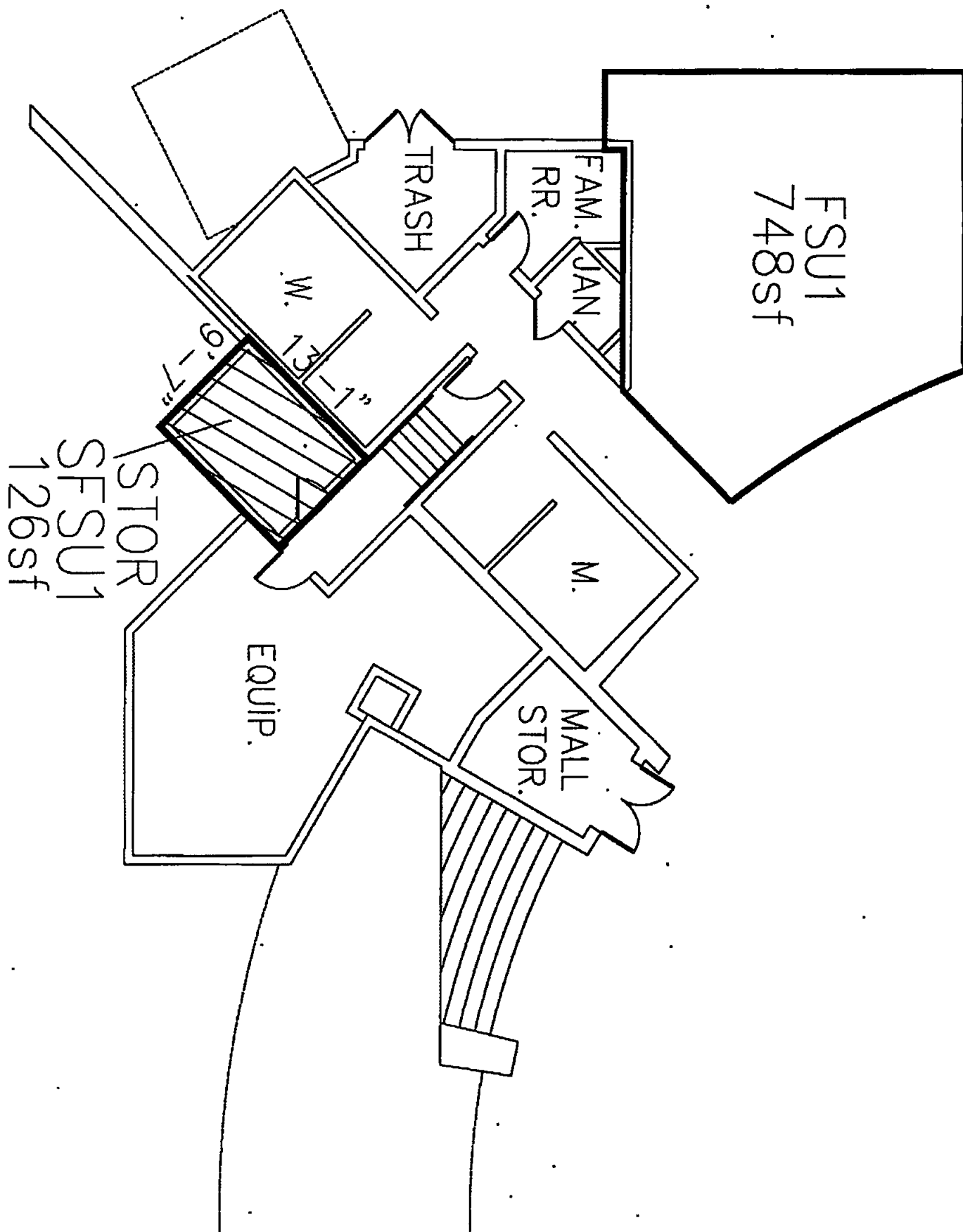
**Westfield**  
**Horton Plaza Urban Park**

