

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

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Attorneys for Plaintiff  
AE RETAIL WEST, LLC

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

AE RETAIL WEST, LLC, a Delaware limited liability company,

Plaintiff,

vs.

S.F. CENTRE LIMITED PARTNERSHIP, a Delaware Limited Partnership; and DOES 1 through 20, inclusive,

Defendants.

Case No.:

**COMPLAINT FOR DAMAGES**

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**09/11/2023**  
Clerk of the Court  
BY: DAEJA ROGERS  
Deputy Clerk

**CGC-23-608976**

1 Plaintiff AE RETAIL WEST, LLC (“American Eagle”), by its undersigned counsel, hereby  
2 submits its Complaint against Defendants S.F. CENTRE LIMITED PARTNERSHIP (“Westfield”)  
3 and DOES 1 through 20, inclusive, and in support thereof alleges as follows:

4 **EXECUTIVE SUMMARY OF DISPUTE**

5 1. American Eagle and Westfield are parties to a lease agreement for a retail store at  
6 Westfield’s San Francisco Centre. In exchange for millions of dollars in rent, Westfield obligated  
7 itself to maintain the common areas of the mall and promised American Eagle would have quiet  
8 enjoyment of the store for the duration of the lease. But Westfield neglected its obligations, allowing  
9 the mall to become a lightning rod for, in Westfield’s words, “rampant criminal activity.”

10 2. While Westfield has invested more than \$2 billion in upgrades and maintaining its  
11 other malls in the region – malls that are seeing record sales – Westfield’s neglect of its San  
12 Francisco location came to a head in June of 2023 when it publicly announced its abandonment of  
13 the mall and intent to default on its \$558 million loan, leaving tenants like American Eagle, residents  
14 of San Francisco, and investors in San Francisco real estate to clean up Westfield’s mess.



1 3. American Eagle believed it was leasing a prime retail space with a street-front  
2 entrance in Downtown San Francisco from one of the most established and reputable retail landlords  
3 in the country. But Westfield let the mall deteriorate into disarray, leaving American Eagle and its  
4 employees to suffer and respond to gun violence, physical assaults, burglaries, and robberies.

5 4. This is not the store American Eagle paid millions of dollars for, or the store that  
6 Westfield promised. Westfield cannot walk away from the harm that it has caused without  
7 consequence. It must be held accountable for the damages caused by its failures and broken  
8 promises.

9 GENERAL ALLEGATIONS

10 5. At all relevant times herein mentioned, Plaintiff American Eagle was and is a limited  
11 liability company duly organized and existing under and by virtue of the laws of the State of  
12 Delaware, and was and now is qualified to do business in the State of California and the County of  
13 San Francisco.

14 6. On information and belief, American Eagle alleges Defendant Westfield was and is a  
15 limited partnership duly organized and existing under and by virtue of the laws of the State of  
16 Delaware.

17 7. On information and belief, American Eagle alleges DOES 1 through 20, inclusive, are  
18 and were individuals, business entities, and/or other organizations that resided and/or conducted  
19 business in San Francisco County. American Eagle does not currently know the true names and  
20 capacities of DOES 1 through 20, inclusive, and therefore sues these defendants under fictitious  
21 names pursuant to California Code of Civil Procedure § 474. American Eagle will ask leave of Court  
22 to amend this Complaint by inserting their true names and capacities in the place and stead of said  
23 fictitious names when the same have been ascertained.

24 8. On information and belief, American Eagle alleges that each of the Defendants  
25 designated DOES 1 through 20, inclusive, is responsible in some way and/or manner for the acts and  
26 occurrences alleged herein, and that each DOE Defendant is liable to American Eagle for damages  
27 suffered by American Eagle as hereinafter set forth. Any mention or reference to any named  
28

1 Defendant, and any cause of action in this Complaint against any named Defendant, includes and  
2 applies to DOES 1 through 20, inclusive.

3 9. On information and belief, American Eagle alleges that each of the Defendants were  
4 the agent, employee, and/or alter ego of each other and were acting within the scope of such agency  
5 and employment in performing the acts complained of herein.

### 6 VENUE

7 10. American Eagle alleges that venue is proper in this County because the property from  
8 which this dispute arises is in San Francisco County, located at 865 Market St., San Francisco,  
9 California 94103.

### 10 THE PARTIES

11 11. American Eagle is one of the United States' most recognizable fashion brands, with  
12 over 1,400 stores worldwide generating \$1.745 billion in gross revenue in 2022. American Eagle's  
13 ability to grow revenue and acquire new customers is contingent on its ability to drive traffic to its  
14 store locations, and its stores benefit from its presence at malls that generate consumer traffic.

15 12. Westfield, similarly, is one of the most well-known retail real estate companies. In  
16 December of 2017, European company Unibail-Rodamco acquired Westfield for a reported price of  
17 \$24.8 billion. The company rebranded itself Unibail-Rodamco-Westfield SE, and, on information  
18 and belief, has nearly \$25 billion in net assets worldwide.

### 19 THE LEASE AGREEMENT

20 13. American Eagle and Westfield are parties to a lease agreement executed on or about  
21 February 1, 2017 for a retail store in Westfield's San Francisco Centre Property (the "Lease"). The  
22 store is in a prime location of the mall with a street-front entrance on Market Street in Downtown  
23 San Francisco, and the Lease Term runs through January 31, 2028. A copy of the Lease is attached  
24 to this Complaint as **Exhibit A**.

25 14. Westfield charges and American Eagle pays millions of dollars in annual rent under  
26 the Lease. In exchange, Westfield assumes certain obligations and owes certain duties to American  
27 Eagle. There are two terms of the Lease that are pertinent to this dispute.

28

1           15.     First, Section 8.01 of the Lease states, in pertinent part: “[Westfield] shall cause to be  
2 operated and maintained during the Term all ‘Common Areas’ (as defined below) at a level  
3 comparable to other regional shopping malls in the region in which the Shopping Center is located.”

4           16.     In pertinent part, the Lease defines “Common Areas” to include, without limitation:

5                   (i) public transportation loading and unloading facilities not devoted to  
6 a single tenant, truckways, curbs, driveways, delivery areas, landscaped  
7 areas, community rooms, seating areas, play areas, office facilities,  
8 elevators, escalators, roofs, skylights, beams, stairs and ramps not  
9 contained within any Floor Area, utility rooms, storage, security and  
10 office areas used by [Westfield] to manage the Shopping Center, public  
11 restrooms and comfort stations, service areas, service and fire exit  
12 corridors, passage ways and other areas, amenities, facilities, and  
13 improvements provided by [Westfield], and

14                   (ii) those areas within the Shopping Center and areas adjacent to the  
15 Shopping Center containing signs, pylons or structures advertising the  
16 Shopping Center or which from time to time may be provided by the  
17 owners of such areas for the use by Landlord and the tenants of the  
18 Shopping Center and their respective concessionaires, agents,  
19 employees, customers, [and] invitees . . . .

20           17.     Second, Section 25.01 of the Lease states, in pertinent part:

21                   Upon payment by [American Eagle] of Rental (*sic*) herein provided and  
22 other charges payable by [American Eagle] under this Lease, and upon  
23 the observance and performance of all the covenants, terms and  
24 conditions on [American Eagle’s] part to be observed and performed,  
25 [American Eagle] **shall peaceably and quietly hold and enjoy the  
26 Premises for the Term hereby demised without hinderance or  
27 interruption** by [Westfield] . . . . (emphasis added).

28           18.     Westfield has breached both Section 8.01 and Section 25.01 of the Lease and, in  
doing so, caused American Eagle to suffer damages.

**WESTFIELD BREACHES THE LEASE**

          19.     Over the last few years, Westfield has failed to maintain the Common Areas of the  
mall in accordance with its obligations under the Lease. What began as a slow decline in  
performance has turned to full neglect, leading to what Westfield has publicly acknowledged as

1 “rampant criminal activity”<sup>1</sup> at and around the mall, including stabbings, violent physical and sexual  
2 assaults, and robberies. This rampant criminal activity and Westfield’s failure to properly maintain  
3 the Common Areas of the mall have stripped American Eagle of material purposes of the Lease and  
4 interfered with American Eagle’s quiet enjoyment of the store.

5 20. Between May of 2022 and May of 2023, American Eagle employees reported over  
6 100 significant security incidents, which include incidents of violence, aggressive guests, and thefts.  
7 On multiple occasions, patrons have brandished firearms while verbally assaulting the store’s  
8 employees. American Eagle employees have suffered multiple physical attacks and assaults. In one  
9 instance, a patron even threatened American Eagle staff with a machete.

10 21. For its part, Westfield accepted no responsibility for its role in allowing these issues  
11 to infect its mall. It shifted all the blame to San Francisco in public statements and through the  
12 media. But Westfield omitted from those statements that it considered options to address the security  
13 issues at the mall, but ultimately decided not to make that investment. Worse, Westfield closed its  
14 management office at the mall, leaving American Eagle on its own to deal with Westfield’s  
15 unmonitored Common Areas and their problems. Westfield invited the tenants to communicate  
16 emergencies through texts or phone calls, but in American Eagle’s experience, Westfield responds to  
17 less than 50% of those calls and texts.

18 22. Westfield made its neglect for the mall public in June of 2023 when it publicly  
19 announced that it had given up on the mall. Westfield issued a press release that it would no longer  
20 be making payments on its \$558 million loan for the mall and had begun the process of surrendering  
21 the mall to its lenders.<sup>2</sup> Rather than take accountability for its actions and invest in fixing its  
22 mistakes, Westfield decided to leave its tenants, the city and people of San Francisco, and investors  
23 in San Francisco real estate holding the bag.

24 23. Westfield has the means and resources to have maintained the Common Areas at the  
25 mall, which only bolsters the reprehensibility of its misconduct in this case. Just 50 miles south,  
26

27 <sup>1</sup> Roland Li, *Westfield giving up S.F. mall in wake of Nordstrom closure, plunging sales and foot traffic*, San Francisco  
28 *Chronicle*, June 12, 2023, <https://www.sfchronicle.com/bayarea/article/westfield-giving-san-francisco-mall-18148102.php> (last visited August 31, 2023).

<sup>2</sup> *Id.*

1 Westfield invested \$1.1 billion to expand its San Jose location – that mall saw record sales in 2022.<sup>3</sup>  
2 In Southern California, Westfield completed a \$1 billion makeover of its Century City location in or  
3 around 2017<sup>4</sup> and is reportedly close to securing a \$925 million in additional financing at that mall.<sup>5</sup>  
4 Westfield was obligated under Section 8.01 of the Lease to maintain its San Francisco mall at a level  
5 comparable to these shopping centers in the region. It has failed entirely.

6 24. American Eagle has done what it can to mitigate the harm caused by Westfield’s  
7 neglect. It permanently closed its street-front entrance on Market Street to provide greater physical  
8 safety to its staff, significantly altering the store that it bargained for in the Lease. The street-front  
9 entrance was a major factor in the lease negotiations – American Eagle negotiated away key rights  
10 and remedies against Westfield (including co-tenancy rental rates) because of the street-front  
11 entrance.

12 25. American Eagle also hired additional security officers, nearly doubling its annual  
13 security expenditures from 2022. It installed security window film on the Market Street entrance to  
14 counter increased burglaries, “smash and grab” style robberies, and vandalism. American Eagle also  
15 upgraded its CCTV system in response to increased patron aggression and violent incidents in the  
16 store. None of these expenses would have been incurred but for Westfield’s failure to perform its  
17 obligations under the Lease.

18 26. Despite its efforts, American Eagle has not been able to overcome the mall’s  
19 conditions. Westfield’s failure to maintain the Common Areas at the mall has poisoned public  
20 opinion – patrons no longer feel safe because of Westfield’s inaction, and American Eagle is bearing  
21 the brunt of Westfield’s abandonment of its obligations. Westfield is liable to American Eagle for  
22 these damages arising out of its misconduct.

23  
24  
25 <sup>3</sup> Roland Li, *Stores in Westfield’s S.F. mall are shuttering while its Silicon Valley mall is thriving. Here’s why*, San  
26 Francisco Chronicle, June 16, 2023, <https://www.sfchronicle.com/bayarea/article/westfield-valley-fair-mall-18155044.php> (last visited August 31, 2023).

27 <sup>4</sup> Roger Vincent, *Century City mall goes deluxe with \$1-billion makeover to entice online shoppers*, Los Angeles Times,  
28 September 27, 2017, <https://www.latimes.com/business/la-fi-century-city-mall-20170927-story.html> (last visited August 31, 2023).

<sup>5</sup> Brynn Shaffer, *Westfield Century City Gets \$925M in Financing*, Los Angeles Business Journal, August 28, 2023,  
<https://labusinessjournal.com/uncategorized/westfield-century-city/> (last visited August 31, 2023).

**FIRST CAUSE OF ACTION**

**(Breach of Contract Against Westfield and DOES 1 to 20, inclusive)**

1  
2  
3 27. American Eagle incorporates by reference the allegations contained in the above-  
4 stated Paragraphs.

5 28. On or about February 1, 2017, American Eagle and Westfield entered into a lease  
6 agreement for a retail store in Westfield’s San Francisco Centre Property located at 865 Market St.,  
7 San Francisco, California 94103. A copy of the Lease is attached hereto as **Exhibit A**.

8 29. The Lease provided, in pertinent part, that Westfield would maintain the Common  
9 Areas of the mall “at a level comparable to other regional shopping malls in the region in which the  
10 Shopping Center is located.” Lease, § 8.01.

11 30. Westfield further covenanted that American Eagle would “peaceably and quietly hold  
12 and enjoy” the store for the term of the Lease. Lease, § 25.01.

13 31. American Eagle has performed all its obligations under the Lease.

14 32. Westfield failed to maintain the Common Areas of the mall in accordance with the  
15 terms of the Lease. Westfield has made public statements acknowledging its awareness of the  
16 “rampant criminal activity” at and around the mall. However, it has not taken any reasonable steps to  
17 mitigate that activity. In fact, it closed its on-site management office and gave American Eagle a  
18 phone number to call or text in case of emergencies – American Eagle estimates that Westfield  
19 responds to less than 50% of tenant issues reported to that remote service.

20 33. Westfield later publicly announced that it was abandoning the mall and would no  
21 longer be making payments towards its \$558 million loan.

22 34. In contrast, Westfield has injected significant investments into the common areas of  
23 its other malls in the region. Westfield recently completed a \$1.1 billion improvement at its San Jose  
24 location just 50 miles from the mall in San Francisco – that location saw record profits in 2022.  
25 Westfield also recently completed a \$1 billion improvement project at its Century City location and  
26 is reportedly in the process of obtaining an additional \$925 million in financing for that location as  
27 well.

28



1 35. Westfield’s breach has also interfered with American Eagle’s quiet enjoyment of the  
2 premises.

3 36. The covenant of quiet enjoyment includes protection of the lessee from any act *or*  
4 *omission* by a landlord which interferes with the lessee’s right to use and enjoy the premises for the  
5 purposes contemplated by the lease. *See, e.g., Andrews v. Mobile Aire Estates* (2005) 125  
6 Cal.App.4th 578, 588 – 591.

7 37. American Eagle employees, between May of 2022 and May of 2023, reported over  
8 100 significant security incidents ranging from harassment of employees to verbal and physical  
9 assaults. Notable incidents include verbal assaults by patrons brandishing firearms, physical assaults  
10 of employees, and a verbal assault by a patron wielding a machete.

11 38. In neglecting its obligations to maintain the Common Areas under the Lease and  
12 turning a blind eye to “rampant criminal activity” occurring at the mall, Westfield interfered with  
13 American Eagle’s quiet enjoyment of the store.

14 39. As a direct and proximate result of Westfield’s breaches, American Eagle has  
15 suffered damages, which include, but are not limited to, diminution in value of the leased property,  
16 loss of income, out-of-pocket costs and expenses, and attorneys’ fees and costs, the amount of which  
17 will be proven at trial.

18 **SECOND CAUSE OF ACTION**

19 **(Breach of Implied Covenant of Quiet Enjoyment Westfield and DOES 1 to 20, inclusive)**

20 40. American Eagle incorporates by reference the allegations contained in the above-  
21 stated Paragraphs.

22 41. In every lease, a landlord impliedly covenants that the tenant shall have quiet  
23 enjoyment and possession of the premises. *See Guntert v. City of Stockton* (1976) 55 Cal.App.3d  
24 131, 138; *see also* California Civil Code § 1927.

25 42. The covenant of quiet enjoyment includes protection of the lessee from any act *or*  
26 *omission* by a landlord which interferes with the lessee’s right to use and enjoy the premises for the  
27 purposes contemplated by the lease. *See, e.g., Andrews, supra*, 125 Cal.App.4th at 588 – 591.  
28

1 43. Westfield breached this obligation by neglecting its obligations to maintain the  
2 common areas in the mall.

3 44. Specifically, Westfield has publicly acknowledged that it is aware of what it termed  
4 “rampant criminal activity” at the mall. However, rather than take action to address the criminal  
5 elements at its mall, Westfield closed its management office and left American Eagle to fend for  
6 itself while injecting billions of dollars into its other malls in the region. Westfield has announced  
7 that it is abandoning the mall and will no longer be paying on its \$558 million loan, leaving the  
8 problems it allowed to progress with the tenants, including American Eagle, the city and people of  
9 San Francisco, and investors in San Francisco real estate.

10 45. Due to Westfield’s misconduct, American Eagle and its employees have suffered over  
11 100 significant security incidents between May of 2022 and May of 2023, which include incidents of  
12 violence, aggressive guests, and thefts. Patrons have brandished firearms while verbally assaulting  
13 the store’s employees. They have physically attacked and assaulted American Eagle employees. In  
14 one instance, a patron threatened American Eagle staff with a machete. These incidents, individually  
15 and/or collectively, constitute an interference with American Eagle’s ability to use and enjoy the use  
16 of the store.

17 46. As a direct and proximate result of Westfield’s breach of this implied covenant,  
18 American Eagle has suffered damages, which include, but are not limited to, diminution in value of  
19 the leased property, loss of income, out-of-pocket costs and expenses, and attorneys’ fees, the  
20 amount of which will be proven at trial.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, American Eagle seeks judgment against Westfield as follows:

23 **First Cause of Action**

- 24 1. American Eagle requests all actual and compensatory monetary damages in an  
25 amount to be proven at trial and all relief available at law for Defendant’s breach of contract,  
26 including costs, expenses, and pre-judgment and post-judgment interest;
- 27 2. Attorneys’ fees and costs, as authorized by Section 27.22 of the Lease; and
- 28 3. Any additional relief as the Court deems just and appropriate.

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**Second Cause of Action**

1. American Eagle requests all actual and compensatory monetary damages in an amount to be proven at trial and all relief available at law for Defendant’s breach of contract, including costs, expenses, and pre-judgment and post-judgment interest; and
2. Any additional relief as the Court deems just and appropriate.

DATED: September 11, 2023

REED SMITH LLP

By:   
\_\_\_\_\_  
Casey D. Laffey  
Matthew P. Houghton  
  
Attorneys for Plaintiff  
AE RETAIL WEST, LLC

# **EXHIBIT A**

LEASE

AMERICAN EAGLE OUTFITTERS and/or AERIE  
TRADE NAME

AE RETAIL WEST LLC  
TENANT

148  
STORE NUMBER

**Westfield**<sup>®</sup>

**SAN FRANCISCO  
CENTRE**

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**EXHIBITS - See Data Sheet**

WESTFIELD SAN FRANCISCO CENTRE

City of San Francisco  
County of San Francisco  
State of California

LEASE

THIS LEASE is made as of this 1<sup>st</sup> day of February, 2017 (the "Commencement Date"), by and between **S.F. CENTRE LIMITED PARTNERSHIP**, a Delaware limited partnership, whose address is 2049 Century Park East, 41<sup>st</sup> Floor, Los Angeles, California 90067 ("Landlord"), and **AE RETAIL WEST LLC**, a Delaware limited liability company, whose address is: 150 Thorn Hill Dr., Warrendale, Pennsylvania 15086 ("Tenant").