50% REDUCED IN SIZE FROM PREVIOUS EDITIONS



**HORTON PLAZA  
May 11, 2017**

**A5**



## EXHIBIT A6 - STORAGE AREA

SPACE: FSU1  
BURGERIM OR BURGERIM:  
ALWAYS MORE THAN ONE

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

LEASE PLAN

N.T.S  
SCALE

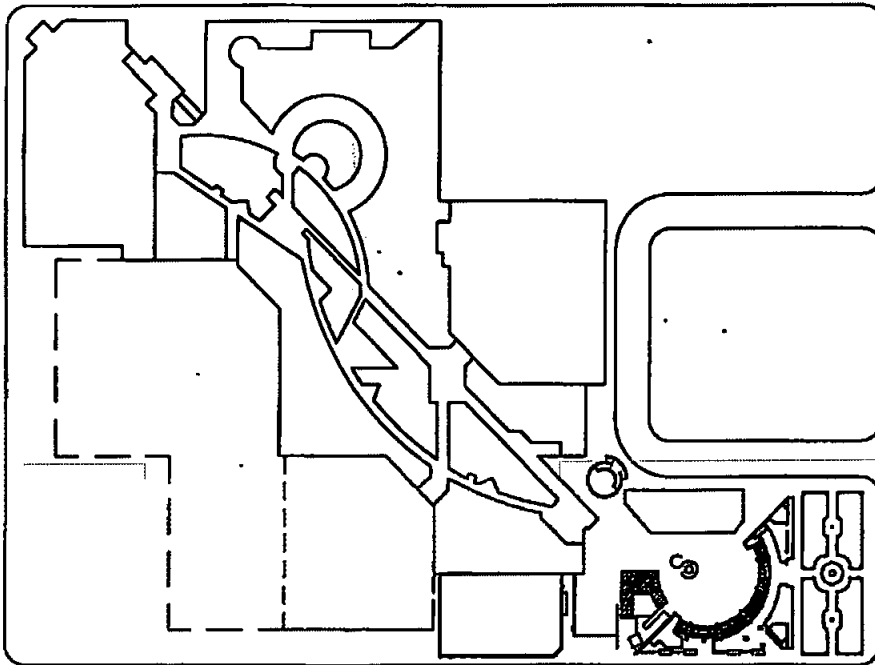
**Westfield**  
Horton Plaza Urban Park

334 HORTON PLAZA SAN DIEGO, CALIFORNIA 92101-9401 (619) 533-0100



HORTON PLAZA  
May 11, 2017

A6  
Level L11 of 5

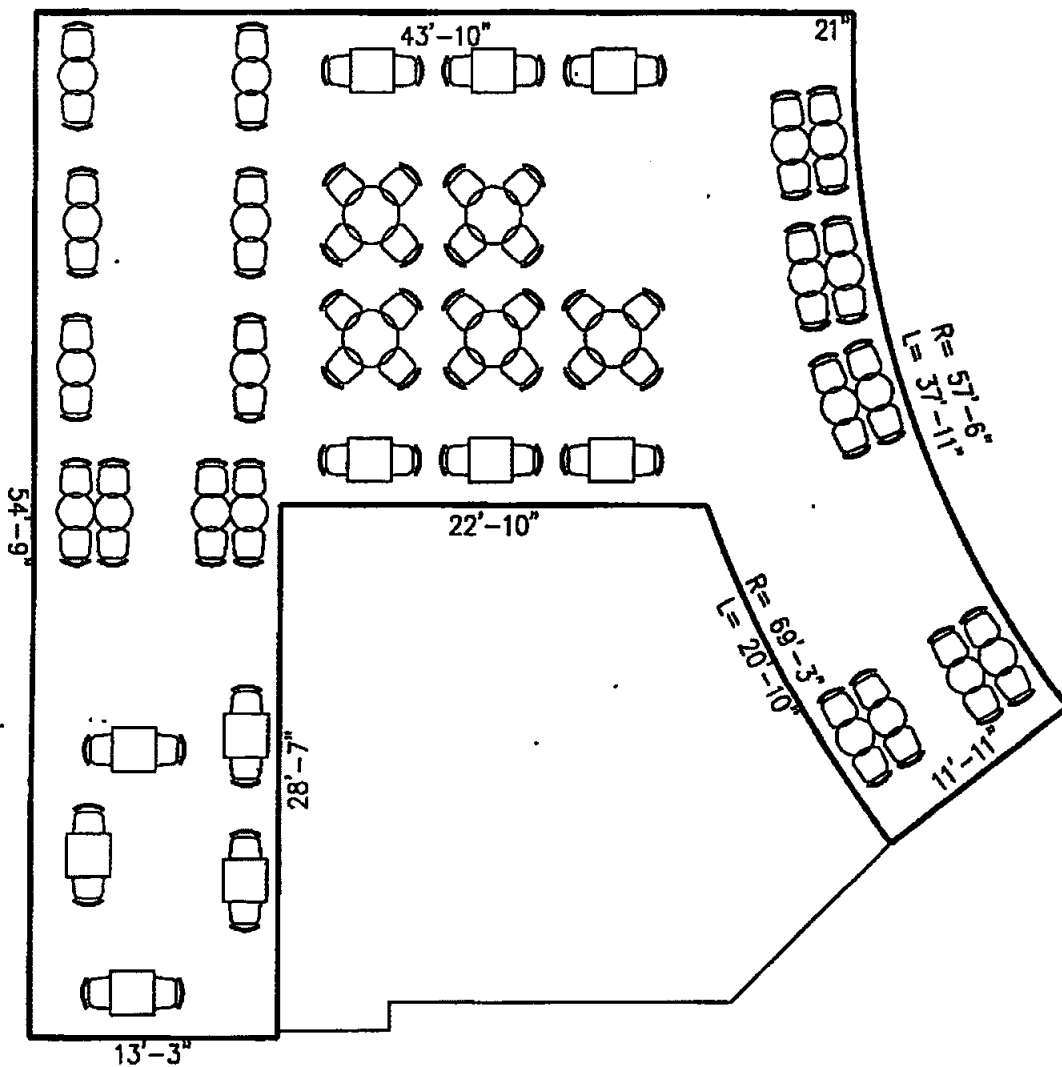


This LOD was produced prior to 100% CD phase and/or during development of an expansion. Layout/GLA subject to change per Base Building updates.



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.)



## HORTON PLAZA



EXHIBIT  
A7

SITE  
05/11/17

PFSU1

PATIO - BURGERIM OR BURGERIM:  
ALWAYS MORE THAN ONE

1,768 S.F.

## **EXHIBIT B**

### **DESIGN AND CONSTRUCTION OF THE BUILDING AND THE PREMISES**

This Exhibit B, including any attachment hereto, is hereby made part of the lease (the "Lease") between Landlord and Tenant.

#### **I. DEFINITIONS**

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

#### **II. GENERAL REQUIREMENTS AND PROVISIONS**

- A. Tenant's Work shall be subject to Landlord's prior approval, which approval shall not be unreasonably withheld, 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. Complete flashing work on the roof of the Premises.
16. A remote storage area as depicted on Exhibit A-6 which may be used as "Wet Storage" or "Dry Storage" only ("Storage Area"), as is permitted by municipal authorities.
  - a. Storage Area will be provided with broom-swept concrete floor slab on grade. Tenant shall be required, at Tenant's expense, to modify and reinstate the concrete floor slab in accordance with Tenant's Drawings.
  - b. Intentionally deleted.
  - c. Landlord shall provide all building finishes outside of the Storage Area which are not specifically made the responsibility of Tenant or another tenant of the Park/Plaza Development.
  - d. The installation of metal studs to separate the Storage Area from adjoining stores and/or Common Areas. Such studs shall extend from the finished floor elevation to the underside of the deck above with Storage Area with five-eighth inch (5/8") fire code gypsum board or other approved material on common area side.
  - e. Installation of all doors and associated hardware as may be required to complete the Storage Area. Such doors and hardware shall comply with all required fire ratings
  - f. A common electrical service distribution system of a type and capacity set forth in the Landlord's Base Building Drawings.
    - i. A remote electrical service area outside the Storage Area with common sub-panel with 120/208 3ph 4w supply.
    - ii. Intentionally deleted.
  - g. Intentionally deleted.

#### IV. LANDLORD'S WORK AT TENANT'S EXPENSE

- A. Tenant Reimbursement Costs. In the event Tenant fails to provide the following items by itself, 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 from the service provider 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 reasonably necessary or practical, 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. 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. Intentionally Deleted.

G. A remote storage area as depicted on Exhibit A-6 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 reasonable approval. Tenant's General Contractor shall be bonded and insured as required under the provisions of this Lease. By this reference, Tenant agrees not to act as its own general contractor and further agrees that Tenant's General Contractor can act as Tenant's agent for all Tenant construction purposes and obligations of this Exhibit B.
- B. Each contractor and subcontractor participating in the construction of Tenant's Work shall be duly licensed in the state where the Premises is located, and each contract and subcontract shall contain the guaranty of the contractor or subcontractor that the portion of Tenant's Work covered thereby will be free from any and all defects in workmanship and materials for the period of time which customarily applies in good contracting practices, but in no event less than one (1) year after the completion of Tenant's Work. The aforesaid guaranty shall include the obligations to repair or replace in a first-class and workmanlike manner, and without any additional charge, any and all of Tenant's Work done or furnished by said contractor or subcontractor, or by any of his subcontractors, employees or agents, which shall be or become defective because of faulty materials or workmanship within the period covered by such guaranty (and of which notice is given to such contractor or subcontractor within such period); and the correction, as aforesaid, of any such matter shall include, without any additional charge therefor, all expenses and damages in connection with the removal, replacement or repair in a first-class manner of any other part of Tenant's Work which may be damaged or disturbed thereby. All warranties or guarantees as to materials or workmanship on or with respect to Tenant's Work shall be written so that they shall inure to the benefit of Landlord and Tenant as their respective interests may appear and can be directly enforced by either, and Tenant shall give to Landlord any assignments or other assurance necessary to effectuate the same.
- C. Tenant shall submit to Landlord at least five (5) days prior to the commencement of construction the following information:
1. The name and address of the General Contractor Tenant intends to engage for the construction of the Premises, including names and telephone numbers of on-site and off-site representatives;