Landlord, in consideration of the rent to be paid and the covenants to be performed by Tenant, does hereby demise and lease unto Tenant, and Tenant hereby rents and hires from Landlord, those certain premises identified on Exhibit A-2 attached hereto and made a part hereof ("the Premises"). The Premises are in and part of the shopping center located in the City of San Francisco, California commonly known as "**WESTFIELD SAN FRANCISCO CENTRE**" (the "Shopping Center"), a general site plan of which is shown on Exhibit A-1 attached hereto and made a part hereof. The term "Shopping Center" shall mean: (i) the land and improvements as may be generally schematically depicted on Exhibit A-1, whether owned in fee or ground leased by Landlord; (ii) any other land, together with the improvements thereon, and any easement or right of way at any time designated by Landlord to be part of the Shopping Center; and (iii) any plant, area, building or other facility serving any portion of the Shopping Center but not located in the Shopping Center, including the facilities connecting same to the Shopping Center. Landlord reserves the right to add or to sever the ownership of any portion of the Shopping Center at any time. The "Floor Area" of the Shopping Center (as defined in Section 27.12) shall be deemed to include the areas shown on Exhibit A-1 and shall be deemed to exclude "Department Stores" (as hereinafter defined), theatre premises, full-service sit-down restaurants, commercial office space, all premises having an exterior entrance; premises which do not front on any enclosed mall area of the Shopping Center; and all basement or storage space not used for retail purposes. The term "Department Store" shall be deemed to include any tenant leasing Twenty Thousand (20,000) square feet or more of Floor Area. The Premises is described as follows:

Store No. 148, being approximately 12,726 square feet, located in Building I.

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 1.01: Conditions of Grant:**

Shopping Center Mailing Address:

Westfield San Francisco Centre  
865 Market St., Box A  
San Francisco, CA 94103

(2) **Section 1.02: Term:**

Latest Rental Commencement Date: See Section 1.02 of the Lease

Expiration Date of Term: January 31, 2028

(3) **Section 1.03: Late Opening Fee:** Intentionally deleted.

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

Rental Commencement Date through January 31, 2018: \$1,635,291.00;

February 1, 2018 through January 31, 2019: \$1,684,349.73;

February 1, 2019 through January 31, 2020: \$1,734,880.22;

February 1, 2020 through January 31, 2021:	\$1,786,926.63;
February 1, 2021 through January 31, 2022:	\$1,840,534.43;
February 1, 2022 through January 31, 2023:	\$1,895,750.46;
February 1, 2023 through January 31, 2024:	\$1,952,622.97;
February 1, 2024 through January 31, 2025:	\$2,011,201.66;
February 1, 2025 through January 31, 2026:	\$2,071,537.71;
February 1, 2026 through January 31, 2027:	\$2,133,683.84
and	
February 1, 2027 through the end of the Term:	\$2,197,694.36.

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

(a) Percentage Rental Rate: Twelve percent (12%)

(b) Annual Breakpoint(s) as follows:

Rental Commencement Date through January 31, 2018:	\$13,627,425.00;
February 1, 2018 through January 31, 2019:	\$14,036,247.75;
February 1, 2019 through January 31, 2020:	\$14,457,335.18;
February 1, 2020 through January 31, 2021:	\$14,891,055.24;
February 1, 2021 through January 31, 2022:	\$15,337,786.90;
February 1, 2022 through January 31, 2023:	\$15,797,920.50;
February 1, 2023 through January 31, 2024:	\$16,271,858.12;
February 1, 2024 through January 31, 2025:	\$16,760,013.86;
February 1, 2025 through January 31, 2026:	\$17,262,814.28;
February 1, 2026 through January 31, 2027:	\$17,780,698.70.
and	
February 1, 2027 through the end of the Term:	\$18,314,119.67

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

**Payee:** S.F. Centre Limited Partnership  
**Address:** P.O. Box 56993, Los Angeles, California 90074-6993

(7) **Section 2.03(d):** Intentionally Deleted.

(8) **Section 2.04: Tenant's Tax Obligation:**

(a) **Section 2.04(a):** Tax Administration Fee: 0%

(b) **Section 2.04(c):** Estimated to be \$23.89 per square foot of Floor Area in the Premises per annum, subject to adjustment and reconciliation as provided in Section 2.04 of the Lease.

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

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



- (11) **Section 6.01: Alterations by Tenant:** An aggregate of \$20,000.00 permitted in each lease year.
- (12) **Section 7.01: Permitted Use:** For the display and sale, at retail, of men's, women's and children's outdoor and casual apparel, dormwear, intimates and related accessories including footwear, which shall be the primary business of Tenant conducted within the Premises at all times. As long as Tenant uses the Premises for said primary use, Tenant may, ancillary to such primary use, display and sell at retail personal care items. The Premises shall be used solely for the use stated above and for no other use or purpose.
- (13) **Section 7.02(e):** Intentionally Deleted.
- (14) **Section 7.04: Radius Area:** 1 mile.
- (15) **Section 8.02(b): Use of Common Areas:** Ten feet (10').
- (16) **Section 8.03: Common Area Charge:** \$61.35 per square foot of Floor Area in the Premises per annum, increased on a compounded basis by 4% at each January 1<sup>st</sup> following the Rental Commencement Date.
- (17) **Section 11.01(a): Tenant's Insurance:**
- (a) Commercial General Liability Insurance: \$2,000,000.00
  - (b) Broad Form/Extended Bodily Injury, Death and Property Damage, and Business Automobile Liability Insurance: \$1,000,000.00
  - (c) Workers' Compensation Coverage:
    - (i) \$1,000,000.00 each accident
    - (ii) \$1,000,000.00 each employee by disease
    - (iii) \$1,000,000.00 policy aggregate by disease
  - (d) Product Liability Coverage: \$3,000,000.00
- (18) **Section 12.01(a): Utilities:**
- (a) Water and Sewer Service: \$840.00 per annum
  - (b) Fire Detection Services: \$420.00 per annum
  - (c) Electric Services: Paid direct
- (19) **Section 16.01: Trade Name:**
- (a) Trade Name: AMERICAN EAGLE OUTFITTERS and/or AERIE.
  - (b) Name of Shopping Center: WESTFIELD SAN FRANCISCO CENTRE.
- (20) **Section 16.02: Promotional Program:**
- (a) \$5.36 per square foot of Floor Area in the Premises per annum, increased on a compounded basis by 4% at each January 1<sup>st</sup> following the Rental Commencement Date.
  - (b) Initial Assessment: None.
- (21) **Section 26.01: Security Deposit:** \$0.00.
- (22) **Section 26.02: Lease Deposit:** Intentionally deleted.
- (23) **Section 26.03: Letter of Credit:** Intentionally deleted.

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

Landlord:

S.F. Centre Limited Partnership  
2049 Century Park East  
41<sup>st</sup> Floor  
Los Angeles, California 90067  
Attention: Legal Department

Tenant: None to the Premises and:

AE Retail West LLC  
77 Hot Metal Street  
Pittsburgh, Pennsylvania 15203  
Attn: Lease Administration

Billing Address:

AE Retail West LLC  
77 Hot Metal Street  
Pittsburgh, Pennsylvania 15203  
Attn: Lease Administration

(25) **Exhibit B: Design and Construction of the Building and the Premises:**

- (a) Plan Coordination and Administrative Services Fee: Waived.
- (b) Construction Deposit: A fully refundable deposit in the amount of \$3,000.00.
- (c) Construction Barricade: Actual Cost.
- (d) Barricade Graphic Charge: Actual Cost
- (e) Design Fee: Waived
- (f) Insurance: Tenant’s, Tenant’s General Contractor, and Subcontractor’s Required Minimum Coverages and Limits to Liability:
  - (i) Workers' Compensation Coverage:
    - (A) \$2,000,000.00 each accident
    - (B) \$2,000,000.00 each employee by disease
    - (C) \$2,000,000.00 policy aggregate by disease
  - (ii) Commercial General Liability Insurance (including Contractor’s Protective Liability): \$2,000,000.00
  - (iii) Comprehensive Automobile Liability Insurance: \$2,000,000.00
  - (iv) Tenant’s Protective Liability Insurance: \$3,000,000.00
  - (v) Tenant’s Builder’s Risk Insurance: 80%

(26) **Exhibit D: Utility Charges:** Estimated to be \$5.02 per square foot of Floor Area in the Premises per annum, subject to adjustment as provided in Exhibit D.

**ATTACHMENTS AND EXHIBITS**

The following exhibits 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 “B”..... CONSTRUCTION OF PREMISES
- EXHIBIT “C”.....ADDITIONAL INSURED ENTITIES
- EXHIBIT “D”.....UTILITY CHARGES
- EXHIBIT “E”.....DIGITAL MEDIA PROGRAM

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**ARTICLE I**

**GRANT AND TERM**

**Section 1.01 CONDITIONS OF GRANT.**

The exterior walls, the floor above, the roof and the area beneath the Premises are not demised hereunder, and the use thereof, together with the right to locate, both vertically and horizontally, install, maintain, use, repair and replace pipes, utility lines, ducts, conduits, flues, refrigerant lines, drains, sprinkler mains and valves, access panels, wires and structural elements leading through the Premises serving other parts of the Shopping Center is hereby reserved unto Landlord. Landlord agrees to use reasonable efforts to locate any such items in locations that do not materially interfere with Tenant's use of the Premises.

**Section 1.02 TERM.**

(a) The "Term" of this Lease shall begin on the Commencement Date set forth on the Data Sheet, which is the date of execution of this Lease by Landlord and Tenant. The Term of this Lease shall end on the Expiration Date set forth in Item (2) of the Data Sheet, unless sooner terminated in accordance with this Lease.

(b) 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 earliest to occur of (i) the date on which Tenant opens its store in the Premises for business to the public, or (ii) ninety (90) days after Landlord's delivery of the Premises to Tenant with Landlord's Work substantially complete (the "Latest Rental Commencement Date"), or (iii) in the event of new construction where a grand opening date shall be set by Landlord, the date set forth in a notice sent by Landlord to Tenant specifying the "Grand Opening Date", provided that such date shall not be sooner than ninety (90) days from the date the notice is mailed by Landlord. In the case of (iii) above, Tenant shall cooperate with Landlord to effect the Grand Opening Date as set forth in such notice, and Tenant shall delay opening of the Premises until the Grand Opening Date, if required by such notice or if subsequently extended by Landlord upon written notice to Tenant. 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. Unless otherwise approved in writing by Landlord, Tenant shall open its store in the Premises for business to the public (with improvements pursuant to Exhibit B hereto completed and the Premises fully fixtured, stocked with new 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.

Notwithstanding anything to the contrary, as Tenant already occupies the Premises, the Commencement Date and the Rental Commencement Date shall be deemed to be November 15, 2017.

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

**Section 1.03 LATE OPENING.**

Intentionally deleted.

**ARTICLE II**

**RENTAL**

**Section 2.01 MINIMUM ANNUAL RENTAL.**

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

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

1           **Section 2.02    PERCENTAGE RENTAL.**

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

7  
8           (b)       Percentage Rental shall be computed on all Gross Sales made during each lease year and  
9 payable by Tenant in installments commencing on the date which is twenty (20) days after that calendar  
10 month of each lease year in which Gross Sales to date for such lease year exceed the Annual Breakpoint.  
11 The first (1st) installment shall equal the product of (a) the Percentage Rental Rate and (b) the difference  
12 between Gross Sales to date for such lease year and the Annual Breakpoint for such lease year. Thereafter,  
13 for the balance of such lease year, each monthly installment of Percentage Rental shall be payable  
14 simultaneously with the delivery of each monthly statement of Gross Sales and shall equal the product of  
15 (i) the Percentage Rental Rate and (ii) Gross Sales for the month depicted on the monthly statement.

16  
17           (c)       If, at the end of any lease year, the total amount of Percentage Rental paid by Tenant based  
18 upon Gross Sales for such lease year exceeds the total amount of Percentage Rental required to be paid by  
19 Tenant for such lease year, Tenant shall receive a credit, equivalent to such excess, against the next monthly  
20 payments of Percentage Rental due from Tenant to Landlord under this Lease. If at the end of the final  
21 lease year the total amount of Percentage Rental paid by Tenant exceeds the total amount of Percentage  
22 Rental required to be paid by Tenant for such lease year, such excess shall be refunded to Tenant after (i)  
23 Tenant has vacated the Premises in accordance with the provisions of this Lease and (ii) any Rental due  
24 Landlord from Tenant under this Lease has been paid in full or deducted therefrom. If at the end of any  
25 lease year, the total amount of Percentage Rental paid by Tenant for such lease year is less than the total  
26 amount of Percentage Rental required to be paid by Tenant for such lease year, Tenant shall pay the amount  
27 of such deficiency on or before the thirtieth (30th) day after the last day of such lease year. Should any  
28 lease year contain less than twelve (12) calendar months, then, the Annual Breakpoint shall be adjusted  
29 proportionately for such partial lease year.

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

46  
47           **Section 2.03    GROSS SALES.**

48           (a)       The term "Gross Sales" as used herein shall be construed to include the entire amount of  
49 the actual sales price (including all finance charges by Tenant or anyone on Tenant's behalf) whether for  
50 cash, credit or otherwise, of all sales, rentals, leases, licenses or other transfer of merchandise or services  
51 and other receipts whatsoever of all business conducted in or from the Premises, by Tenant, all subtenants,  
52 assignees, licensees, concessionaires or otherwise, including, without limitation, orders made by mail,  
53 catalogue, computer, internet, other electronic or telephone or facsimile orders (or any similar or new  
54 technology used to place orders for goods and/or services) which: (a) originate at, or are accepted at, the  
55 Premises but delivery or performance of which is made from or at a place other than the Premises; or (b)  
56 originate at, or are accepted at, a place other than the Premises but delivery or performance of which is  
57 made from the Premises or is fulfilled using inventory from the Premises; all deposits not refunded to  
58 purchasers; gross receipts from vending machines, electronic games or similar devices, whether coin-  
59 operated or otherwise. A "sale" shall be deemed to have been consummated for the purposes of this Lease,  
60 and the entire amount of the sales price shall be included in Gross Sales, at such time as (i) the transaction  
61 is initially reflected in the books or records of Tenant or any subtenant, assignee, licensee or concessionaire  
62 (if a concessionaire makes the sale), or (ii) Tenant or any subtenant, assignee, licensee or concessionaire  
63 receives all or any portion of the sales price, or (iii) the applicable goods or services are delivered to the  
64 customer, whichever first occurs, irrespective of whether payment is made in installments, the sale is for  
65 cash or for credit, or all or any portion of the sales price has actually been paid at the time of inclusion in  
66 Gross Sales or at any other time. Subject to Section 2.03(b) below, no deduction shall be allowed for direct

1 or indirect discounts, rebates, credits or other reductions to employees or others, unless such discounts,  
2 rebates, credits or other reductions are generally offered to the public on a uniform basis. All returns or  
3 refunds processed at the Premises not previously reported in Gross Sales from the Premises are not  
4 deductible from Gross Sales.

5  
6 (b) Notwithstanding anything to the contrary contained in Section 2.03(a) above, Gross Sales  
7 shall not include the following:

8  
9 (1) Goods returned to sources, including shippers or manufacturers, or transferred to  
10 another store or warehouse owned by or affiliated with Tenant (where such exchange of goods or  
11 merchandise is made solely for the convenient operation of the business of Tenant and not for purposes of  
12 consummating a sale which has theretofore been made in or from the Premises and/or for the purpose of  
13 depriving Landlord of the benefit of a sale which otherwise would be made in or from the Premises);

14  
15 (2) Alteration workroom charges and delivery charges at Tenant's cost of sales;

16  
17 (3) Receipts from public telephones, stamp machines, public toilet locks, or vending  
18 machines installed solely for use by Tenant's employees;

19  
20 (4) Sales taxes, so-called luxury taxes; consumers' excise taxes, gross receipts taxes  
21 and other similar taxes now or hereafter imposed upon the sale of merchandise or services, but only if  
22 collected separately from the selling price of goods, merchandise or services and collected from customers;  
23 and

24  
25 (5) Sales of trade fixtures, equipment or property which are not stock in trade.

26  
27 (c) Notwithstanding anything to the contrary contained in Section 2.03(a) above, the following  
28 shall be deducted from Gross Sales but only to the extent previously included in Gross Sales:

29  
30 (1) Uncollected accounts in an amount not to exceed two percent (2%) of Tenant's  
31 Gross Sales per annum as written off by Tenant as bad debts for income tax purposes, provided, however,  
32 prior to such an exclusion for bad debts being taken by Tenant, Tenant shall have exerted its customary  
33 collection efforts to collect such bad debts; provided further that such bad debt amounts shall be deducted  
34 or excluded from Gross Sales in the lease year in which they are written off; if an amount previously written  
35 off as bad debt is later collected in whole or in part, the amount collected shall be included in Gross Sales  
36 in the lease year in which collected;

37  
38 (2) Fees paid to credit card companies, provided such exclusion shall not exceed two  
39 percent (2%) of Tenant's Gross Sales in any lease year;

40  
41 (3) Sales to Tenant's employees at discounted or reduced prices in accordance with  
42 Tenant's standard employee discount plan; however, said exclusion for discounted merchandise shall not  
43 exceed two percent (2%) of Tenant's Gross Sales per annum; and

44  
45 (4) Layaway sales until such time as the sale is fully paid for and merchandise is  
46 delivered to the customers.

47  
48 **Section 2.04 TENANT'S TAX OBLIGATION.**

49 (a) Commencing with the Rental Commencement Date, and continuing for the balance of the  
50 Term, Tenant shall pay to Landlord as Additional Rent Tenant's Share of Taxes (as hereinafter defined)  
51 levied or assessed during or with respect to each fiscal tax year falling in whole or in part during the Term  
52 following the Rental Commencement Date plus a percentage equal to the amount set forth on the Data  
53 Sheet ("Tax Administration Fee") of the total of such Taxes. "Tenant's Share" shall mean the proportion  
54 that the number of square feet of Floor Area in the Premises bears to the total number of square feet of  
55 constructed gross leased and occupied Floor Area of all buildings in the Shopping Center (which lease and  
56 occupied Floor Area for this calculation shall not be less eighty percent (80%) of the gross leasable Floor  
57 Area of the Shopping Center). As used herein, the term "Taxes" shall mean any and all taxes, surcharges,  
58 assessments, levies, fees and other governmental charges and impositions of every kind or nature, regular  
59 or special, direct or indirect, presently foreseen or unforeseen or known or unknown, levied or assessed by  
60 municipal, county, state, federal or other governmental taxing or assessing authority (i) upon, against or  
61 with respect to the real estate upon which the Development, or any part of it, is located and to any  
62 improvements located in the Shopping Center or the Development, and (ii) any other taxes which Landlord  
63 becomes obligated to pay with respect to the Development, irrespective of whether the same are assessed  
64 as real or personal property. Taxes shall not include Landlord's income, inheritance, or franchise taxes. To  
65 the extent that any such Taxes are the obligation of Tenant pursuant to Section 8.03 or Section 22.01, the  
66 same shall not be included in Tenant's Share pursuant to this Section 2.04. If the Shopping Center shall be

1 part of or shall include a group of buildings or structures collectively owned or managed by Landlord or its  
2 affiliates, or shall include any space used for office or other non-retail purposes, Landlord may determine  
3 separately and allocate Taxes between such buildings and structures and the parcels on which they are  
4 located, and between the retail and non-retail area of the Development, in accordance with sound accounting  
5 and management principles. Prior to the proration of such Taxes as provided in this Section 2.04, there shall  
6 be deducted therefrom all amounts received from the Department Stores and/or any other tenant within the  
7 Shopping Center not included in the definition of the Floor Area of the Shopping Center towards such  
8 Taxes. The Taxes payable by Tenant pursuant to this Section 2.04(a) which are levied or assessed for the  
9 fiscal tax year in which the Rental Commencement Date occurs and for the fiscal tax year in which the  
10 Term of this Lease ends shall be prorated on a daily basis.