2. The names and addresses of Tenant's mechanical, electrical and plumbing subcontractors, including names and telephone numbers of on-site and off-site representatives;
  3. A schedule setting forth key dates relating to Tenant's Work;
  4. Copies of insurance certificates required by Article IX below; and
  5. A copy of Tenant's written contract with its General Contractor(s) and an itemized statement of estimated construction costs, including architectural, engineering and contractor's fees.
- D. The following provisions with respect to construction procedures and materials shall apply to Tenant's Work:
1. Tenant and Tenant's General Contractor participating in Tenant's Work shall comply with the following:
    - a. At all times during construction, Tenant's General Contractor shall have available on-site one (1) full set of Final Working Drawings, endorsed with Landlord's approval, the approval stamp and permit number of the local municipality's building department, local fire marshal or other governmental entity having jurisdiction over Tenant's Work or other evidence that the Tenant has received building department approval.
    - b. Provide a full-time supervisor or representative, representing either Tenant's General Contractor or Tenant, who will be present in the Premises at all times when work is being performed in the Premises.
    - c. Make appropriate arrangements, as directed by Landlord, for temporary utility connections, if available within the Development. Landlord does not represent that any temporary utility services will be available for Tenant's use. Tenant must verify the availability of such services with Landlord prior to the commencement of Tenant's Work. If temporary services are not available, Tenant must install permanent utility services for the Premises immediately upon the commencement of Tenant's Work. If temporary services are available, Tenant shall pay the cost of all connections, proper maintenance, use and the removal of such temporary services. Tenant shall pay all utility charges incurred by Tenant's General Contractor and any subcontractor.
    - d. Store all building materials, tools and equipment within the Premises or such other locations as may be specifically designated by Landlord's tenant construction coordinator. In no event shall any material be stored in the Common Areas or service corridors.
    - e. During Tenant's construction of the Premises, Tenant shall remove any and all trash, debris and rubbish on a daily basis as directed by Landlord. Upon completion of Tenant's Work, Tenant shall remove all temporary structures, surplus materials, debris and rubbish of whatever kind remaining in the Premises, or the Development. No debris shall be deposited in the Common Areas or service corridors except as directed by Landlord.
    - f. Properly protect Tenant's Work and secure all parts of Tenant's Work against accident, storm and any other hazard. Tenant's Work must be performed entirely within the Premises.
    - g. Tenant or Tenant's General Contractor is responsible for initiating, maintaining, supervising, and enforcing all safety precautions and programs as required by applicable federal, state and local laws, codes and regulations in connection with the performance of Tenant's Work as set forth in the Contractor Safety Rules provided by Landlord to Tenant's General Contractor. Tenant's General Contractor is solely responsible for the on-site safety of its employees and subcontractors performing work for the benefit of Landlord and the Development, as well as the safety of the

general public and other contractor employees impacted by Tenant's Work.

2. Tenant's Work shall be coordinated with all work being performed or to be performed by Landlord and other occupants of the Development so that Tenant's Work will not interfere with or delay the completion of any other work. No contractor or subcontractors participating in Tenant's Work shall at any time damage, injure, interfere with or delay the completion of Landlord's Work or any other construction within the Development, and each of them shall comply with all procedures and regulations prescribed by Landlord for the integration of Tenant's Work with the work to be performed in connection with Landlord's Work and all other construction within the Development.

Recognizing that Landlord shall be employing such contractors, Tenant agrees to engage the services of contractors whose employees employed at the job site are members of, or represented by, organizations for the purpose of collective bargaining, to the end that there shall be no labor dispute which would interfere with the operation, construction and completion of the Park/Plaza Development or any other work, and Tenant further agrees to enforce the same condition upon all contractors engaged by Tenant with respect to their subcontractors which may be engaged by any such contractors.

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

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

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

With a copy to:

City of San Diego  
1200 Third Street, Suite 1700  
San Diego, California 92101  
Attention: Contracts Manager

- F. During construction Tenant's General Contractor shall be required to comply with the following:
  1. The work of Tenant's General Contractor and subcontractors shall be subject to inspection by Landlord and its supervisory personnel. Any defects and/or deviations from Tenant's Final Working Drawings shall be rectified by Tenant's General Contractor and/or subcontractors at no expense to Landlord.
  2. Unless otherwise approved by Landlord, Tenant shall cause its General Contractor and/or subcontractors to limit their access to the Premises via the access pathways identified by Landlord at Landlord's sole discretion.
  3. Tenant shall protect all of Landlord's Work that may be affected by Tenant's Work. Repair of damage caused to Landlord's Work by Tenant's General Contractor or subcontractors shall be at Tenant's expense. Landlord will carry out

necessary repairs without notice and Tenant shall pay for the cost of such repairs upon demand.

4. Tenant's General Contractor will be required to abide by and comply with all construction rules and regulations of the Development, copies of which will be obtained by Tenant or Tenant's General Contractor prior to the commencement of Tenant's Work, and to make certain deposits with and/or payments to Landlord in accordance with such requirements. Notwithstanding such requirements, Tenant shall indemnify and protect Landlord with respect to any breach of such construction rules and regulations by Tenant's General Contractor or the failure of Tenant's General Contractor to make any required deposits or payments.

Landlord shall have the right to perform, on behalf of and for the account of Tenant, which shall be subject to reimbursement of the cost thereof by Tenant, any and all of Tenant's Work which Landlord determines in its reasonable 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 One Million Dollars (\$1,000,000.00) each accident, One Million Dollars (\$1,000,000.00) 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 Two Million Dollars (\$2,000,000.00) 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 Two Million Dollars (\$2,000,000.00) 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 Two Million Dollars (\$2,000,000.00) 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**

### **REIMBURSEMENT FOR COST OF CONSTRUCTION**

This Exhibit B-1 is annexed to and made a part of that certain Lease (hereinafter "Lease") by and between **HORTON PLAZA SERVICES, INC.**, a Delaware corporation, (as "Landlord") and **IRWANTIO, INC.**, a California corporation (as "Tenant").

In the event a conflict arises between the provisions of this Exhibit B-1 and any other part of this Lease, this Exhibit B-1 shall modify and supersede such other part of the Lease to the extent necessary to eliminate any such conflict but no further. All terms which are defined in the Lease shall have the same meaning when used herein.

#### **Section 1. CONSTRUCTION REIMBURSEMENT AND PAYMENT.**

Subject to the provisions of this Exhibit B-1, and provided Tenant is not in default under this Lease, beyond any applicable notice and cure period, Landlord shall reimburse to Tenant an amount (hereinafter called the "Construction Consideration") equal to \$100,000.00. The Construction Consideration shall be due only during the original Term of this Lease. The Construction Consideration shall be payable within sixty (60) days following Tenant's written application for such payment and the satisfaction of all of the following conditions:

- (a) Completion of the improvements in or to the Premises required by the Lease to be made by Tenant;
- (b) Acquisition by Tenant of a Certificate of Occupancy for the Premises properly issued by the governmental body having jurisdiction there over (or other equivalent authority to open);
- (c) The opening by Tenant of Tenant's business in the Premises;
- (d) The lien period for the work performed by Tenant shall have expired and no liens in connection with the same shall have been filed, or if said lien period shall not have expired, Tenant has furnished Landlord with unconditional waivers of lien and sworn statements from Tenant's general contractor and any subcontractor or any person performing labor and/or supplying materials in connection with such work showing that all of said persons have been paid in full;
- (e) Submission by Tenant to Landlord of copies of warranties received by Tenant, which warranties shall be for not less than one year against defects in workmanship, materials and equipment;
- (f) Full payment by Tenant of all sums due Landlord for items of work performed by Landlord on behalf of Tenant as outlined in Exhibit B;
- (g) Submission by Tenant to Landlord of a breakdown of Tenant's final and total construction costs, along with all supporting invoices, agreements and related documents covering the amount of the Construction Consideration; and
- (h) Receipt by Landlord of Internal Revenue Service Form W-9, Request For Taxpayer Identification Number and Certification.