11  
12 (b) Should the state where the Shopping Center is located or any political subdivision thereof  
13 or any governmental, taxing or assessing authority, directly or indirectly by way of substitution for or in  
14 lieu of or in addition to or in any other way directly or indirectly used or intended to provide revenues to  
15 fund all or any part of revenues theretofore provided or services theretofore funded by all or any part of the  
16 Taxes otherwise required to be paid in whole or in part by Tenant pursuant to this Section 2.04 or Section  
17 8.03 or Section 22.01, whether presently foreseen or unforeseen or known or unknown, either (i) impose a  
18 tax of any kind or nature upon, against, in connection with or with respect to the rentals or other charges  
19 payable by or to Landlord by the Tenant or other tenants in or occupants of the Shopping Center or on the  
20 income of Landlord derived from the Shopping Center or on the revenues of the Shopping Center or on  
21 Landlord's (or the individuals or entities which constitute the partners of Landlord, if Landlord is a  
22 partnership) ownership of the Shopping Center or any portion thereof or interest therein, or any direct or  
23 indirect tax whatsoever other than the Taxes otherwise required to be paid in whole or in part by Tenant  
24 pursuant to this Section 2.04 or Section 8.03 or Section 22.01, and/or (ii) reappraise, or determine that the  
25 method utilized by Landlord in determining property Taxes to be incorrect, or redetermine the method upon  
26 which property taxes are imposed against the Shopping Center from time to time by virtue of a change in  
27 the ownership of Landlord's interest or otherwise by operation of law and/or (iv) impose a charge for  
28 assessments, taxes, fees, levies and charges imposed by governmental agencies for services such as fire  
29 protection, sidewalk and road maintenance, refuse removal and other public services generally provided  
30 without charge to property owners or occupants prior to the date of this Lease, the same shall be deemed as  
31 a part of Taxes payable by Tenant hereunder for the purposes of this Lease. For the purposes of this Section  
32 2.04, the term "Shopping Center" shall include any land upon which temporary off-site utility systems and  
33 parking (if any) serving the Shopping Center is located.

34  
35 (c) Tenant's Share of Taxes, as reasonably determined by Landlord, shall be paid to Landlord  
36 as Additional Rent, in monthly installments on or before the first day of each month (or such longer period  
37 as Landlord may reasonably determine), in advance, in an amount estimated by Landlord and billed by  
38 Landlord to Tenant; provided that Landlord shall have the right initially to determine monthly estimates  
39 and to revise the estimates from time to time. Upon receipt of all tax bills pertaining to Taxes payable by  
40 Tenant, Landlord shall furnish Tenant with a written statement of the actual amount of Tenant's Share of  
41 Taxes for such tax year. Upon written request by Tenant, Landlord shall provide copies of any and all tax  
42 bills, if available, issued by any taxing authority which serve as a basis for the determination of Taxes or  
43 Tenant's tax obligation under this Section. In the event any applicable tax bill is not available at the time  
44 Landlord bills Tenant for Taxes, Landlord may estimate the amount of such tax. If the total amount paid  
45 by Tenant under this Section 2.04 for any calendar, tax, fiscal or lease year during the Term following the  
46 Rental Commencement Date shall be less than the actual amount due from Tenant for such year, as shown  
47 on such statement, Tenant shall pay to Landlord the difference between the amount paid by Tenant and the  
48 actual amount due within thirty (30) days after demand therefor by Landlord; and if the total amount paid  
49 by Tenant hereunder for any such calendar, tax, fiscal or lease year shall exceed such actual amount due  
50 from Tenant for such year, such excess shall be credited against the next monthly payments due from Tenant  
51 to Landlord under this Lease. If at the end of the final lease year the total amount paid by Tenant hereunder  
52 for such lease year shall exceed such actual amount due from Tenant for such year, such excess shall be  
53 refunded to Tenant after Tenant has vacated the Premises in good condition at the conclusion of this Lease  
54 and any other sums due Landlord from Tenant under this Lease have been paid in full or deducted  
55 therefrom. A copy of a tax bill or statement or assessment notice submitted by Landlord to Tenant shall at  
56 all times be sufficient evidence of the amount of Taxes assessed or levied against the property to which  
57 such bill relates. Landlord's and Tenant's obligations under this Section 2.04 shall survive the expiration  
58 of the Term or earlier termination of this Lease.

59  
60 (d) Landlord reserves the right to contest any Taxes levied or assessed during the Term upon,  
61 against or with respect to the Shopping Center or any portion thereof or interest therein. Tenant shall pay  
62 to Landlord that proportion of all reasonable costs incurred by Landlord in connection therewith based on  
63 the formula specified in Section 2.04(a). Notwithstanding any such contest, or any related negotiation or  
64 appeal, Tenant shall pay, as provided for in this Section 2.04, Tenant's Share of Taxes. If, as a result of  
65 any such contest, negotiation or appeal, Taxes shall be increased, Tenant's Share of Taxes shall be computed  
66 on the basis of the amount of Taxes finally determined to be payable by Landlord, including any of

1 Landlord's reasonable costs in any such contest. If, as a result of any such contest, negotiation or appeal,  
2 Taxes shall be decreased, Landlord's statement to Tenant of Taxes following such decrease shall include an  
3 adjustment for any prior tax years affected by such decrease reflecting the amount of such decrease in  
4 Taxes. Tenant's Share of any such adjustment, less all costs and expenses, including, but not limited to,  
5 reasonable attorney fees, expenses of accountants, consultants and appraisers; and administrative expenses  
6 incurred by Landlord in connection with such contest, negotiation or appeal and not previously paid by  
7 Tenant, shall be treated as a credit against Taxes payable by Tenant following such decrease.  
8

9 Notwithstanding anything contained to the contrary, Tenant's obligation under this Section  
10 2.04 shall not include penalties imposed upon Landlord for late payment of any Taxes  
11

12 **Section 2.05 TRASH REMOVAL CHARGE.**

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

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

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

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

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

50 **Section 2.06 ADDITIONAL RENT.**

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

62 **Section 2.07 LATE CHARGE.**

63 Unless specifically stated otherwise in this Lease, all Rental or other charges required to be paid by  
64 Tenant pursuant to this Lease shall be due and payable ten (10) days after demand, without any notice from  
65 Landlord and without any deductions or offsets whatsoever. The parties hereby agree that late payment by  
66 Tenant of any Rental owing under this Lease will cause Landlord to incur certain costs and expenses not

1 contemplated under this Lease, the exact amount of which costs are extremely difficult and impracticable  
2 to fix. Such costs and expenses may include, for example, administrative and collection costs, and  
3 processing and accounting expenses. Therefore, in the event Tenant fails to pay any monthly installment of  
4 Rental on the date said payment is due, then Tenant shall pay a late charge of five percent (5%) of such  
5 amount as Additional Rent. The parties hereby agree that such late charge represents a fair and reasonable  
6 estimate of the costs and expenses Landlord will incur by reason of late payment by Tenant. Acceptance  
7 of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such  
8 overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted in this  
9 Lease. In the event Tenant pays the late charge set forth hereunder but fails to pay contemporaneously  
10 therewith all unpaid amounts of Rental, Landlord's acceptance of this late charge payment shall not  
11 constitute a waiver of Tenant's default with respect to Tenant's nonpayment nor prevent Landlord from  
12 exercising all other rights and remedies available to Landlord under this Lease, at law or in equity.

13  
14 For the first two (2) times in any lease year that Tenant failed to pay any Rental owing under this  
15 Lease, such late charge shall not apply, unless Tenant has failed to make such payment within ten (10) days  
16 of receipt of Landlord's written notice of such delinquency; provided, however, Landlord shall not be required  
17 to give Tenant such notice more than twice in any lease year prior to assessing such late charge.

18  
19 **Section 2.08 TENANT'S PAYMENT OBLIGATIONS.**

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

27  
28 (b) Tenant covenants to pay all charges under this Lease, including, without limitation,  
29 Minimum Annual Rental, Percentage Rental and Additional Rent and other charges, independent of any  
30 obligation of Landlord. No breach of this Lease by Landlord shall relieve Tenant of its obligation and duty  
31 to pay all such charges when due under the terms of this Article II.

32  
33 **ARTICLE III**

34  
35 **RECORDS AND BOOKS OF ACCOUNT**

36  
37 **Section 3.01 TENANT'S RECORDS.**

38 Tenant shall prepare and keep full, complete and proper books and source documents, in  
39 accordance with Generally Accepted Accounting Principles, of the Gross Sales, whether for cash, credit or  
40 otherwise, of each separate department at any time operated within the Premises and of the operations of  
41 each subtenant, concessionaire, licensee and/or assignee, and shall require and cause all such parties to  
42 prepare and keep books, source documents, records and accounts sufficient to substantiate those kept by  
43 Tenant ("Records"). The Records to be kept by Tenant shall include, without limitation, true copies of all  
44 state and local sales and use tax returns and reports, records of inventories and receipts of merchandise,  
45 records of bank deposits of the entire receipts from transactions at the Premises, daily receipts from all sales  
46 (including those from mail or telephone orders), and other pertinent original sales records and records of  
47 any other transactions conducted in or from the Premises by Tenant and any other persons conducting  
48 business from the Premises. Pertinent original sales records shall include, without limitation, a point of sale  
49 system of record keeping and such other reasonable documentation which would normally be examined by  
50 an independent accountant pursuant to Generally Accepted Auditing Standards in performing an audit of  
51 Tenant's sales sufficient to provide determination and verification of Gross Sales and the exclusions and  
52 deductions therefrom. Tenant's Records shall be preserved by Tenant for at least three (3) years after  
53 expiration of each lease year or partial lease year. All of books, source documents, records and  
54 documentation maintained pursuant hereto shall at all reasonable times be open to the inspection of, and  
55 may be copied or extracted from, in whole or in part, by Landlord or Landlord's authorized representative  
56 or agent for a period of at least three (3) years after the expiration of each lease year.

57  
58 Notwithstanding the provisions of this Lease, Tenant shall only be obligated to include among its  
59 Records copies of state and local sales and use tax returns and reports which relate only to Tenant's business  
60 being conducted upon the Premises. In the event such returns and reports are filed on a consolidated basis,  
61 then Tenant's Records will only include the worksheets therefor which relate only to the business of Tenant  
62 being conducted from the Premises.

63  
64 **Section 3.02 REPORTS BY TENANT.**

65 Tenant shall furnish to Landlord, within twenty (20) days after the expiration of each month of each  
66 lease year, a complete statement, certified by Tenant, of the amount of Gross Sales, as defined in Section



1 2.03 of this Lease, made from the Premises during such period. Tenant shall furnish to Landlord, , forty-  
2 five (45) days after the expiration of each lease year, a complete statement, certified by Tenant, showing in  
3 all reasonable detail the amount of such Gross Sales made by Tenant from the Premises during the preceding  
4 lease year or partial lease year. Tenant shall require all subtenants, concessionaires, licensees and/or  
5 assignees, if any, to furnish a similar statement. If Tenant or any subtenant, concessionaire, licensee and/or  
6 assignee fails to furnish to Landlord any monthly or annual statement of Gross Sales within the time  
7 required by this Section 3.02, then Tenant shall pay within ten (10) days of demand therefor by Landlord  
8 as Additional Rent, a special handling fee of \$100.00 per statement per day until such statement is delivered  
9 to Landlord; provided, however, the foregoing special handling fee shall only apply after Tenant has  
10 received two (2) notices in any given lease year and has failed to cure such violation within ten (10) days  
11 after such notice, thereafter, any subsequent or continued failure to timely deliver said statements in said  
12 lease year will subject Tenant to such special handling fee without any additional notice required for said  
13 lease year. This remedy shall be in addition to any and all other remedies provided in this Lease or by law  
14 to Landlord. In addition, if Tenant or any subtenant, concessionaire, licensee and/or assignee, if any, fails  
15 to furnish any two (2) consecutive monthly or annual statements of Gross Sales within the time required by  
16 this Section 3.02, then, without limiting any of the Landlord's other rights under this Lease, Landlord shall  
17 have the right upon ten (10) days' prior written notice to conduct an audit as set forth in Section 4.02 below  
18 and any and all charges occasioned by reason thereof shall be the sole obligation of Tenant and payable on  
19 demand.

## 20 21 **ARTICLE IV**

### 22 23 **AUDIT**

#### 24 25 **Section 4.01 RIGHT TO EXAMINE BOOKS.**

26 Notwithstanding the acceptance by Landlord of payments of Minimum Annual Rental or  
27 Percentage Rental or installments thereof, Landlord shall have the right to audit all rentals and other charges  
28 actually due hereunder. Within ten (10) days following Landlord's request (but not more often than once  
29 in any lease year), Tenant shall make available to Landlord at the Premises or at Tenant's principal business  
30 office in the United States for examination, extracting and/or copying all books, source documents,  
31 accounts, records and sales tax reports of Tenant and any subtenants, concessionaires, licensees and/or  
32 assignees, in order to verify the amount of Gross Sales made in and from the Premises.  
33

34 Notwithstanding the provisions of this Lease, Tenant shall only be obligated to include among its  
35 Records copies of state and local sales and use tax returns and reports which relate only to Tenant's business  
36 being conducted upon the Premises. In the event such returns and reports are filed on a consolidated basis,  
37 then Tenant's Records will only include the worksheets therefor which relate only to the business of Tenant  
38 being conducted from the Premises.  
39

#### 40 **Section 4.02 AUDIT.**

41 (a) At its option, Landlord may at any time upon ten (10) days' prior written notice to Tenant,  
42 cause a complete audit to be made by an auditor selected by Landlord of the entire records and operations  
43 of Tenant and/or any subtenants, concessionaires, licensees and/or assignees relating to the Premises for  
44 the period covered by any statement issued or required to be issued by Tenant or a concessionaire as above  
45 set forth in Article III. Tenant shall make available to Landlord's auditor at the Premises or at Tenant's  
46 principal business office in the United States, within ten (10) days following Landlord's notice requiring  
47 such audit, all of the books, source documents, accounts, records and sales tax reports of Tenant and any of  
48 its concessionaires which such auditor deems necessary or desirable for the purpose of making such audit.  
49 If such audit discloses that Tenant's Gross Sales as previously reported for the period audited were  
50 understated, Tenant shall immediately pay to Landlord the additional percentage rental due for the period  
51 audited. Further, if such understatement was in excess of three percent (3%) of Tenant's actual Gross Sales  
52 as disclosed by such audit, Tenant shall immediately pay to Landlord the cost of such audit, and if such  
53 understatement was in excess of ten percent (10%) of Tenant's Gross Sales as disclosed by such audit,  
54 Landlord may declare this Lease terminated and the Term ended, in which event this Lease shall cease and  
55 terminate on the date specified in such notice with the same force and effect as though the date set forth in  
56 such notice were the date set forth in this Lease for expiration of the Term, and Tenant shall vacate and  
57 surrender the Premises on or before such date in the condition required by this Lease for surrender upon the  
58 expiration of the Term.  
59

60 (b) If upon examination or audit Landlord's accountant or representative determines that  
61 sufficient documentation is not maintained, retained, recorded or available to verify Tenant's actual Gross  
62 Sales, Tenant shall pay for the cost of such audit and, in addition, should Landlord deem it necessary,  
63 Tenant shall reconstruct, at its sole cost and expense, all Records for the determination of Gross Sales for  
64 any period being audited.  
65

1 (c) If Tenant subleases, licenses, or in any manner allows the Premises to be used by another  
2 party (the "Subtenant"), Tenant is responsible for ensuring that the Subtenant's Records conform to the  
3 requirements of this Lease. The failure of Subtenant to maintain its Records as required under this Lease,  
4 or to correctly report Gross Sales, will be deemed a failure on the part of Tenant to conform to the  
5 requirements of this Lease and shall subject Tenant to the remedies set forth in Section 4.02(a) or Section  
6 4.02(b) above, including termination of this Lease.  
7

## 8 **ARTICLE V**

### 9 **CONSTRUCTION OF PREMISES**

#### 10 **Section 5.01 CONSTRUCTION OF PREMISES.**

11  
12 (a) Any improvements to be made to the Premises shall be substantially as set forth in Exhibit  
13 B attached hereto. Each of the parties hereto shall perform the obligations imposed upon such party in said  
14 Exhibit at the times and in the manner therein provided. It is understood and agreed by Tenant that any  
15 minor changes from any plans or specifications covering Landlord's Work as defined in said Exhibit shall  
16 not affect or change this Lease or invalidate the same.  
17

18  
19 (b) Without limiting the generality of the incorporation by reference of all exhibits and/or  
20 addenda to this Lease, Tenant's failure to furnish the plans and specifications required pursuant to Exhibit  
21 B ("Plans and Specifications") to Landlord within the time periods and in the form required by Exhibit B,  
22 or failure to perform any other obligation under Exhibit B, shall constitute a default under this Lease  
23 pursuant to Article XIX below, which shall entitle Landlord to all remedies set forth in Article XIX below.  
24 No deviation from the final Plans and Specifications, once approved by Landlord, shall be made by Tenant  
25 without Landlord's prior written consent, which consent shall not be unreasonable withheld or delayed.  
26 Approval of the final Plans and Specifications by Landlord shall not constitute the assumption of any  
27 responsibility by Landlord for their accuracy, efficacy or sufficiency, and Tenant shall be solely responsible  
28 for such items. Any occupancy of the Premises by Tenant prior to the Rental Commencement Date shall  
29 be solely for the purpose of inspection, measurement and obtaining information necessary to prepare Plans  
30 and Specifications and to construct its leasehold improvements, and shall be subject to all terms and  
31 conditions of this Lease applicable to such entry prior to the Rental Commencement Date pursuant to  
32 Section 1.02 above. Storefront barricades, reasonably acceptable to Landlord, attractively screening the  
33 Premises from view during construction shall be erected and maintained by Tenant at all times prior to  
34 Tenant's opening for business to the general public and shall be removed by Tenant prior to such opening.  
35

#### 36 **Section 5.02 CERTIFICATE OF OCCUPANCY.**

37 Within the earlier of (a) ten (10) days after completion of construction of Tenant's Work in  
38 accordance with the final Plans and Specifications as approved by Landlord (as described in Section 5.01  
39 and Exhibit B); or (b) ten (10) days after Tenant opens the Premises for business, Tenant shall deliver to  
40 Landlord a copy of the original of the Certificate of Occupancy for the Premises issued by the appropriate  
41 governmental agency, original execution copies of all mechanics' lien releases or other lien releases on  
42 account of Tenant's Work, notarized and unconditional, in such form as reasonably acceptable to Landlord,  
43 copies of all building permits indicating inspection and approval by the issuer of said permits, and Tenant's  
44 certification that Tenant's Work has been constructed in accordance with the final Plans and Specifications  
45 and is fully complete in accordance with Exhibit B.  
46

47 In the event such documentation has not been provided from the issuing agency or Tenant's contractors  
48 and material men within the specified time period, Tenant agrees to provide any such document to Landlord  
49 within ten (10) days after receipt by Tenant. Further, notwithstanding anything to the contrary contained in  
50 this Lease, or Exhibit B, in the event Tenant is required to submit the same affidavit(s), statement(s), waiver of  
51 lien document(s), and/or certificate(s) pursuant to the Lease, and Exhibit B, Tenant's initial delivery of said  
52 required affidavit(s), statement(s), waiver of lien document(s) and/or certificate(s) shall be deemed to satisfy  
53 the requirements of this Lease, and Exhibit B.  
54

#### 55 **Section 5.03 CONDITION OF PREMISES.**

56 (a) Except as otherwise specifically provided in this Lease (including, without limitation, in  
57 Exhibit B attached hereto), Tenant hereby agrees that upon delivery of possession of the Premises to Tenant,  
58 Tenant shall accept such delivery of possession of the Premises in its then existing "AS IS" condition, and  
59 Tenant acknowledges (i) that Tenant shall have inspected the Premises and shall be fully aware of the  
60 condition of the Premises as of delivery of possession; (ii) that Landlord shall have no obligation to improve  
61 or alter the Premises for the benefit of Tenant; (iii) that, except as may be expressly provided in this Lease,  
62 neither Landlord nor any of Landlord's employees, agents, representatives, contractors nor brokers has  
63 made any representation or warranty of any kind respecting (a) the condition of the Premises, the building  
64 in which the Premises is located, and/or the Shopping Center (b) the suitability thereof for Tenant's use or  
65 the conduct of Tenant's business, or (c) occupancy or operation within the Shopping Center by any other  
66 person or entity. Tenant irrevocably waives any claim based upon or related to any such claimed

1 representation by Landlord or any claimed representation by Landlord as to traffic to be expected at the  
2 Premises or sales to be expected at the Premises. Tenant's taking possession of the Premises shall constitute  
3 Tenant's formal acceptance of the same and acknowledgment that the Premises are in the condition called  
4 for under this Lease, subject to all field conditions existing at the time of delivery of possession. In no  
5 event shall Landlord be liable for damages or otherwise as a result of any failure to make the Premises  
6 available within the time and/or in the condition provided in this Lease and no such failure shall permit  
7 Tenant to rescind or terminate this Lease.

8  
9 Notwithstanding anything to the contrary contained in this Section 5.03, in no event shall  
10 Tenant be liable or responsible for any "Hazardous Materials," as said term is defined in Section 7.03 (a)  
11 hereof, that was not placed in or upon or introduced to the Premises by Tenant or any affiliate of Tenant or  
12 any employee, agent or contractor of Tenant or its affiliates. In the event any such Hazardous Materials is  
13 discovered in or on the Premises, during Tenant's initial remodel of the Premises, Landlord shall be  
14 responsible, at Landlord's expense, for complying with governmental requirements in the removing or  
15 sealing of any such Hazardous Materials.

16  
17 (b) CASp Inspection. A Certified Access Specialist ("CASp") can inspect the subject premises  
18 and determine whether the subject premises comply with all of the applicable construction-related  
19 accessibility standards under state law. Although state law does not require a CASp inspection of the subject  
20 premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a  
21 CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant,  
22 if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and  
23 manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making  
24 any repairs necessary to correct violations of construction-related accessibility standards within the  
25 premises. As of the Commencement Date of this Lease, the Premises has not been inspected by a CASp,  
26 pursuant to California Civil Code §1938.

27  
28 **Section 5.04 ULTIMATE RENTAL COMMENCEMENT DATE.**

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

34  
35 **Section 5.05 REQUIRED IMPROVEMENTS.**

36 Tenant agrees to maintain the Premises in a first class condition at all times during the Term.

37  
38 **ARTICLE VI**

39  
40 **ALTERATIONS, CHANGES AND ADDITIONS**

41  
42 **Section 6.01 ALTERATIONS BY TENANT.**

43 Tenant shall not make or cause to be made any alterations, additions or improvements to the  
44 Premises without the prior written approval of Landlord which approval shall not be *unreasonably withheld*  
45 or delayed (for example, but without limiting the generality of the foregoing, Tenant shall not install or  
46 cause to be installed any signs, floor covering, interior or exterior lighting, plumbing fixtures, shades,  
47 canopies, awnings, electronic detection devices, antennas, mechanical, electrical or sprinkler systems, or  
48 make any changes to the storefront without such approval. However, Tenant may make such alterations,  
49 additions and improvements to the interior of the Premises as do not in the aggregate exceed in any lease  
50 year the amount set forth in the Data Sheet, provided (a) the same are cosmetic and not structural in nature,  
51 do not affect a utility system, the storefront or storefront sign and are not inconsistent with the final Plans  
52 and Specifications approved by Landlord; (b) that Tenant complies with. Or a material deviation from, the  
53 provisions concerning contractors, labor relations, compliance with law, reporting of costs and insurance  
54 and the provisions of Exhibit B; and (c) that Tenant shall submit to Landlord fifteen (15) days written  
55 notice prior to undertaking any of the foregoing. Tenant shall present to Landlord Plans and Specifications  
56 for any other alterations, additions or improvements at the time approval is sought, in accordance with  
57 criteria and procedures as provided in Exhibit B. All alterations, decorations, additions and improvements  
58 made by Tenant shall be deemed to have attached to the Premises and to have become the property of  
59 Landlord upon such attachment.

60  
61 **Section 6.02 REMOVAL BY TENANT.**

62 Upon the expiration or earlier termination of this Lease, Tenant shall not remove any of such  
63 alterations, decorations, additions and improvements, except that trade fixtures, portable light fixtures,  
64 equipment and other personal property installed by Tenant ("Property") and not affixed to the Premises  
65 may be removed if all Rental and other charges due hereunder are paid in full and Tenant is not otherwise  
66 in default hereunder; provided that Tenant immediately repairs any damage caused by such removal. If

1 Tenant shall fail to remove any of its Property, Landlord may, at Landlord's option, retain either any or all  
2 of the property, and title thereto shall thereupon vest in Landlord without compensation to Tenant; or  
3 remove all or any portion of the Property from the Premises and dispose of the Property in any manner,  
4 without compensation to Tenant. In the latter event, Tenant shall, upon demand, pay to Landlord the actual  
5 expense of such removal and disposition and the repair of any damage to the Premises resulting from or  
6 caused by such removal. The obligations contained in this Section 6.02 shall survive the expiration or  
7 earlier termination of this Lease.

8  
9 **Section 6.03 CHANGES AND ADDITIONS.**

10 (a) Landlord reserves the right at any time, and from time to time, to make alterations to, and  
11 to build additional stories on, the building in which the Premises is located, and to construct other buildings  
12 and improvements in the Shopping Center including any modifications of the Common Areas in connection  
13 therewith, to enlarge or reduce the Shopping Center to add decks or elevated parking facilities, and to sell  
14 or lease any part of the land comprising the , as shown on Exhibit A-1, for the construction thereon of a  
15 building or buildings to be occupied by a Department Store which may or may not be part of the  
16 Development. Landlord also reserves the right at any time, and from time to time, to change, modify, or  
17 abolish any temporary off-site utility serving the Shopping Center. The purpose of Exhibit A-1 is to show  
18 the approximate location of the Shopping Center while the purpose of Exhibit A-2 is to show the  
19 approximate location of the Premises within the Shopping Center. Landlord reserves the right at any time  
20 to relocate, reduce, enlarge, or reconfigure the various buildings, and other common areas shown on said  
21 exhibits.

22  
23 (b) Landlord shall have the exclusive right to use all or any part of the roof of the Premises for  
24 any purpose; to erect additional stories or other structures over all or any part of the Premises; to erect in  
25 connection with the construction thereof temporary scaffolds and other aids to construction on the exterior  
26 of the Premises, provided that access to the Premises shall not be denied; and to install, maintain, use, repair  
27 and replace within the Premises pipes, ducts, conduits, wires and all other mechanical equipment serving  
28 other parts of the Shopping Center, the same to be in locations as will not unreasonably deny Tenant's use  
29 thereof. Landlord may make any use it desires of the side or rear walls of the Premises (including, without  
30 limitation, freestanding columns and footings for all columns), provided that such use shall not encroach  
31 on the interior of the Premises unless (i) all work carried on by Landlord with respect to such encroachment  
32 shall be done during hours when the Premises are not open for business and otherwise shall be carried out  
33 in such a manner as not to unreasonably interfere with Tenant's operations in the Premises, and (ii)  
34 Landlord, at its expense, shall repair all damage to the Premises resulting from such work.

35  
36 (c) Notwithstanding anything to the contrary contained in this Section 6.03, in the exercise of  
37 Landlord's rights under this Section 6.03, Landlord agrees to use diligent efforts to perform any such work in  
38 a manner so as to minimize interference with Tenant's business operation, and shall not adversely affect access  
39 to nor the reasonable visibility of the Premises.

40  
41 **Section 6.04 RIGHTS OF LANDLORD.**

42 (a) Intentionally deleted.

43  
44 (b) Intentionally Deleted.

45  
46 **ARTICLE VII**

47  
48 **CONDUCT OF BUSINESS BY TENANT**

49  
50 **Section 7.01 PERMITTED USE.**

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

58  
59 **Section 7.02 OPERATION OF BUSINESS.**

60 (a) Tenant agrees to be open for business and to operate in all of the Premises during the entire  
61 Term following the Rental Commencement Date, and to actively and diligently conduct its business at all  
62 times in a first class and reputable manner, maintaining at all times a full staff of employees and a complete  
63 stock of current season merchandise. Tenant shall install and maintain at all times a display of merchandise  
64 in the display windows, if any, of the Premises and shall keep the same well lighted. Provided at least two  
65 (2) Department Stores and seventy five percent (75%) of the retail tenants in the Shopping Center are also  
66 required to be open for business, Tenant shall be obligated to be open for business and to operate

1 continuously during all hours established by Landlord as Shopping Center business hours; provided,  
2 however, notwithstanding the foregoing, Tenant shall have the right to close the Premises on two (2) non-  
3 consecutive days, other than weekends, during each lease year of the Term for the purpose of taking inventory  
4 so long as Tenant gives advance notice to the Shopping Center manager of any such closure. In the event  
5 Landlord has approved Tenant's remaining open for business after normal Shopping Center hours, then  
6 such approval shall be conditioned upon Tenant paying, as Additional Rent, all additional costs incurred by  
7 Landlord as a result thereof. Tenant's obligation to be open for business shall include, but not be limited  
8 to, opening for business not more than fifteen (15) minutes late, closing for business not more than fifteen  
9 (15) minutes early, and closing for business for not more than fifteen (15) minutes during Shopping Center  
10 business hours. If Tenant fails more than twice in any given lease year to comply with any of the provisions  
11 of this Section 7.02(a), then Tenant shall pay within ten (10) days of demand therefor by Landlord  
12 Additional Rent in the amount of \$150.00 per day until such time as Tenant is in compliance with this  
13 Section 7.02(a). This remedy shall be in addition to any and all other remedies provided in this Lease or  
14 by law to Landlord. Failure by Tenant to be open for business and to operate shall entitle Landlord, in  
15 addition to other remedies provided in this Section 7.02, this Lease or by law, to mandatory injunctive  
16 relief. Without limiting the generality of the foregoing, in the event the hours during which the Shopping  
17 Center is legally permitted to be open to the public are regulated by any lawful authority, then Landlord  
18 shall be the sole judge of which hours and days shall be Shopping Center business hours.

19  
20 Notwithstanding anything contained in this Section 7.02, Tenant shall be permitted to open  
21 early or close late up to four (4) times in any lease year for special promotional events of Tenant, provided  
22 Tenant gives Landlord notice of the dates of said special promotional events at least seven (7) days in advance,  
23 and further Tenant agrees to pay Landlord within ten (10) days of demand all the additional costs incurred by  
24 Landlord as a result of such early openings and/or late closings.

25  
26  
27 (b) Tenant, at Tenant's expense, shall promptly comply with all present and future laws,  
28 ordinances, orders, rules, regulations and requirements of all governmental authorities having jurisdiction  
29 affecting or applicable to the Premises or the cleanliness, safety, occupancy and use of the same, whether  
30 or not any such law, ordinance, order, rule, regulation or requirement is substantial, or foreseen or  
31 unforeseen, or ordinary or extraordinary, or shall necessitate changes or improvements (other than structural  
32 changes or improvements) or interfere with the use and enjoyment of the Premises. Tenant shall not do or  
33 permit anything to be done in or about the Premises, nor bring anything therein, which will in any way  
34 conflict with any such law, ordinance, order, rule, regulation or requirement affecting the occupancy or use  
35 of the Premises or the Shopping Center or the Shopping Center which has been or may hereafter be enacted  
36 or promulgated by governmental authorities, or in any way obstruct or interfere with the rights of others,  
37 nor shall Tenant use or allow the Premises to be used for any unlawful purposes or do any act tending to  
38 injure the reputation of the Shopping Center. Tenant shall not give samples, approach customers or  
39 otherwise solicit business in the, Common Areas or any part of the Shopping Center other than in the  
40 Premises.

41  
42 Notwithstanding anything contained in this Lease to the contrary, there shall be no obligation  
43 on the Tenant to comply with any of the laws, directions, rules or regulations referred to which may require  
44 structural alterations, changes, repairs or additions, all of which required structural alterations, changes, repairs  
45 or additions shall be the obligation of Landlord unless made necessary by the specific use or design of Tenant's  
46 Premises or the negligence or default of Tenant, in which event, Tenant shall comply at its expense.

47  
48 No auction, liquidation, going out of business, fire or bankruptcy sale may be conducted  
49 or advertised by sign or otherwise in the Premises. Tenant shall not permit the operation of any coin  
50 operated or vending machines or pay telephones in the Premises, other than in the areas reserved solely for  
51 the use of Tenant's employees. Tenant shall not sell or display any merchandise within two feet (2') of the  
52 storefront leaseline or opening unless such sale or display shall be expressly approved on the Plans and  
53 Specifications or otherwise approved by Landlord, in writing, except that Tenant shall be permitted to  
54 display merchandise in the display windows, if any. Tenant shall not use the areas adjacent to the Premises  
55 for business purposes or any other purpose. Tenant shall not store anything in service or exit corridors. All  
56 receiving and delivery of goods and merchandise for the Premises, and all removal of merchandise,  
57 supplies, equipment, trash and debris and all storage of trash and debris from the Premises shall be made  
58 only by way of or in the areas provided by Landlord. Tenant shall be solely responsible for prompt disposal  
59 within the Premises or in such areas as may be provided for such disposal by Landlord of all trash and  
60 debris from the Premises. Tenant shall not use or permit the use of any portion of the Premises as sleeping  
61 quarters, lodging rooms, for any unlawful purpose, or for cooking, except as specifically permitted in  
62 Section 7.01. Tenant shall not install any radio, television, communication dish or other similar device or  
63 related equipment exterior to the Premises, shall not cause or make any penetration of the roof of the  
64 Premises or the building in which the Premises is located and shall not erect any aerial or antenna on the  
65 roof or exterior walls of any building within the Shopping Center.

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

5  
6 **Section 7.03 HAZARDOUS MATERIALS.**

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

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

36  
37 (c) Tenant shall comply and shall cause any other person on or about the Premises, including,  
38 without limitation, employees, invitees, contractors, subcontractors, licensees, subtenants or agents, to  
39 comply in all respects with all Environmental Requirements, and shall cause itself and its employees,  
40 invitees, contractors, subcontractors, licensees, subtenants or agents not to generate, store, handle,  
41 manufacture, process, sell, dispose of, transport or otherwise use Hazardous Materials at, in, on, under or  
42 about the Premises in a manner that could lead or potentially lead to the imposition on Landlord or the  
43 Shopping Center of any liability or lien of any nature whatsoever.

44  
45 (d) Tenant shall (i) notify Landlord promptly in the event of any spill or other release of any  
46 Hazardous Material at, in, on, under or about the Premises which is required to be reported to a  
47 Governmental Authority under any Environmental Requirement; (ii) promptly forward to Landlord copies  
48 of any notices received by Tenant relating to the alleged violations of any Environmental Requirement; and  
49 (iii) promptly pay when due any fine or assessment against Tenant, Landlord or the Shopping Center  
50 relating to any Environmental Requirement or the existence of Hazardous Materials at the Premises.

51  
52 (e) If, at any time, it is determined that the operation or use of the Premises violates any  
53 applicable Environmental Requirement, or that there are Hazardous Materials located at, in, on, under or  
54 about the Premises which require special handling in collection, storage, treatment or disposal, or any other  
55 form of cleanup or corrective action, Tenant shall within ten (10) days after receipt of notice thereof from  
56 any Governmental Authority or from Landlord take, at its sole cost and expense, such actions as may be  
57 necessary to fully comply in all respects with all Environmental Requirements; provided, however, that if  
58 such compliance cannot reasonably be completed within such ten (10) day period, Tenant shall commence  
59 such necessary action within such ten (10) day period and shall thereafter diligently and expeditiously  
60 proceed to fully comply in all respects and in a timely fashion with all Environmental Requirements. If  
61 Tenant fails to timely take, or to diligently and expeditiously proceed to complete in a timely fashion, any  
62 such action, Landlord may, in its sole and absolute discretion, make advances or payments towards the  
63 performance or satisfaction of the same, but shall in no event be under any obligation to do so. All sums  
64 so advanced or paid by Landlord (including, without limitation, counsel and consultant fees and expenses,  
65 investigation and laboratory fees and expenses, and fines or other penalty payments) and all sums advanced  
66 or paid in connection with any judicial or administrative investigation or proceeding relating thereto, will

1 immediately, upon demand, become due and payable from Tenant. If Tenant fails to make such payment  
2 within ten (10) days of such demand, Tenant shall be in default under this Lease and Landlord may, resort  
3 to any other of its rights upon default set forth in Article XIX.

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

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

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

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

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

58  
59 (j) Tenant shall surrender the Premises to Landlord upon the expiration or earlier termination  
60 of the Lease free of Hazardous Materials and free of any violation of any Environmental Requirement.  
61 Upon surrender, Tenant shall provide Landlord with a report by experts acceptable to Landlord showing  
62 the Premises free of Hazardous Materials.

63  
64 (k) Notwithstanding anything to the contrary contained in this Section 7.03, in no event shall  
65 Tenant be liable or responsible for the removal or abatement of any "Hazardous Material", as said term is  
66 defined in Section 7.03 (a) hereof, that was not placed in or upon or introduced to the Premises by or at the

1 direction of Tenant its agents, employees, or others within Tenant's control including Tenant's parent  
2 corporation, subsidiaries or affiliates. Further, if any Hazardous Materials are discovered in or under the  
3 Premises during the Term, and such Hazardous Materials were present prior to the date that Landlord  
4 delivered possession of the Premises to Tenant, then Landlord shall take all steps necessary to remove,  
5 abate or manage in place such Hazardous Materials in accordance with all Environmental Requirements, at  
6 no cost or expense to Tenant.

7  
8 **Section 7.04 RADIUS.**

9 Tenant acknowledges that sales from a store owned by it or a related entity as described herein  
10 within the radius set forth on the Data Sheet ("Radius Area") may reduce the Gross Sales that might  
11 otherwise be made from the Premises. If such a business is operated, the specific effect on Gross Sales  
12 may be difficult or impossible to establish with certainty. Therefore, in order to provide Landlord with a  
13 fair and adequate rental for the Premises, in the event that during the Term hereof Tenant or any person,  
14 firm, corporation or other entity who or which controls or is controlled by Tenant, or by any person, firm,  
15 corporation or other entity who or which controls Tenant, shall directly, either individually or as a partner  
16 or stockholder or otherwise, own, operate or become financially interested in any business similar to or in  
17 competition with the business of Tenant described in the Data Sheet, within the Radius Area from the  
18 Shopping Center, then the Gross Sales of any such business or businesses within said area shall be included  
19 in the Gross Sales made from the Premises and the Percentage Rental hereunder shall be computed upon  
20 the aggregate of the Gross Sales made from the Premises and by any such other business or businesses then  
21 conducted within the Radius Area. Tenant shall be obligated to provide Landlord with a statement of  
22 Tenant's Gross Sales for all such other businesses operated within the Radius Area, in accordance with the  
23 provisions of Article III and Landlord shall have a right to examine the books and to audit such other  
24 businesses in a manner as set forth in Article IV of this Lease.

25  
26 This Section 7.04 shall not apply to any such business or businesses open and in operation within  
27 the Radius Area as of the date of execution of this Lease. Landlord or Landlord's authorized representative  
28 or agent shall have the right at all reasonable times during the Term hereof and for a period of at least two  
29 (2) years after the expiration of the Term, to inspect, audit, copy and make extracts of the books, source  
30 documents, records and accounts pertaining to such other business or businesses for the purpose of  
31 determining or verifying the Additional Rent due to Landlord pursuant to this Section.

32  
33  
34 **ARTICLE VIII**

35  
36 **COMMON AREAS**

37  
38 **Section 8.01 OPERATION AND MAINTENANCE OF COMMON AREAS.**

39 Landlord shall cause to be operated and maintained during the Term all "Common Areas" (as  
40 defined below) at a level comparable to other regional shopping malls in the region in which the Shopping  
41 Center is located. The manner in which such areas and facilities shall be operated and maintained, and the  
42 expenditures therefor, shall be at the sole discretion of Landlord and the use of such areas and facilities  
43 shall be subject to such reasonable regulations as Landlord may establish, modify and enforce from time to  
44 time, which regulators will be uniformly applied to the extent applicable among the tenants at the Shopping  
45 Center.