#### **Section 2. APPLICATION FOR PAYMENT.**

Application for payment along with required supporting documentation should be submitted electronically at <http://www.westfieldtenantcoordination.com/tenantallowance>. Instructions for use and additional information can also be accessed using this website address. When prompted for a security code, use WestfieldTA.

Further, if Tenant has not made application for the Construction Consideration or satisfied all conditions to Landlord's obligation to pay the Construction Consideration within one (1) year after the Rental Commencement Date of this Lease, then Landlord's obligation to pay the Construction Consideration shall automatically terminate without any notice required by Landlord. The rights given Landlord in this paragraph shall be in addition to all other rights and remedies under the Lease, at law or in equity arising from Tenant's failure to open for business in the Premises.

**Section 3.     RIGHT OF DEDUCTION.**

Any improvement or work done or authorized by Tenant or performed to Tenant's account, the cost of which remains unpaid at the time the Construction Consideration is otherwise payable, and any accrued Rental which remains unpaid at the time the Construction Consideration is payable, will be deducted from any Construction Consideration payment by Landlord to Tenant, and Landlord may hold the same as security against any liens arising therefrom if Tenant has not posted a bond or other security, or Landlord may pay such unpaid cost for and on behalf of Tenant.

**Section 4.     LATE OPENING.**

Intentionally Deleted.

**Section 5.     MISCELLANEOUS.**

Notwithstanding anything to the contrary contained herein, Tenant acknowledges that unless this Lease qualifies as a "short-term lease" within the meaning of the Internal Revenue Code of 1986 as amended, any payments made by Landlord to Tenant and designated as a Construction Consideration hereunder shall be treated in accordance with the requirements of the Internal Revenue Code of 1986 (as amended). Subject to the foregoing, Tenant represents to Landlord that the Construction Consideration will be expended by Tenant for purposes of constructing or improving long term real property. Based upon the foregoing representation, Landlord and Tenant agree that the monies to be paid by Landlord to Tenant pursuant to this Section are being paid to Tenant as reimbursement for amounts expended for the purpose of Tenant's constructing or improving qualified long-term real property as defined in Section 110(c)(1) of the Internal Revenue Code of 1986, as amended, for use in such Tenant's trade or business at the Premises, which Premises Landlord and Tenant acknowledge constitutes retail space. It is the intent of Landlord and Tenant that Landlord and Tenant shall consider any such payment as made in accordance with this Section 110 of the Internal Revenue Code of 1986, as amended, and Landlord and Tenant shall provide the Internal Revenue Service any and all information concerning such payments as may be required by the Internal Revenue Service. If, but only to the extent that, Tenant's foregoing representation is not correct, then Landlord and Tenant agree that the monies to be paid by Landlord to Tenant pursuant to this Section are not being paid to Tenant as reimbursement for amounts expended for the purpose of constructing or improving long-term real property as defined in Section 110(c)(1) of the Internal Revenue Code of 1986, as amended, for use in Tenant's trade or business at the Premises and Tenant agrees to promptly provide Landlord written notice setting forth the portion of the Construction Consideration not so expended.

-END-

## **EXHIBIT C**

### **ADDITIONAL INSURED ENTITIES**

1. The City of San Diego, a California municipal corporation, and
2. Civic San Diego, a nonprofit public benefit corporation, and
3. Horton Plaza LLC, Westfield America, Inc., Westfield America Limited Partnership, Westfield Property Management LLC, and

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

## **EXHIBIT D**

### **HORTON PLAZA URBAN PARK**

#### **SATELLITE DISH RIGHTS**

##### **A. SCOPE OF RIGHTS.**

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

##### **B. COMPLIANCE WITH LAW.**

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

##### **C. INSTALLATION PROCEDURES.**

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

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

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

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

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

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

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

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

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

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

#### **D. INTERFERENCE.**

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

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

#### **E. MAINTENANCE AND REMOVAL OF THE SATELLITE DISH EQUIPMENT.**

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

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

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

#### **F. INDEMNIFICATION.**

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

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

#### **G. TAXES.**

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

-END-

**EXHIBIT E**

[illegible]

## GUARANTY

THIS GUARANTY (the "Guaranty") is made this 11 day of May, 2017, by the undersigned ("Guarantor") to and for the benefit of HORTON PLAZA LLC ("Landlord").

WHEREAS, Landlord and IRWANTIO, INC, a California corporation ("Tenant") have entered into that certain Lease dated the 11 of May, 2017 (the "Lease") for Premises located in WESTFIELD HORTON PLAZA, 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.