46  
47 **Section 8.02 USE OF COMMON AREAS.**

48 (a) The term "Common Area(s)", as used in this Lease, shall mean, to the extent provided by  
49 Landlord, all improved and unimproved areas within the Shopping Center including, without limitation: (i)  
50 public transportation loading and unloading facilities not devoted to a single tenant, truckways, curbs,  
51 driveways, delivery areas, landscaped areas, community rooms, seating areas, play areas, office facilities,  
52 elevators, escalators, roofs, skylights, beams, stairs and ramps not contained within any Floor Area, utility  
53 rooms, storage, security and office areas used by Landlord to manage the Shopping Center, public restrooms  
54 and comfort stations, service areas, service and fire exit corridors, passageways and other areas, amenities,  
55 facilities and improvements provided by Landlord, and (ii) those areas within the Shopping Center and  
56 areas adjacent to the Shopping Center containing signs, pylons or structures advertising the Shopping  
57 Center or which from time to time may be provided by the owners of such areas for the use by Landlord  
58 and the tenants of the Shopping Center and their respective concessionaires, agents, employees, customers,  
59 invitees, (iii) utility pipes, lines, ducts, conduits, wires and other interconnecting facilities within the  
60 Shopping Center through which heat, ventilation, air-conditioning, water, sewage, storm drainage,  
61 telephone, electricity, gas and other utility services utilized by any occupant of the Shopping Center are  
62 received, transmitted or discharged at any time and from time to time during the Term to the extent that  
63 such items are not leased or owned by any occupants of the Shopping Center.. The use and occupancy by  
64 Tenant of the Premises shall include the non-exclusive use of the Common Areas in common with Landlord  
65 and with all others for whose convenience and use the Common Areas have been or may hereafter be  
66 provided. Tenant acknowledges that there are no parking facilities serving the Shopping Center for use by  
67 Tenant or Tenant's employees or customers.



1  
2 Landlord shall have the right, but not the obligation, from time to time, to modify the  
3 Common Areas, remove portions of the Common Areas from common use, and to permit entertainment  
4 events, advertising displays, educational displays and other displays in the Common Areas that in  
5 Landlord's reasonable judgment tend to attract the public. Landlord shall also have the right to include  
6 kiosks, carts, movable retail merchandising units and other types of installations and services in the  
7 Common Areas including, but not limited, vending machines and Tenant shall not be entitled to any credit  
8 for income earned by Landlord with respect thereto.  
9

10 Landlord may at any time close all or any portion of the Common Area to make repairs or  
11 changes, to prevent the acquisition of public rights and may do such other acts in and to the Common Areas  
12 as in its reasonable judgment may be desirable.  
13

14 (b) Except for any kiosk or other installation currently existing as of the Commencement Date,  
15 Landlord agrees that there shall be no permanent kiosk located within the number of feet set forth on the Data  
16 Sheet directly in front of the front leaseline of the Premises throughout the Term of this Lease.  
17

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

19 (a) From and after the Rental Commencement Date, Tenant shall pay to Landlord the Common  
20 Area Charge (as defined hereinbelow) as a contribution for the following (collectively "Operating Costs  
21 and Expenses"): all costs and expenses of every kind and nature paid or incurred by Landlord in managing,  
22 operating, equipping, policing and protecting, lighting, signing, cleaning, painting, heating, ventilating, air  
23 conditioning, providing sanitation and sewer and other services, insuring, defending or prosecuting lawsuits  
24 (or other legal proceedings), repairing, replacing, upgrading, decorating and maintaining (i) the Common  
25 Areas, (ii) all buildings and roofs within the Shopping Center and (iii) all other areas, facilities, work and  
26 storage areas, leased or owned property, and buildings whether located within or outside of, the Shopping  
27 Center (the "project areas") which constitute or benefit the Common Areas and not the premises of any  
28 specific tenant.  
29

30 (b) The "Common Area Charge" shall initially mean the amount set forth on the Data Sheet.  
31 The Common Area Charge shall be payable for each year during the Term and shall be increased annually  
32 on a compounded basis by the percentage amount set forth on the Data Sheet. Landlord and Tenant hereby  
33 agree that the Common Area Charge has been freely negotiated and agreed upon by the parties and is not  
34 subject to dispute, review, or challenge by Tenant whether at law or in equity. Accordingly, Tenant  
35 expressly waives any and all rights it has or may have to inspect and/or audit Landlord's records relating to  
36 the Common Area Charge. The Common Area Charge shall be paid as Additional Rent to Landlord at the  
37 address shown on the Data Sheet in monthly installments on the first day of each calendar month, in  
38 advance, without demand, offset or reduction.  
39

40 **ARTICLE IX**

41 **SIGNS**

42 **Section 9.01 TENANT'S SIGNS.**

43  
44 Tenant shall affix a sign to the exterior surface of the storefront of the Premises located inside the  
45 Shopping Center. Tenant shall pay all costs of fabricating, constructing, operating and maintaining such  
46 sign including, without limitation, all charges for electricity. Tenant shall keep said sign well lighted during  
47 such hours as Landlord shall designate (provided Tenant shall not be required to keep said sign lighted  
48 earlier than one half hour prior to the Shopping Center opening nor later than one half hour after the closing  
49 of the Shopping Center) and shall maintain said sign in good condition and repair during the entire Term  
50 of this Lease. Said sign shall conform to the criteria for signs contained in Exhibit B, and the size, content,  
51 design and location thereof shall be subject to the prior written approval of Landlord. Except as hereinabove  
52 mentioned, Tenant shall not place or cause to be placed, erected or maintained on any exterior door, wall,  
53 window or the roof of the Premises, or on the interior or exterior surface of the glass of any window or door  
54 of the Premises, or on any sidewalk or other location outside the Premises, or on or within any display  
55 window space in the Premises, or within two feet (2') of the front of the storefront leaseline, whether or not  
56 there is display window space in the Premises, or within any entrance to the Premises, any sign (flashing,  
57 moving, hanging, handwritten, or otherwise), decal, placard, decoration, flashing, moving or hanging lights,  
58 lettering, or any other advertising matter of any kind or description; provided, however, that subject to the  
59 prior written approval of Landlord with respect to design and placement, Tenant may place decals for safety  
60 purposes on glass storefronts where warranted. No symbol, design, name, mark or insignia adopted by  
61 Landlord for the Shopping Center shall be used without the prior written consent of Landlord, which  
62 approval shall not be unreasonably withheld. No illuminated sign located in the interior of the Premises  
63 and visible from outside the Premises shall be permitted without the prior written approval of Landlord.  
64 All signs located in the interior of the Premises shall be in good taste so as not to detract from the general  
65 appearance of the Premises, the Shopping Center.  
66

1  
2 Landlord will not unreasonably withhold or delay its consent to Tenant's placement of seasonal  
3 promotional decals upon the windows of the Premises so long as the same are like those used in a majority  
4 of its other locations in enclosed full priced major regional malls provided such decals; (i) are professionally  
5 manufactured and of a professional quality, (ii) are primarily transparent and/or translucent, (iii) consist  
6 only of lettering, (iv) do not cover more than twenty-five percent [25%] of the area of the storefront glass  
7 in total with no one decal covering more than nine [9] square feet, (v) do not unreasonably obstruct the  
8 view of the interior of the Premises, and (vi) do not remain on the glass for any period in excess of thirty  
9 (30) days.

10  
11 For this Lease at Westfield San Francisco Centre only, as Tenant intends to have two separate  
12 concepts operating for business at the Premises, Tenant shall be permitted to build two separate storefronts  
13 and to install two separate storefront signs to the exterior surface of the storefront of the Premises located  
14 inside the Shopping Center. One storefront and storefront sign shall apply to one concept, and the other  
15 storefront and storefront sign shall apply to the other concept.

## 16 17 **ARTICLE X**

### 18 19 **MAINTENANCE OF PREMISES**

#### 20 21 **Section 10.01 LANDLORD'S OBLIGATIONS FOR MAINTENANCE.**

22 Landlord shall keep and maintain the roof (excluding any skylights, Tenant rooftop HVAC units  
23 and/or roof penetrations made by Tenant, any of which shall only be permitted with Landlord's prior written  
24 consent), foundation, gutters, gutter downspouts and the exterior surface of the exterior walls of the building  
25 in which the Premises are located (exclusive of storefronts, doors, door frames, door checks, other  
26 entrances, windows and window frames which are not part of Common Areas) in good repair, except that  
27 Landlord shall not be called upon to make any such repairs occasioned by the act or omission or negligence  
28 of Tenant, its agents, employees, invitees, licensees or contractors. Landlord shall not be called upon to  
29 make any other improvements or repairs of any kind upon the Premises and appurtenances, except as may  
30 be required under Articles XVII and XVIII hereof, and nothing contained in this Section 10.01 shall limit  
31 Landlord's right to reimbursement from Tenant for maintenance, repair costs and replacement costs  
32 conferred elsewhere in this Lease.

#### 33 34 **Section 10.02 TENANT'S OBLIGATIONS FOR MAINTENANCE.**

35 (a) Except as provided in Section 10.01 of this Lease, Tenant, at Tenant's expense, shall keep  
36 and maintain in first-class appearance, in a condition equal to or better than that which existed when Tenant  
37 initially opened the Premises for business, reasonable wear and tear excepted, and in good condition and  
38 repair (including replacement of parts and equipment, if necessary), the Premises and every part thereof  
39 and any and all appurtenances thereto wherever located, including, without limitation, the interior surfaces  
40 of the exterior walls, the exterior and interior portion of all doors, door frames, door checks, other entrances,  
41 windows, window frames, plate glass, storefronts, all plumbing and sewage facilities within the Premises  
42 (including free flow to the main sewer line), fixtures, ventilation, heating and air conditioning and electrical  
43 systems exclusively serving the Premises (whether or not located in the Premises), sprinkler systems, walls,  
44 floors and ceilings (including floor and ceiling coverings), and all other repairs, replacements, renewals and  
45 restorations, interior and exterior, ordinary and extraordinary, foreseen and unforeseen, and all other work  
46 performed by or on behalf of Tenant pursuant to Exhibit B and Article VI hereof.

47  
48 (b) Tenant shall keep and maintain the Premises in a clean, sanitary and safe condition in  
49 accordance with applicable law and all directions, rules and regulations of the health officer, fire marshal,  
50 building inspector or other proper officials of the governmental agencies having jurisdiction and Tenant  
51 shall comply with all requirements of law, ordinances and otherwise, affecting the Premises, all at Tenant's  
52 sole cost and expense. Tenant also agrees to comply with requirements of any insurance underwriters,  
53 inspection bureaus or a similar agency designated by Landlord with respect to the Premises. At the end of  
54 the Term, Tenant shall surrender the Premises in good order, condition and repair, reasonable wear and tear  
55 excepted. Tenant, at its own expense, shall install and maintain such fire extinguishers and other fire  
56 protection devices as may be required from time to time by any agency having jurisdiction thereof or by  
57 the insurance underwriter insuring the building in which the Premises are located.

58  
59 (c) Tenant shall keep the Premises and all other parts of the Shopping Center free from any  
60 and all liens arising out of any work performed, materials furnished or obligations incurred by or on behalf  
61 of Tenant. Within twenty (20) days after written request therefor by Landlord, Tenant shall (a) bond against  
62 or discharge any mechanics' or materialmen's lien or (b) furnish Landlord with a copy of the recorded  
63 waiver of lien, recorded release of lien, or of the recorded bond discharging such lien. Tenant shall  
64 reimburse Landlord as Additional Rent for any and all costs and expenses including, without limitation,  
65 reasonable attorneys' fees, which may be incurred by Landlord by reason of the filing of any such liens  
66 and/or removal of same, such reimbursement to be made within twenty (20) days after receipt by Tenant

1 from Landlord of a statement setting forth the amount of such costs and expenses such reimbursement to  
2 be paid to Landlord in the manner and at the place provided in this Lease. Tenant shall give Landlord at  
3 least fifteen (15) days' written notice prior to commencing or causing to be commenced any work on the  
4 Premises (whether prior or subsequent to the Commencement Date), so that Landlord shall have reasonable  
5 opportunity to file and post a notice of non-responsibility for Tenant's work.  
6

7 (d) In the event Tenant fails, refuses or neglects to maintain the Premises as required hereunder  
8 or to commence and complete repairs promptly and adequately, to remove or bond against any lien, to pay  
9 any cost or expense, to reimburse Landlord, or otherwise to perform any act or fulfill any obligation required  
10 of Tenant pursuant to this Section 10.02, Landlord may, but shall not be required to, perform such  
11 maintenance or to make or complete any such repairs, remove or bond against such lien, pay such cost or  
12 perform such act or the like without prior notice to, but at the sole cost and expense of Tenant. Tenant shall  
13 reimburse Landlord, as Additional Rent, for all cost and expense of Landlord thereby incurred within ten  
14 (10) days after receipt by Tenant from Landlord of a statement setting forth the amount of such cost and  
15 expense.  
16

## 17 ARTICLE XI

### 18 INSURANCE AND INDEMNITY

#### 19 Section 11.01 TENANT'S INSURANCE.

20 (a) Tenant, at its sole cost and expense, shall, during the entire Term hereof, procure and keep  
21 in force: (i) Commercial General Liability Insurance with respect to the Premises and the operations of  
22 Tenant in, on or about the Premises, in which the limits shall be not less than the amount set forth on the  
23 Data Sheet per occurrence combined single limit, broad form/extended bodily injury, death and property  
24 damage, and business automobile liability insurance covering all owned, non-owned and hired or borrowed  
25 vehicles of Tenant used in connection with the operation of its business from the Premises, in which the  
26 limits shall be not less than the amount set forth on the Data Sheet per occurrence combined single limit,  
27 insuring for bodily injury, death and property damage; (ii) plate glass insurance, at full replacement value  
28 (Tenant may self-insure for plate glass insurance); (iii) insurance against fire, extended coverage,  
29 vandalism, malicious mischief, water damage which does not exclude backup from sewers or drains and/or  
30 sprinkler leakage, and such other additional perils including earthquake and flood as now are or hereafter  
31 may be included in a standard extended coverage endorsement from time to time in general use in the  
32 county in which the Shopping Center is located, insuring Tenant's merchandise, trade fixtures, furnishings,  
33 equipment and all other items of personal property of Tenant located on or in the Premises, including steam  
34 boiler insurance, if applicable, in an amount equal to the full replacement cost thereof; (iv) workers'  
35 compensation coverage as required by law and including Employer's Liability Insurance in the amounts set  
36 forth on the Data Sheet per each accident, per each employee by disease, with a policy aggregate by disease  
37 in the amount set forth on the Data Sheet; (v) with respect to alterations, improvements and the like required  
38 or permitted to be made by Tenant under this Lease, contingent liability and builders' risk insurance, in an  
39 amount satisfactory to Landlord; (vi) the insurance required under Exhibit B, and (vii) product liability  
40 coverage (including, without limitation, if this Lease covers Premises in which food and/or beverages are  
41 sold and/or consumed, liquor liability coverage for acts arising out of the serving and/or consumption of  
42 food and/or alcoholic beverages on or obtained at the Premises, to the extent obtainable), for not less than  
43 the amount set forth on the Data Sheet combined single limit, bodily injury, death and property damage. In  
44 addition, if Landlord deems it necessary to increase the amounts or limits of insurance required to be carried  
45 by Tenant hereunder, Landlord may reasonably increase said amounts or limits, and Tenant shall so increase  
46 the amounts or limits of the insurance required to be carried by Tenant hereunder and shall provide Landlord  
47 with policies or certificates indicating the increased amounts or limits as provided in this Section 11.01.  
48 Notwithstanding the foregoing, Landlord shall not increase the amounts or limits of insurance required to be  
49 carried by Tenant hereunder unless Landlord also requires other tenants in the same merchandising category  
50 (that is, men's and/or women's apparel) to carry the same levels of amounts or limits of insurance, and any  
51 such new limits are reasonable and customary for other similar shopping centers in the state in which the  
52 Shopping Center is located; any such increase to Tenant shall not exceed the percentage of increase applied to  
53 such other tenants, nor shall the limits be increased to more than \$5,000,000.00.  
54  
55  
56

57 Notwithstanding the foregoing to the contrary, Tenant shall not be required to carry product  
58 liability coverage as required in this subsection (a); provided, however, that Tenant shall indemnify, defend and  
59 hold Landlord harmless from any loss, cost or expense associated with any product liability claim in the event  
60 Landlord is included as a defendant in a product liability suit as a result of any goods or services sold by, from  
61 or at the Premises.  
62

63 (b) All policies of insurance required to be carried by Tenant pursuant to this Section 11.01  
64 shall be written by insurance companies of adequate financial capacity with a Best's rating and Financial  
65 Size Category of not less than A-/VII and authorized to do business in the state in which the Shopping  
66 Center is located. Any such insurance required of Tenant hereunder may be furnished by Tenant under any

1 blanket policy carried by it or under a separate policy therefor. An insurance certificate (and endorsements  
2 where same become necessary) from Tenant's insurer, certifying that such policy has been issued, provides  
3 the coverage required by this Section 11.01 and contains all of the provisions specified in this Section 11.01  
4 (including, without limitation, naming of additional insured entities as required by Section 11.01(c) below  
5 (with respect to liability insurance only) and a statement that no or self-insured retention applies to such  
6 policy), shall be delivered to Landlord, at the address set forth on the Data Sheet prior to the commencement  
7 of the Term of this Lease, and such insurance information shall also be provided in connection with all  
8 renewals, not less than thirty (30) days prior to the expiration of the term of each such policy. As often as  
9 any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained  
10 by Tenant in like manner and to like extent. Landlord may, at any time, and from time to time, inspect and  
11 copy any and all insurance policies required to be procured by Tenant hereunder.  
12

13 (c) Each policy evidencing insurance required to be carried by Tenant pursuant to this Section  
14 11.01 shall contain the following clauses and provisions: (i) a provision that such policy and the coverage  
15 evidenced thereby shall be primary and non-contributing with respect to any policies carried by Landlord  
16 and that any coverage carried by Landlord be excess insurance; (ii) a provision including Landlord and the  
17 parties set forth on Exhibit C of this Lease and any other parties designated by Landlord from time to time  
18 as additional insured entities; (iii) a waiver by the insurer of any right to subrogation against Landlord and  
19 other additional insured entities (as set forth on Exhibit C), its agents, employees and representatives which  
20 arises or might arise by reason of any payment under such policy or by reason of any act or omission of  
21 Landlord, its agents, employees or representatives; (iv) a severability of interest clause or endorsement; (v)  
22 a provision that the insurer will not cancel or change the coverage provided by such policy without giving  
23 Landlord thirty (30) days' prior written notice; and (vi) such policy shall be an "occurrence form" policy.  
24 Any policy of insurance required to be carried by Tenant that names the parties set forth in this Section  
25 11.01 (c) (ii) as additional insured entities shall not be subject to a deductible or self-insured retention, it  
26 being the intent of the parties that such insurance shall fully and completely insure such additional insured  
27 entities for all loss or expense.  
28

29 (d) In the event that Tenant fails to procure or to maintain, at the times and for the duration  
30 specified in this Section 11.01, any insurance required by this Section 11.01, or fails to carry insurance  
31 required by law or governmental regulation, Landlord may (but shall not be required to) at any time or from  
32 time to time, and without notice to Tenant, procure such insurance and pay the premiums therefor, and the  
33 cost of same, plus a fifteen percent (15%) administrative fee shall be deemed Additional Rent and shall be  
34 payable upon Landlord's demand.  
35

36 (e) Tenant will not do or suffer to be done, or keep or suffer to be kept, anything in, upon or  
37 about the Premises which will violate Landlord's policies of hazard or liability insurance or which will  
38 prevent Landlord from procuring such policies in companies acceptable to Landlord. If anything done,  
39 omitted to be done or suffered by Tenant to be kept in, upon or about the Premises shall cause the rate of  
40 fire or other insurance on the Premises or on other property of Landlord or of others within the Shopping  
41 Center to be increased beyond the minimum rate from time to time applicable to the Premises or to any  
42 property for the use or uses made thereof, Tenant will pay, as Additional Rent, the amount of any such  
43 increase upon Landlord's demand.  
44

45 (f) In the event Tenant retains any security guard contractor to service the Premises, Tenant  
46 shall cause Landlord to receive a customary waiver of subrogation under the worker's compensation  
47 insurance policy covering such security guard. Tenant shall provide Landlord with written notice if any  
48 such security guard is to carry a firearm upon the Premises, and in such event, Landlord shall have the right  
49 to impose additional reasonable insurance requirements upon Tenant and/or such security guard, which  
50 shall be complied with by Tenant and Tenant shall provide Landlord with evidence of such compliance  
51 prior to the posting of such security guard at the Premises. Notwithstanding the foregoing, Landlord shall  
52 have the sole and absolute right to prohibit any person (including any security guard) from carrying a  
53 firearm upon the Premises, Shopping Center.  
54

55 **Section 11.02 LANDLORD'S INSURANCE.**

56 During the Term following the Rental Commencement Date, Landlord shall provide (a) in amounts  
57 and coverages determined by Landlord (but not less than the replacement cost of the property so insured),  
58 with or without deductibles, insurance coverage in the form of an "all-risk" type policy against loss or  
59 damage by fire, flood, windstorm, hail, explosion, damage from aircraft and vehicles and smoke damage,  
60 and such other risks as are from time to time included in a standard extended coverage endorsement,  
61 insuring the Shopping Center and the leasehold improvements to the Premises (exclusive of Tenant's  
62 merchandise, trade fixtures, furnishings, equipment, plate glass, signs and all other items of personal  
63 property of Tenant); (b) to the extent the same is commercially available in the market during such period,  
64 rental interruption insurance which insurance may be carried in amounts up to Tenant's total Rental  
65 obligation for no less than twelve (12) months, (c) commercial general liability insurance; and (d) any other  
66 insurance which Landlord determines in its reasonable judgment is proper with respect to the Shopping

1 Center including, but not limited to, flood, environmental hazard and earthquake, loss or failure of building  
2 equipment, errors and omissions, workers' compensation insurance and fidelity bonds for employees  
3 employed to perform services; all such insurance in form and amounts as determined in Landlord's  
4 reasonable business judgment. Tenant shall submit to Landlord a statement setting forth the cost of Tenant's  
5 leasehold improvements promptly after completion thereof. Landlord at its option may carry a special  
6 extended coverage endorsement. The cost of all insurance maintained by Landlord pursuant to this Section  
7 shall be included as part of Operating Costs and Expenses (as defined in Section 8.03 of this Lease). The  
8 Shopping Center may be included in a blanket policy (in which case the cost of such insurance allocable to  
9 the Shopping Center will be determined by Landlord based upon the insurer's cost calculations).

10  
11 **Section 11.03 COVENANT TO HOLD HARMLESS.**

12 Tenant covenants to defend and indemnify Landlord, its affiliates, parent corporation, subsidiaries,  
13 partners, members, management company, successors, and assigns, and the employees, agents, officers,  
14 directors, shareholders, members, advisers, trustees and fiduciaries of any of them, save them harmless  
15 (except to the extent of loss or damage resulting from the intentional or willful acts or omissions or the  
16 gross negligence of Landlord not required to be insured against by Tenant pursuant to this Article XI) from  
17 and against any and all claims, actions, demands, judgments, awards, fines, mechanics' liens or other liens,  
18 losses, damages, liability and expense, including attorneys' fees and court costs, in connection with all  
19 losses, including loss of life, personal injury and/or damage to property, arising from or out of any  
20 occurrence (or arising from or out of Tenant's failure to comply with any provision of this Lease) caused  
21 wholly or in part by any act or omission of Tenant, its concessionaires, agents, contractors, suppliers,  
22 employees, servants, customers or licensees and including any product liability claim or any labor dispute  
23 involving Tenant or its contractors and agents. In case Landlord or any other party so indemnified shall be  
24 made a party to any litigation commenced by or against Tenant, then Tenant shall defend, indemnify, protect  
25 and save them harmless and shall pay, as the same becomes due and payable, all costs, expenses and  
26 reasonable attorneys' fees and court costs incurred or paid by them in connection with such litigation.

27 Landlord agrees to indemnify and hold Tenant, its partners, shareholders, representatives, agents and  
28 employees harmless from and against all claims, liabilities, losses, damage and expenses for injury to or death  
29 of any person or loss or damage to property in or upon the Shopping Center Common Areas which result from  
30 claims by third parties relating to the Shopping Center's Common Areas, except to the extent such claim is  
31 based upon an act of Tenant or any other party so indemnified. In case Tenant or any other party so indemnified  
32 shall, without fault, be made a party to any such litigation, then Landlord shall protect and hold them harmless  
33 and shall pay all reasonable costs, expenses and attorneys' fees incurred or paid by them in connection with  
34 such litigation.

35  
36 **Section 11.04 WAIVER OF RIGHT OF RECOVERY.**

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

43  
44 **ARTICLE XII**

45  
46 **UTILITIES**

47  
48 **Section 12.01 UTILITY CHARGES.**

49 (a) Tenant shall be solely responsible for and shall promptly pay for all fees, deposits  
50 and charges, including use and/or connection fees, hook-up fees, standby fees, and/or penalties for  
51 discontinued or interrupted service, and the like, for water, gas, electricity, HVAC, fire alarm, burglar alarm,  
52 telephone, cable television, sewer and sanitation, solid waste disposal and any other service or utility used  
53 in or upon or furnished to the Premises, including, without limitation, any services to be supplied by  
54 Landlord from a central utility plant or other utility system (including, without limitation, Landlord's charge  
55 for the HVAC central plant system or any other charge) as more particularly set forth on the Data Sheet or  
56 on Exhibit D, irrespective of whether any of the foregoing are initially paid in advance by Landlord, or  
57 otherwise. Landlord, at its sole option, may elect to furnish any or all of such services with a separate  
58 charge therefor to Tenant, at a cost in excess of Landlord's cost, such charge to be based upon the services  
59 used by Tenant, as reflected by meter, submeter or otherwise. Tenant shall pay such charge, as Additional  
60 Rent, at such time and upon such terms as installments of Minimum Annual Rental are due. If any utilities  
61 are supplied by Landlord, Tenant's charges for such utilities will not exceed the amount which would have  
62 been charged to Tenant had Tenant obtained the same directly from the local utility provider serving the  
63 Shopping Center.

64  
65 Tenant shall initially pay Landlord the sums set forth on the Data Sheet per annum for the  
66 cost of providing: (i) water and sewer service; (ii) fire detection services; and (iii) electric service to the

1 Premises, which sums shall be subject to adjustment as provided herein and payable as Additional Rent and  
2 paid in equal consecutive monthly installments in the same manner as Minimum Annual Rental.

3  
4 (b) Except to the extent of Landlord's gross negligence, in no event shall Landlord be liable  
5 for damages or otherwise for any interruption, reduction, disruption, curtailment or failure in the supply,  
6 quality or character of electricity, services from a central utility plant or any other utility or other service,  
7 or if either the quantity, quality or character thereof supplied to or by Landlord is changed or is no longer  
8 available for Tenant's requirements, nor shall any such interruption, reduction, disruption, curtailment,  
9 failure or change in quantity, quality or character constitute or be deemed to constitute constructive eviction  
10 of Tenant, or excuse or relieve Tenant from its obligations under this Lease, including but not limited to the  
11 payment of Rental.

12  
13 If as a result of the negligence of Landlord, there is an interruption or discontinuance in the  
14 utility or other service supplied by Landlord which results in Tenant's inability to conduct its business at the  
15 Premises, then Tenant shall have the right to close the Premises for business. If such interruption or  
16 discontinuance continues for a period in excess of forty-eight (48) hours, and the Premises is still closed for  
17 business, then the payment of Minimum Annual Rental only due hereunder shall abate until such time as said  
18 utility or other service supplied is restored, or Tenant reopens the Premises for business, whichever is first to  
19 occur.

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

39  
40 (d) Notwithstanding any other provisions of this Article, to the extent utilities provided by  
41 Landlord are utilities which could be supplied to Tenant as a direct customer of a public utility, the value  
42 of such utility used by Tenant shall be computed for the purposes of this Article so as not to exceed the rate  
43 schedules which would be applicable if Tenant were at the time a direct customer of such public utility  
44 corporation.

45  
46 (e) Any obligation of Landlord to furnish light, power and services from a central utility plant  
47 shall be conditioned upon the availability of adequate energy sources. Landlord shall have the right to  
48 reduce heating, cooling and lighting within the Premises and the Common Areas as required by any  
49 mandatory or voluntary fuel or energy saving allocation, or similar statute, regulation, order or program.

50  
51 (f) Tenant shall operate its heating, ventilating and air conditioning ("HVAC") system(s)  
52 serving the Premises so as to maintain comfortable conditions during regular Shopping Center business  
53 hours. Temperatures in the Premises shall be compatible with temperatures in the Shopping Center.  
54 Tenant's obligation to connect to the services supplied by Landlord, as set forth in this Section 12.01 and  
55 Exhibit B, as well as Tenant's installation, operation and maintenance of its HVAC system(s) within the  
56 Premises, shall be as set forth herein, in Exhibit B and in any related exhibit(s).

57  
58 (g) If Tenant desires to install any equipment which shall exceed the capacity of any utility  
59 facilities or which shall require additional utility facilities, Tenant shall not have the right to do so without  
60 Landlord's prior written approval of Tenant's Plans and Specifications and specifications therefor. If such  
61 installation is approved by Landlord, and if Landlord provides such additional facilities to accommodate  
62 Tenant's installation, Tenant agrees to pay Landlord, on demand, the cost of providing such additional utility  
63 facilities or utility facilities of greater capacity. Tenant shall in no event use any of the utility facilities in  
64 any way which shall overload or overburden the utility systems.  
65

1 (h) Landlord reserves the right to cut off and discontinue furnishing any heating, ventilation,  
2 air conditioning or other utility services furnished or submetered by Landlord at any time after notice to  
3 Tenant of an event of default under this Lease by Tenant. Landlord shall not be liable for any damages  
4 resulting from or arising out of such discontinuance of utility services, and such discontinuance shall not  
5 constitute a termination of this Lease or an eviction of Tenant. Tenant hereby releases Landlord from any  
6 loss, damage or liability sustained by Tenant as a result of such discontinuance.  
7

## 8 **ARTICLE XIII**

### 9 **ESTOPPEL STATEMENT, ATTORNMENT AND SUBORDINATION**

#### 10 **Section 13.01 ESTOPPEL STATEMENT.**

11  
12 Within fifteen (15) days after request therefor by Landlord, Tenant shall execute, in recordable  
13 form, and deliver to Landlord a statement, in writing, certifying (a) that this Lease is in full force and effect,  
14 (b) the Commencement Date, the Rental Commencement Date and the expiration date of this Lease, (c)  
15 that Rental and all other charges hereunder are paid currently without any offset or defense thereto, (d) the  
16 amount of Rental and all other charges hereunder, if any, paid in advance, (e) whether this Lease has been  
17 modified and, if so, identifying the modifications, (f) that there are no uncured defaults by Landlord or  
18 stating in reasonable detail those claimed by Tenant (provided that, in fact, such details are accurate and  
19 ascertainable), and (g) such other matters as may be reasonably requested by Landlord related to the status  
20 of this Lease and/or the performance of its provisions by Landlord or Tenant. Tenant's failure or refusal to  
21 execute timely such statement shall constitute an acknowledgment by Tenant that the statements contained  
22 in such statement are true and correct without exception, and may be relied upon by Landlord or by any  
23 prospective or existing transferee of all or any part of Landlord's interest in the Shopping Center or this  
24 Lease or by any of Landlord's lenders.  
25  
26

27 Upon not less than thirty (30) days prior written request by Tenant, but not more than once in any given  
28 lease year, Landlord will deliver to Tenant a statement certifying that (i) this Lease is unmodified and in full  
29 force and effect (or if there has been any modifications thereof that the Lease is in full force and effect as  
30 modified and stating the nature of the modification or modifications); (ii) that, to the extent of Landlord's  
31 knowledge, Tenant is not in default under this Lease or if such default exists, the specific nature and extent  
32 thereof; and (iii) the dates to which Minimum Annual Rental and Additional Rent have been paid in advance,  
33 if any.  
34

#### 35 **Section 13.02 ATTORNMENT.**

36 In the event any proceedings are brought for the foreclosure of, or in the event of exercise of the  
37 power of sale under any mortgage and/or deed of trust made by Landlord covering the Premises, or in the  
38 event Landlord sells, conveys or otherwise transfers its interest in the Shopping Center or any portion  
39 thereof containing the Premises Landlord shall endeavor to promptly notify Tenant in such event, provided,  
40 however, Landlord's failure to do so shall not in any way change Tenant's rights or obligations hereunder), this  
41 Lease shall remain in full force and effect and Tenant hereby automatically attorns to the new owner.  
42 Tenant covenants and agrees, at such new owner's request, to execute an instrument evidencing such  
43 attornment reasonably satisfactory to the new owner, recognizing the new owner as the landlord under this  
44 Lease. Tenant acknowledges that such new owner shall not be bound by (i) any prepayment of more than  
45 one (1) month's Rent (except rental deposit but only to the extent received by said successor) or (ii) any  
46 material amendment of the Lease made after the later of the Commencement Date, or the date that such  
47 successor's lien or interest first arose, unless said successor shall have consented to such amendment or (iii)  
48 any claims, offsets or defenses of Tenant arising prior to such attornment, except for those specifically  
49 provided in the Lease. Payment by or performance of this Lease by any person, firm or corporation claiming  
50 an interest in this Lease or the Premises by, through or under Tenant without Landlord's consent in writing  
51 shall not constitute an attornment or create any interest in this Lease or the Premises. At Tenant's request,  
52 the new owner shall acknowledge in writing that, subject to the provisions of this Section, Tenant's interest  
53 in the Premises and rights under this Lease shall not be disturbed so long as Tenant is not in default under  
54 the terms of this Lease beyond the time permitted to cure such default.  
55

#### 56 **Section 13.03 SUBORDINATION.**

57 Tenant further agrees this Lease shall be subordinate to the lien of any mortgage, deed of trust or  
58 any ground lease that may be placed upon the Premises or the Shopping Center and to any and all advances  
59 to be made thereunder, and to the interest thereon, and all renewals, modifications, replacement and  
60 extensions thereof upon the condition that Tenant shall have the right to remain in possession of the Premises  
61 under the terms and conditions of this Lease, notwithstanding any default in any such mortgage, deeds of trust  
62 or ground lease, or after foreclosure thereof, so long as Tenant is not in default under any of the covenants,  
63 conditions and agreements contained in this Lease. The foregoing shall be self-operative and no further  
64 instruments shall be required to effect such subordination of this Lease. Tenant also agrees that any  
65 mortgagee, beneficiary or ground lessor may elect to have this Lease constitute a prior lien to its mortgage,  
66 deed of trust or ground lease, and in the event of such election and upon notification by such mortgagee,

1 beneficiary or ground lessor to Tenant to that effect, this Lease shall be deemed a prior lien to such  
2 mortgage, deed of trust or ground lease, whether this Lease is dated prior to or subsequent to the date of  
3 said mortgage, deed of trust or ground lease. Tenant agrees that upon the demand of Landlord, or any  
4 mortgagee, beneficiary or ground lessor, Tenant shall, within fifteen (15) days of the receipt of said demand,  
5 execute whatever instruments may be required to carry out the intent of this Section 13.03 in the form  
6 requested by Landlord or such mortgagee, beneficiary or ground lessor, including, without limitation, an  
7 appropriate recordable subordination agreement.  
8

9 **Section 13.04 REMEDIES.**

10 Failure of Tenant to execute any statements or instruments necessary or desirable to effectuate the  
11 foregoing provisions of this Article within fifteen (15) days after written demand so to do by Landlord shall  
12 constitute a breach of this Lease. In the event of such failure, Landlord, in addition to any other rights or  
13 remedies it might have, shall have the right by not less than ten (10) days' notice to Tenant during which  
14 Tenant shall fail to cure to declare this Lease terminated and the Term ended, in which event this Lease  
15 shall cease and terminate on the date specified in such notice with the same force and effect as though the  
16 date set forth in such notice were the date originally set forth in this Lease and fixed for the expiration of  
17 the Term; upon such termination Tenant shall vacate and surrender the Premises, but shall remain liable as  
18 provided in this Lease by reason of said breach.  
19

20 **Section 13.05 NOTICE TO MORTGAGEE, BENEFICIARY OR GROUND LESSOR.**

21 If Tenant is given written notice of the name and address of a mortgagee, beneficiary or ground  
22 lessor, then Tenant shall give written notice of any default by Landlord (which would allow Tenant the  
23 right to terminate this Lease) to such mortgagee, beneficiary or ground lessor specifying the default in  
24 reasonable detail. Tenant shall afford mortgagee, beneficiary or ground lessor the right to cure such default  
25 during the same period of time afforded to Landlord and if such mortgagee, beneficiary or ground lessor  
26 does perform on behalf of Landlord, such default shall be deemed cured.  
27

28 **ARTICLE XIV**

29 **ASSIGNMENT AND SUBLETTING**

30 **Section 14.01 RESTRICTIONS ON TRANSFER.**

31  
32 (a) Notwithstanding any provision contained herein to the contrary, Tenant agrees not to  
33 mortgage, encumber, pledge or hypothecate all or any part of this Lease, Tenant's interest in the Premises,  
34 or Tenant's business. Further, Tenant shall not transfer, assign, sublet, enter into franchise, license or  
35 concession agreements, change ownership or voting control of, all or any part of this Lease, Tenant's interest  
36 in the Premises or Tenant's business (collectively "Transfer") without first procuring the written consent of  
37 Landlord, which consent shall not be unreasonably withheld, subject to the terms, covenants and conditions  
38 contained in this Lease. Any attempted or purported Transfer without Landlord's prior written consent shall  
39 be void and of no force or effect and shall not confer any estate or benefit on anyone. Further, any such  
40 attempted or purported Transfer shall entitle Landlord immediately to terminate this Lease and all further  
41 obligations of Landlord hereunder. A consent to one Transfer by Landlord shall not be deemed to be a  
42 consent to any subsequent Transfer to any other party. No Transfer of this Lease or agreement entered into  
43 with respect thereto, whether with or without Landlord's consent, shall relieve Tenant or any guarantor from  
44 liability under this Lease.  
45

46  
47 (b) Landlord and Tenant agree that it shall not be unreasonable for Landlord to withhold its  
48 consent to any proposed Transfer for any of the following reasons, which are not exclusive:  
49

50 (1) The contemplated use of the Premises by the proposed transferee, assignee or  
51 sublessee (hereinafter referred to as the "Transferee") is not substantially identical to the "Use of Premises"  
52 permitted under this Lease;  
53

54 (2) The proposed use of the Premises by the proposed transferee is inconsistent with  
55 the retail tenant mix desired by Landlord;  
56

57 (3) The net worth and/or financial stability of the Transferee is, or may become,  
58 inadequate to operate the business permitted to be conducted in the Premises in the manner required by this  
59 Lease and/or to meet all of Tenant's financial and other obligations under this Lease;  
60

61 (4) The Transferee's reputation (or that of any of its affiliates) would have an adverse  
62 effect upon the reputation of the Shopping Center or the other businesses located therein;  
63

64 (5) The Percentage Rental that would be reasonably anticipated from the sales of the  
65 Transferee would reasonably be expected to be less than that of Tenant hereunder;  
66



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

4  
5 (7) Tenant is in default pursuant to this Lease;

6  
7 (8) The nature of the Transferee's proposed or likely use of the Premises would involve  
8 any risk, greater than that of Tenant's, of the use, release, disposition or mishandling of "Hazardous  
9 Materials" (as defined in Section 7.03);

10  
11 (9) The Transferee is not likely to conduct on the Premises a business of a quality  
12 substantially equal to that conducted by Tenant; or

13  
14 (10) Any ground lessor or mortgagee whose consent to such transfer is required fails to  
15 consent thereto.

16  
17 (c) Notwithstanding anything to the contrary contained in this Section 14.01, Tenant shall have  
18 the right to assign this Lease or sublet the entire (but not part of the) Premises without Landlord's prior consent  
19 and without being subject to the provisions of Sections 14.03 and 14.04 hereof, to its parent corporation or to  
20 a wholly owned subsidiary or to a corporation which is wholly owned by the same corporation which wholly  
21 owns Tenant, provided, however, that (i) Tenant shall remain primarily liable for all obligations under this  
22 Lease, (ii) the Transferee shall, prior to the effective date of the Transfer, deliver to Landlord, instruments  
23 evidencing such Transfer and its agreement to assume and be bound by all the terms, conditions and covenants  
24 of this Lease to be performed by Tenant, all in form acceptable to Landlord, (iii) Tenant shall not be in default  
25 under this Lease, and (iv) Tenant's right to make such Transfer is expressly conditioned on, and shall remain  
26 in effect only as long as, the Transferee maintains its relationship as parent corporation or wholly owned  
27 subsidiary of Tenant or wholly owned subsidiary of Tenant's parent corporation.

28  
29 Further, Tenant shall have the right to assign this Lease or sublet the entire (but not part of the)  
30 Premises, without Landlord's consent and without being subject to the provisions of Sections 14.03 and 14.04  
31 hereof, at any time during the Term to any corporation with which Tenant shall merge or consolidate, or to any  
32 corporation acquiring all or substantially all of the assets of Tenant; provided, however, any such Transfer  
33 pursuant to this paragraph shall be subject to the following conditions: (i) such assignee or sublessee shall  
34 assume all obligations of Tenant under this Lease; (ii) no such assignment or subletting shall release Tenant  
35 from any obligation under the Lease; (iii) any such assignment or subletting shall be subject to all of the terms  
36 covenants and conditions of this Lease including without limitation the Trade Name permitted in Section 16.01  
37 and the permitted use provided in Section 7.01; (iv) Tenant shall, within thirty (30) days prior to such  
38 assignment or subletting, give Landlord written notice of such assignment or subletting, setting forth the name  
39 and address of any such assignee or subtenant and a copy of the document setting forth the assumption of  
40 liability of this Lease by virtue of any such assignment or subletting; and (v) any such assignee shall have a net  
41 worth equal to the greater net worth of Tenant as of the date hereof, or the effective date of said assignment or  
42 subletting.

43  
44 **Section 14.02 PROCEDURE FOR TRANSFER**

45 Should Tenant desire to make a Transfer hereunder, Tenant shall, in each instance, give written  
46 notice of its intention to do so to Landlord at least sixty (60) days before the intended effective date of any  
47 such proposed Transfer, specifying in such notice whether Tenant proposes to assign or sublet, or enter into  
48 license, franchise or concession agreements, the proposed date thereof, and specifically identifying the  
49 proposed Transferee, the net worth and previous business experience of the proposed Transferee, including  
50 without limitation copies of the proposed Transferee's last two years' income statement, balance sheet and  
51 statement of changes in financial position (with accompanying notes and disclosures of all material changes  
52 thereto) in audited form, if available, and certified as accurate by the proposed Transferee. Such notice  
53 shall be accompanied, in the case of a proposed assignment, subletting, license, franchise or concession  
54 agreement, by a copy of the proposed assignment, sublease, license, franchise or concession agreement or,  
55 if same is not available, a letter of commitment or a letter of intent.

56  
57 Landlord shall, within thirty (30) days after its receipt of such notice of a proposed Transfer, by  
58 giving written notice to Tenant of its intention to do so: (a) withhold its consent to the Transfer; (b) consent  
59 to the Transfer. Failure of Landlord to give Tenant written notice of Landlord's action with respect to any  
60 request for Landlord's consent to a proposed Transfer shall not constitute or be deemed Landlord's consent  
61 to such Transfer. Landlord's consent to a proposed Transfer shall only be given if and when Landlord has  
62 notified Tenant in writing that Landlord consents to such proposed Transfer.

63  
64 If Landlord withholds its consent to any proposed Transfer pursuant hereto and if Tenant requests  
65 in writing within ten (10) days after Tenant's receipt of Landlord's written notice of such withholding of  
66 consent, Landlord shall provide to Tenant a statement of its reason(s) for withholding consent to the

1 proposed Transfer within a reasonable time after Landlord's receipt of Tenant's request therefor. Tenant  
2 acknowledges and agrees that each of the rights of Landlord set forth herein in the event of a proposed  
3 Transfer is a reasonable restriction on Transfer for purposes of applicable laws. Landlord and Tenant agree  
4 that Tenant shall have the burden of proving that Landlord's consent to the proposed Transfer was withheld  
5 unreasonably. Landlord shall have no liability to Tenant or to any proposed Transferee in damages if it is  
6 adjudicated that Landlord's consent shall have been unreasonably withheld and/or that such unreasonable  
7 withholding of consent shall have constituted a breach of this Lease or other duty to Tenant, the proposed  
8 Transferee or any other person. In such event, Tenant's sole remedy shall be to have the proposed Transfer  
9 declared valid, as if Landlord's consent had been duly and timely given (although Tenant shall be entitled  
10 to reasonable attorneys' fees if it is the successful party in such litigation, in accordance with the terms of  
11 this Lease).

12  
13 **Section 14.03 TRANSFER RENT ADJUSTMENT.**

14 If Tenant shall make a permitted Transfer hereunder, the Minimum Annual Rental specified in  
15 Section 2.01 shall be increased, effective as of the date of such Transfer, to the higher of: (a) the total rent  
16 payable by the Transferee pursuant to such Transfer; or (b) an amount equal to the total of the Minimum  
17 Annual Rental, plus Percentage Rent, required to be paid by Tenant pursuant to this Lease during the  
18 12-month period immediately preceding such Transfer. In no event shall the Minimum Annual Rental,  
19 after Transfer, be less than the Minimum Annual Rental immediately before Transfer.

20  
21 **Section 14.04 REQUIRED DOCUMENTS AND FEES.**

22 Each Transfer to which Landlord has consented shall be evidenced by a written instrument in form  
23 satisfactory to Landlord, executed by Tenant and the Transferee, under which the Transferee shall agree in  
24 writing for the benefit of Landlord (except as otherwise agreed in writing by Landlord) to assume, perform  
25 and abide by all of the terms, covenants and conditions of this Lease to be done, kept and performed by  
26 Tenant, including the payment of all amounts due or to become due under this Lease directly to Landlord  
27 and the obligation to use the Premises only for the purpose specified in this Lease. Tenant shall reimburse  
28 Landlord for Landlord's reasonable attorneys' and administrative fees incurred in the processing of, and  
29 documentation for, each such requested Transfer, whether or not the Transfer is consummated (not to  
30 exceed \$750.00 in each instance).

31  
32 **Section 14.05 TRANSFER OF STOCK OR PARTNERSHIP INTEREST.**

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

39  
40 Notwithstanding anything to the contrary contained in this Section 14.05, so long as Tenant's stock is  
41 registered with the Security Exchange Commission and traded through a nationally recognized stock exchange,  
42 then the sale of stock by Tenant or its shareholders shall not constitute a Transfer under this Lease. Further,  
43 the transfer of shares of stock of Tenant among the immediate family of the present stockholders through gift,  
44 will or trust shall not be deemed a Transfer provided same does not result in a change in the identity of the  
45 person or persons exercising effective control of Tenant.

46  
47 **Section 14.06 ASSIGNMENT AND SUBLEASE RENTALS.**

48 The following terms and conditions shall apply to any subletting by Tenant of all or any part of the  
49 Premises and shall be deemed included in all subleases under this Lease whether or not expressly  
50 incorporated therein:

51  
52 (a) Tenant hereby assigns and transfers to Landlord all of Tenant's interest in all rentals and  
53 income arising from any sublease of all or a portion of the Premises heretofore or hereafter made by Tenant,  
54 and Landlord may collect such rent and income and apply same toward Tenant's obligations under this  
55 Lease; provided, however, that until a breach shall occur in the performance of Tenant's obligations under  
56 this Lease, Tenant may, except as otherwise provided in this Lease, receive, collect and enjoy the rents  
57 accruing under such sublease. Landlord shall not, by reason of this or any other assignment of such sublease  
58 to Landlord, nor by reason of the collection of the rents from a subtenant, be deemed liable to the subtenant  
59 for any failure of Tenant to perform and comply with any of Tenant's obligations to such subtenant under  
60 such sublease. Tenant hereby irrevocably authorizes and directs any such subtenant, upon receipt of a  
61 written notice from Landlord stating that a breach exists in the performance of Tenant's obligations under  
62 this Lease, to pay to Landlord the rents and other charges due and to become due under the sublease. The  
63 subtenant shall rely upon any such statement and request from Landlord and shall pay such rents and other  
64 charges to Landlord without any obligation or right to inquire as to whether such breach exists and  
65 notwithstanding any notice from or claim from Tenant to the contrary. Tenant shall have no right or claim

1 against said subtenant, or, until the breach has been cured, against Landlord, for any such rents and other  
2 charges so paid by said subtenant to Landlord.

3  
4 (b) In the event of a breach by Tenant in the performance of its obligations under this Lease,  
5 Landlord, at its option and without any obligation to do so, may require any subtenant to attorn to Landlord,  
6 in which event Landlord shall undertake the obligations of the sublandlord under such sublease from the  
7 time of the exercise of said option to the expiration of such sublease; provided, however, Landlord shall not  
8 be liable for any prepaid rents or security deposit paid by such subtenant to Tenant or for any other prior  
9 defaults or breaches of Tenant as sublandlord under such sublease.

10  
11 **ARTICLE XV**

12 **WASTE OR NUISANCE**

13  
14  
15 **Section 15.01 WASTE OR NUISANCE.**

16 Tenant shall not commit nor permit any of its employees, invitees, contractors, subcontractors,  
17 licensees, subtenants or agents to commit any waste upon the Premises and shall not place a load upon the  
18 floor of the Premises which exceeds the floor load per square foot which such floor was designed to carry.  
19 Tenant shall not commit nor permit any of its employees, invitees, contractors, subcontractors, licensees,  
20 subtenants or agents to commit any nuisance or other act or thing which may impact Landlord's operation  
21 of the Shopping Center or disturb the quiet enjoyment of any other occupant or tenant of the Development.  
22 Tenant shall not use or permit to be used any medium that might constitute a nuisance, such as: (a)  
23 loudspeakers, sound amplifiers, tape decks, compact disc players, radios, televisions, or any other sound  
24 producing or other device which will carry sound odors outside the Premises and, upon written notice from  
25 Landlord, Tenant shall cause any such noise, or odors to cease. Tenant agrees that business machines and  
26 mechanical equipment used by Tenant which cause vibration or noise that may be transmitted to the  
27 building or buildings comprising the Shopping Center or to the Premises to such a degree as to be reasonably  
28 objectionable to Landlord or to any occupant, shall be placed and maintained by Tenant at its expense in a  
29 manner sufficient to eliminate such vibrations or noise, such as by cork, rubber or spring-type vibration  
30 isolators. Tenant shall not allow any use of the Premises or any other portion of the Shopping Center in a  
31 manner which is a source of annoyance, disturbance or embarrassment to Landlord or to the other tenants  
32 of the Shopping Center or which is deemed by Landlord, in its sole discretion, as not in keeping with the  
33 character of the Development. The Premises shall not be used for any unlawful, immoral or other purpose  
34 deemed improper by Landlord.

35  
36 **ARTICLE XVI**

37 **TRADE NAME; PROMOTIONAL PROGRAM**

38  
39  
40 **Section 16.01 TRADE NAME.**

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

45  
46 (b) If (i) Tenant intends to close all or substantially all of its stores operating under the Trade  
47 Name then operating at the Premises (a "Concept Closure"), or (ii) Tenant intends to close its business at  
48 the Premises, then Tenant shall have the right to request to change its Permitted Use and Trade Name to  
49 another of its or its' parent's concepts, provided, however, if Tenant would like Landlord to consider more  
50 than one Trade Name, then all such trade names must be submitted concurrently. Landlord's consent to  
51 such change in the Trade Name and/or Permitted Use and concept operated in the Premises shall not be  
52 unreasonably withheld. However, Landlord shall not be deemed unreasonable in withholding its consent  
53 to any such Trade Name if it is already in use in the Shopping Center. If Landlord withholds consent, then  
54 (1) Tenant may terminate the Lease upon thirty (30) days prior written notice to Landlord and concurrent  
55 payment to Landlord on the date of termination of an amount equal to 12 full months of Rental then due  
56 under the Lease, or (2) Tenant may terminate the Lease upon twelve (12) months prior written notice to  
57 Landlord and in the event of either type of closure (1 or 2), Tenant shall pay to Landlord the unamortized  
58 portion of the Tenant Allowance set forth in the Addendum to Exhibit B, if any, as of and on the date of  
59 such termination (such amortization to be on a straight-line basis over the Term).

60  
61 (c) If Tenant is changing the Trade Name of a majority of its same concept stores, then Tenant  
62 shall have the right without Landlord's consent to change its trade name to such other trade name as is used  
63 by Tenant in a majority of its other stores in the continental United States formerly operated under the trade  
64 name then in use at the Premises so long as it will remain the same concept and so long as such Trade Name  
65 is not already in use in the Shopping Center. Tenant shall furnish Landlord with prior written notice of  
66 such change in trade name.

1  
2 (d) Tenant agrees that any change in trade name will require the installation of a new storefront  
3 sign at Tenant's expense, the plans for which shall require Landlord's prior written approval which shall  
4 not be unreasonably withheld and shall conform to Landlord's criteria for signs. In the event of an approved  
5 change in concept and such change requires that the Premises be closed for business to accommodate the  
6 same, Tenant may close the Premises for a period not to exceed thirty (30) consecutive days provided,  
7 however, there shall be no abatement of Rental during any such period of closure.

8  
9 (e) If Tenant refers to the name of the Shopping Center, Tenant shall use the name of the  
10 Shopping Center set forth on the Data Sheet (or such other name as Landlord shall designate during the  
11 Term as provided by written notice to Tenant) to describe the location of the Premises for all advertising,  
12 promotional and marketing materials in which Tenant specifically mentions the location of the Premises.  
13 This will include all television, radio, print or collateral materials which are used to promote, (and  
14 specifically mention) Tenant's location. However, Tenant shall obtain the approval for the Westfield logo  
15 or representations from the Marketing Director of the Shopping Center prior to using such logo or  
16 representations, which approval shall not be unreasonably withheld or delayed.

17  
18 **Section 16.02 PROMOTIONAL PROGRAM.**

19 (a) Landlord shall provide or cause to be provided a program of advertising and promotional  
20 events and services ("Promotional Program") which, in Landlord's sole judgment, will serve to promote  
21 the Shopping Center. Landlord shall not be obligated to spend more than is actually collected from tenants  
22 in providing the Promotional Program. Any promotional services and personnel provided shall be under  
23 the exclusive control and supervision of Landlord, who shall have the sole authority to employ and  
24 discharge personnel and to establish a budget for the Promotional Program. Tenant agrees to the mention  
25 or nonmention of Tenant's Trade Name in the general advertising .

26  
27 (b) Tenant shall pay to Landlord, as Tenant's share of the cost of the Promotional Program, an  
28 annual promotional charge ("Promotional Charge") which originally shall equal the amount set forth in the  
29 Data Sheet. All payments, charges, dues and assessments payable under this Section shall be payable in  
30 monthly installments on the first day of each month as Additional Rent. The Promotional Charge payable  
31 by Tenant shall be increased annually equal to the percentage amount set forth in the Data Sheet.

32  
33 (c) In the event the Premises is located within an expansion and/or specially constructed area  
34 within the Shopping Center where a Grand Opening Date shall be set by Landlord, then Tenant shall also  
35 pay an initial assessment in the amount set forth in the Data Sheet in addition to the Promotional Charge,  
36 such initial assessment payable in one lump sum within thirty (30) days after the Rental Commencement  
37 Date.

38  
39 (d) Tenant shall comply with Landlord's digital media program, the terms of which are more  
40 particularly set forth in Exhibit "E".

41 **ARTICLE XVII**

42  
43 **DAMAGE AND DESTRUCTION**

44  
45 **Section 17.01 RECONSTRUCTION OF DAMAGED PREMISES.**

46 (a) In the event the Premises shall be partially or totally destroyed by fire or other casualty  
47 insured under the insurance carried by Landlord pursuant to Section 11.02 of this Lease so as to become  
48 partially or totally untenable, then the damage to the Premises shall be promptly repaired (unless  
49 Landlord shall elect not to rebuild as hereinafter provided), whereupon the Minimum Annual Rental and,  
50 Additional Rent payable by Tenant to Landlord shall be abated in proportion to the Floor Area of the  
51 Premises rendered untenable, and the Annual Breakpoint shall likewise be proportionately reduced.  
52 Payment of full Minimum Annual Rental and Additional Rent so abated shall commence, and Tenant shall  
53 be obligated to reopen for business on the thirtieth (30th) day following the date that Landlord advises  
54 Tenant that the Premises are tenantable (which shall mean that Landlord shall have repaired, restored or  
55 reconstructed the Premises, including the leasehold improvements as defined in Exhibit B), unless Tenant  
56 opens at an earlier time or remains open following such damage or destruction. Tenant hereby waives the  
57 provisions of any statute or other law that may be in effect at the time of the occurrence of any such damage  
58 or destruction under which a lease is automatically terminated or pursuant to which a tenant is given the  
59 right to terminate a lease by reason of such an event of damage or destruction.

60  
61 (b) Landlord shall be obligated to cause such repairs to be made unless Landlord, at its sole  
62 option, elects to cause Tenant to make such repairs to the leasehold improvements, in which event Tenant  
63 shall promptly complete the same and Landlord will make available to Tenant for the sole purpose of  
64 reconstruction of Tenant's leasehold improvements such portion of any insurance proceeds received by  
65 Landlord from its insurance carrier under a policy carried pursuant to Section 11.02 of this Lease as may  
66 be allocated to the leasehold improvements of the Premises by Landlord. In the event of any such repairs,

1 restoration and reconstruction by Tenant, an architect duly registered in the state where the Premises is  
2 located (if such registration is required by applicable code or governmental authorities) shall be selected  
3 and appointed by Tenant to prepare any necessary drawings and specifications . Such insurance proceeds  
4 shall be payable to Tenant only upon being provided certificates by Tenant stating that the payments  
5 specified therein are properly payable for the purpose of reimbursing Tenant for the expenditures actually  
6 made by Tenant in connection with such work along with copies of paid invoices for such work. At the  
7 election of Landlord or Landlord's mortgagee, direct payments may be made to material suppliers and  
8 laborers upon written certification by Tenant that such payments are due and payable. In making such  
9 repairs, restoration or reconstruction, Tenant, at its expense, shall comply with all laws, ordinances and  
10 governmental rules and regulations and shall perform all work or cause such work to be performed with  
11 due diligence and in a first-class manner. All permits required in connection with said repairs, restoration  
12 and reconstruction shall be obtained by Tenant at Tenant's sole cost and expense. Any amount expended  
13 by Tenant in excess of such insurance proceeds received by Landlord and made available to Tenant shall  
14 be the sole obligation of Tenant; notwithstanding the foregoing, in the event the amount expended by Tenant  
15 in repairing the Premises is in excess of the proceeds of insurance received by Landlord and made available  
16 to Tenant, Landlord agrees to make up such deficit provided Tenant has submitted to Landlord the statement  
17 setting forth the cost of Tenant's leasehold improvements as required in Section 11.02 of this Lease, unless  
18 said excess is the result of a store design change by Tenant which has been approved by Landlord in which  
19 event Tenant shall be responsible for said excess.  
20

21 (c) In the event of repair, restoration or reconstruction by Landlord, any amount expended by  
22 Landlord in repairing the Premises in excess of the proceeds of insurance received by Landlord pursuant to  
23 Section 11.02 of this Lease which were allocated to the Premises shall be repayable by Tenant to Landlord  
24 within ten (10) days after receipt by Tenant of a statement setting forth the amount of such excess;  
25 notwithstanding the foregoing, in the event the amount to be expended by Landlord in repairing the Premises  
26 is in excess of the proceeds of insurance, Landlord agrees to make up such deficit so long as Tenant has  
27 submitted to Landlord the statement setting forth the cost of Tenant's leasehold improvements as required in  
28 Section 11.02 of this Lease, unless said excess is the result of a store design change by Tenant which has been  
29 approved by Landlord in which event Tenant shall be responsible for said excess. The party required  
30 hereunder to repair, restore or reconstruct the damage to the Premises shall reconstruct such Premises in  
31 accordance with the Plans and Specifications originally approved by Landlord or new drawings prepared  
32 by Tenant's architect at Tenant's sole cost and expense and acceptable to Landlord and Tenant, and shall  
33 otherwise comply with the criteria and procedures of Exhibit B unless Landlord elects otherwise. In no  
34 event shall Landlord be required to repair or replace Tenant's merchandise, trade fixtures, signs, furnishings,  
35 equipment or other items of personal property, but the same shall be repaired or replaced promptly to a  
36 condition at least equal to that prior to the damage or destruction thereof by Tenant.  
37

38 **Section 17.02 LANDLORD'S AND TENANT'S OPTION TO TERMINATE LEASE.**

39 If (i) more than thirty-five percent (35%) of the Floor Area of the building in which the Premises  
40 are located or of the Shopping Center or of the Common Areas, shall be damaged or destroyed by fire or  
41 other casualty at any time, or (ii) during the last three (3) years of the Term of this Lease, more than  
42 twenty-five percent (25%) of the Floor Area of the Premises or of the building in which the Premises are  
43 located or of the Shopping Center or of the Common Areas shall be damaged or destroyed by fire or other  
44 casualty, or (iii) all or any part of the Shopping Center or said building or the Premises or of the Common  
45 Areas is damaged or destroyed at any time by the occurrence of any risk not insured under the insurance  
46 carried by Landlord pursuant to Section 8.03 or Section 11.02, then Landlord either may elect that the  
47 building and/or Premises and/or Shopping Center and/or the Common Areas, as the case may be, shall be  
48 repaired and rebuilt or, at its sole option, may terminate this Lease by giving written notice to Tenant of  
49 Landlord's election so to terminate, such notice to be given within ninety (90) days after the occurrence of  
50 such damage or destruction.  
51

52 Landlord agrees that it shall not have the right hereunder to terminate this Lease, unless Landlord terminates  
53 the leases of all similarly affected retail tenants of the Shopping Center.  
54

55 In the event more than twenty-five percent (25%) of the Floor Area of the Premises shall be damaged  
56 or destroyed by fire or other casualty during the last three (3) years of the Term, this Lease may be terminated,  
57 at Tenant's option, by giving Landlord sixty (60) days prior written notice of Tenant's intention to terminate  
58 the Lease.  
59

60 **ARTICLE XVIII**

61 **EMINENT DOMAIN**

62 **Section 18.01 TOTAL CONDEMNATION OF PREMISES.**

63  
64 If the whole of the Premises shall be taken by any public authority under the power of eminent  
65 domain or sold to a public authority under threat or in lieu of such taking, then the Term of this Lease shall  
66

1 cease as of the day upon which possession is taken by such public authority, and Minimum Annual Rental,  
2 Percentage Rental, Additional Rent and other charges shall be paid up to that day with a proportionate  
3 refund by Landlord of such Rental payments as may have been paid in advance for a period subsequent to  
4 the date of the taking.  
5

6 **Section 18.02 PARTIAL CONDEMNATION.**

7 (a) If less than the whole but more than twenty percent (20%) of the Floor Area of the Premises  
8 or more than fifty percent (50%) of the square footage of Common Areas shall be so taken under eminent  
9 domain, or sold to public authority under threat or in lieu of such taking, Tenant shall have the right either  
10 to terminate this Lease as of the day possession is taken by such public authority, or, subject to Landlord's  
11 right of termination as set forth in Section 18.02(c) of this Article, to continue in possession of the remainder  
12 of the Premises, upon notifying Landlord in writing within ten (10) days after such taking of Tenant's  
13 intention. In the event Tenant elects to remain in possession, all of the terms provided herein shall continue  
14 in effect, except that as of the day possession of such percentage of the Premises is taken by public authority,  
15 the Minimum Annual Rental and Additional Rent payable by Tenant to Landlord shall be reduced in  
16 proportion to the Floor Area of the Premises taken and the Annual Breakpoint shall likewise be  
17 proportionately reduced; thereafter, Landlord shall, at Landlord's cost and expense to the extent of any  
18 available condemnation award, make all the necessary repairs or alterations to the basic building, so as to  
19 constitute the remaining Premises a complete architectural unit, and Tenant, at Tenant's sole cost and  
20 expense, shall similarly act with respect to Tenant's leasehold improvements, trade fixtures, furnishings and  
21 equipment.  
22

23 (b) If twenty percent (20%) or less of the Floor Area of the Premises shall be so taken, the  
24 Term of this Lease shall cease, only on the part so taken, as of the day possession shall be taken by such  
25 public authority, and Tenant shall pay Rental and other charges up to that day; thereafter, the Minimum  
26 Annual Rental and Additional Rent payable by Tenant to Landlord shall be reduced in proportion to the  
27 Floor Area of the Premises so taken and the Annual Breakpoint shall likewise be proportionately reduced.  
28 Landlord shall, at Landlord's cost and expense to the extent of any available condemnation award, make all  
29 necessary repairs or alterations to the basic building, so as to constitute the remaining Premises a complete  
30 architectural unit, and Tenant, at Tenant's sole cost and expense, shall similarly act with respect to Tenant's  
31 leasehold improvements, trade fixtures, furnishings and equipment.  
32

33 (c) If more than twenty-five percent (25%) of the Floor Area of the building in which the  
34 Premises are located, or more than twenty-five percent (25%) of the Premises, or more than twenty-five  
35 percent (25%) of the square footage of the Shopping Center or of the Common Areas shall be taken under  
36 power of eminent domain, or sold to public authority under threat or in lieu of such taking, Landlord may,  
37 by written notice to Tenant delivered on or before the tenth (10th) day following the date of surrender of  
38 possession to the public authority, terminate this Lease as of the date possession is taken by public authority.  
39 The Minimum Annual Rental, Percentage Rental, Additional Rent and other charges shall be paid up to the  
40 day possession is taken by public authority, with an appropriate refund by Landlord of such Rental  
41 payments as may have been paid in advance for a period subsequent to that date.  
42

43 (d) A voluntary sale or transfer of interest of all or any part of the Premises or of the Common  
44 Area in the Shopping Center by Landlord to any public or quasi-public body, agency, person or other entity,  
45 corporate or otherwise, having the power of eminent domain, either under threat of condemnation or while  
46 condemnation proceedings are pending, shall be deemed to be a taking under the power of eminent domain  
47 for the purposes of this Article XVIII.  
48

49 **Section 18.03 LANDLORD AND TENANT DAMAGES.**

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

**DEFAULT**

**Section 19.01 RIGHTS UPON DEFAULT.**

(a) Notwithstanding any provision herein to the contrary and irrespective of whether all or any rights conferred upon Landlord by this Article XIX are expressly or by implication conferred upon Landlord elsewhere in this Lease, in the event of (i) any failure of Tenant to pay any Minimum Annual Rental, Percentage Rental or Additional Rent or any other charges or sums whatsoever due hereunder (including without limitation, amounts due as reimbursement to Landlord for costs incurred by Landlord in performing obligations of Tenant hereunder upon Tenant's failure so to perform) for more than ten (10) days after written notice from Landlord to Tenant that such rental or any other charges or sums whatsoever due hereunder were not received on the date required for payment pursuant to this Lease, provided that such notice from Landlord shall be in lieu of, and not in addition to, any notice of default required by applicable laws, or (ii) any default or failure by Tenant to perform any other of the terms, conditions, or covenants of this Lease to be observed or performed by Tenant for more than twenty (20) days after written notice from Landlord to Tenant of such default (unless such default cannot be cured within said twenty (20) days in which event Tenant shall not be deemed to be in default hereunder if Tenant shall have commenced to cure said default promptly within twenty (20) days and shall thereafter proceed to prosecute such cure to completion with all reasonable dispatch and diligence, provided that in no event shall such cure period extend beyond one hundred twenty (120) days), provided that such notice from Landlord shall be in lieu of, and not in addition to, any notice of default required by applicable laws, or (iii) any failure by Tenant to move into the Premises and to initially open for business on or before the Rental Commencement Date, or (iv) any failure by Tenant to operate continuously in the manner and during the hours established by Landlord pursuant to Section 7.02(a) hereof or for the purpose specified in the Data Sheet (the Permitted Use), or (v) Tenant's abandonment of the Premises, or permitting this Lease to be taken under any writ of execution or similar writ or order, then Landlord, in addition to or in lieu of other rights or remedies it may have under this Lease or by law, shall have the following rights: Landlord may at its sole discretion: (A) immediately terminate this Lease and Tenant's right to possession of the Premises by giving Tenant written notice that this Lease is terminated, in which event, upon such termination, Landlord shall have the right to recover from Tenant the sum of (1) the worth at the time of award of the unpaid rental which had been earned at the time of termination; (2) the worth at the time of award of the amount by which the unpaid rental which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant affirmatively proves could have been reasonably avoided; (3) the worth at the time of award of the amount by which the unpaid rental for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant affirmatively proves could be reasonably avoided; (4) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom; and (5) all such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under applicable law; or (B) have this Lease continue in effect for so long as Landlord does not terminate this Lease and Tenant's right to possession of the Premises, in which event Landlord shall have the right to enforce all of Landlord's rights and remedies under this Lease including the right to recover the Minimum Annual Rental, Percentage Rental, Additional Rent and other charges payable by Tenant under this Lease as they become due under this Lease; or (C) without terminating this Lease, Landlord may pay or discharge any breach or violation hereof which amount so expended shall be added to the next monthly incremental payment of Minimum Annual Rent, Percentage Rental and Additional Rent due and treated in the same manner as Rental hereunder; or (D) without terminating this Lease, make such alterations and repairs as may be necessary in order to relet the Premises, and relet the Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term) at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable.

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

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

26  
27 (c) Intentionally deleted

28  
29 (d) For purposes of subclauses (1) and (2) of Section 19.01(a), "worth at the time of award"  
30 shall be computed by allowing interest at the maximum rate permitted by law (see Section 27.13) and for  
31 purposes of subclause (3) of Section 19.01(a), "worth at the time of award" shall be computed by  
32 discounting such amount at the discount rate of the Federal Reserve Bank whose jurisdiction includes the  
33 Shopping Center at the time of award, plus one percent (1%); the Rental reserved in this Lease shall be  
34 deemed to be a monthly rental arrived at (i) by adding to the monthly installment of Minimum Annual  
35 Rental payable under this Lease an amount equal to the monthly average of all the Percentage Rental based  
36 on Gross Sales received by or payable to Landlord hereunder during the period that Tenant was conducting  
37 Tenant's business in the Premises in the manner and to the extent required pursuant to this Lease, plus (ii)  
38 one twelfth (1/12th) of the annual average of all Additional Rent payable by Tenant hereunder (such as, by  
39 way of example, Tenant's share of Operating Costs and Expenses).

40  
41 (e) Anything to the contrary notwithstanding, Landlord shall not be required to give notice  
42 under this Article XIX more than twice in any consecutive twelve month period.

43  
44 (f) Intentionally deleted.

## 45 46 ARTICLE XX

### 47 48 BANKRUPTCY OR INSOLVENCY

#### 49 50 Section 20.01 TENANT'S INTEREST NOT TRANSFERABLE.

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

#### 54 55 Section 20.02 TERMINATION.

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



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

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

13  
14           **Section 20.04 ELECTION TO ASSUME LEASE.**

15           (a) This is a "lease of real property in a shopping center" within the meaning of Section  
16 365(b)(3) of the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq. (the "Bankruptcy Code").

17  
18           (b) In the event that Tenant becomes a Debtor under Chapter 7, 11 or 13 of the Bankruptcy  
19 Code, and the Trustee or Tenant, as Debtor-In-Possession, elects to assume this Lease for the purpose of  
20 assignment to a third party or otherwise, such election and assignment, if any, may only be made if all of  
21 Landlord's conditions are met. If the Trustee or Tenant, as Debtor-In-Possession, fails to elect to assume  
22 or reject this Lease by the sixtieth (60th) day after the entry of the Order for Relief in a case under Chapter  
23 7, 11 and 13 of the Bankruptcy Code, this Lease shall thereafter be deemed rejected and terminated in  
24 accordance with Section 365(d)(4) of the Bankruptcy Code. The Trustee or Tenant, as Debtor-In-  
25 Possession, shall thereupon immediately surrender possession of the Premises to Landlord and Landlord  
26 shall have no further obligation to Tenant or Trustee under the Lease. The acceptance of rent by Landlord  
27 after the sixtieth (60th) day shall not be deemed a waiver of Landlord's rights herein and under Section  
28 365(d)(4) of the Bankruptcy Code, and Landlord's right to be compensated for damages in such bankruptcy  
29 case shall survive.

30  
31           **Section 20.05 SUBSEQUENT BANKRUPTCY.**

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

38  
39           **Section 20.06 ASSIGNMENT.**

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

45  
46           **Section 20.07 OCCUPANCY CHARGES.**

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

51  
52           **Section 20.08 CONSENT.**

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

60  
61           **Section 20.09 ATTORNEY FEES.**

62           If, in the context of Tenant's bankruptcy case, Landlord is compelled at any time to incur any  
63 expense, including attorneys' fees, in enforcing or attempting to enforce the terms of this Lease or to enforce  
64 or attempt to enforce any actions required under the Bankruptcy Code to be taken by the Trustee or by  
65 Tenant, as Debtor-In-Possession, then the sum so paid by Landlord shall be awarded to Landlord by the

1 Bankruptcy Court and shall be immediately due and payable by the Trustee or by Tenant's bankruptcy  
2 estate to Landlord in accordance with the terms of the order of the Bankruptcy Court.

3  
4 **Section 20.10 OTHER LAWS.**

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

10  
11 **ARTICLE XXI**

12  
13 **ACCESS BY LANDLORD**

14  
15 **Section 21.01 RIGHT OF ENTRY.**

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

29  
30 Notwithstanding anything to the contrary, in the event Landlord enters the Premises to make repairs,  
31 additions, improvements, changes or alterations and such work results in Tenant's inability to operate its  
32 business at the Premises for a period exceeding forty-eight (48) consecutive hours, Tenant shall have the right  
33 to close the Premises for business, whereupon Tenant's payment of Minimum Annual Rental due hereunder  
34 shall abate until such time as Landlord has rectified the cause of Tenant's inability to operate or Tenant reopens  
35 its business at the Premises, whichever first occurs. The foregoing rental abatement shall not be effective if the  
36 aforesaid work by Landlord was necessitated by any negligent act or breach of this Lease by Tenant. Landlord  
37 agrees to use diligent efforts to cause any such repairs, alterations or additions to be undertaken in the exercise  
38 of its rights hereunder to be performed in such a manner as to minimize to the extent practicable the interruption  
39 of Tenant's business.

40  
41 **ARTICLE XXII**

42  
43 **TENANT'S PROPERTY**

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

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

62  
63 Tenant's Taxes owed by Tenant to Landlord pursuant to this Section 22.01 shall not be a duplication  
64 of Taxes payable by Tenant under any other Section of this Lease.

1           **Section 22.02    LOSS AND DAMAGE.**

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

10           **Section 22.03    NOTICE BY TENANT.**

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

15                           **ARTICLE XXIII**

16                           **HOLDING OVER**  
17

18           **Section 23.01    HOLDING OVER.**

19           If possession of the Premises is not surrendered to Landlord on the Expiration Date, then Tenant  
20 shall pay to Landlord on account of use and occupancy of the Premises, for each month (or any portion  
21 thereof) during which Tenant (or a Person claiming by, through or under Tenant) holds over in the Premises  
22 after the Expiration Date, an amount equal to the greater of two (2) times (i) the aggregate Rental that was  
23 payable under this Lease during the last month of the Term, and (ii) the then fair market rental value of the  
24 Premises plus the monthly Additional Rent that was payable by Tenant during the last month of the Term.  
25 Landlord's right to collect such amount from Tenant for use and occupancy shall be in addition to any other  
26 rights or remedies that Landlord may have hereunder or at law or in equity. Nothing contained in this  
27 Section 23.01 shall permit Tenant to retain possession of the Premises after the Expiration Date or limit in  
28 any manner Landlord's right to regain possession of the Premises, through summary proceedings or  
29 otherwise. Landlord's acceptance of any payments from Tenant after the Expiration Date shall be deemed  
30 to be on account of the amount to be paid by Tenant in accordance with the provisions of this Section 23.01.  
31 Tenant expressly waives, for itself and for any person claiming through or under Tenant, any rights that  
32 Tenant or any such person may have under the provisions of legal requirements, in connection with any  
33 holdover summary proceedings that Landlord may institute to enforce the foregoing provisions of this  
34 Article. Tenant shall indemnify, defend and hold harmless Landlord from and against any and all loss,  
35 claims, demands, liabilities, damages (including, without limitation, consequential damages), costs and/or  
36 expenses (including, without limitation, attorneys' fees and expenses) resulting from any failure by Tenant  
37 to surrender the Premises in the manner and condition required by this Lease upon the expiration of the  
38 Term or earlier termination of this Lease, including, without limitation, any claims made by any proposed  
39 new tenant founded upon such failure.  
40  
41

42           If bona fide negotiations have commenced between Landlord and Tenant for the renewal of this Lease  
43 within ninety (90) days prior to the Expiration Date and Landlord permits Tenant to remain in possession of  
44 the Premises after the Expiration Date, the Minimum Annual Rental payable for each month of such  
45 occupancy (payable in advance on the first day of each month) shall be at an amount equal to one-twelfth  
46 (1/12th) of the Minimum Annual Rental required to be paid by Tenant for the last full year of the Term of this  
47 Lease, together with an amount estimated by Landlord for the monthly Additional Rent payable pursuant to  
48 this Lease, and such occupancy shall otherwise be on the same terms and conditions as herein specified so far  
49 as applicable. At such time as a new lease is executed by Landlord and Tenant for Tenant's occupancy of the  
50 Premises, the terms of such new lease shall be applied retroactively to commence concurrently with the  
51 Expiration Date (including the payment of increased Rental thereunder). If a new lease for the Premises is  
52 not executed by Landlord and Tenant within ninety (90) days following the Expiration Date, Tenant shall  
53 immediately surrender possession of the Premises or be subject to the first paragraph of this Section 23.01.  
54

55           **Section 23.02    SUCCESSORS.**

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

**RULES AND REGULATIONS**

**Section 24.01 RULES AND REGULATIONS.**

Tenant agrees to comply with and observe all rules and regulations established by Landlord from time to time as set forth in this Lease or which Tenant has received written notice thereof, provided the same shall apply uniformly to all tenants of the Shopping Center. 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.

**ARTICLE XXV**

**QUIET ENJOYMENT**

**Section 25.01 LANDLORD'S COVENANT.**

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

**ARTICLE XXVI**

**SECURITY**

**Section 26.01 SECURITY DEPOSIT.**

Intentionally deleted.

**Section 26.02 LEASE DEPOSIT.**

In addition to any Security Deposit required under Section 26.01 of this Lease, concurrent with Tenant's execution of this Lease, Tenant shall deliver a "Lease Deposit" to Landlord in the amount set forth in the Data Sheet. The Lease Deposit shall be applied toward Tenant's Minimum Annual Rental first becoming due under the provisions of this Lease. In the event that Tenant does not open for business for any reason, the entire Lease Deposit shall be forfeited, in addition to all other remedies available to Landlord under this Lease, at law or in equity.

**Section 26.03 LETTER OF CREDIT.**

Concurrent with Tenant's execution of this Lease, Tenant shall deliver to Landlord an Irrevocable Letter of Credit (referred to herein as the "Letter of Credit"), in the form attached to this Lease, as an identified exhibit listed on the Data Sheet, from a United States of America national bank acceptable to Landlord in the amount set forth on the Data Sheet, naming Landlord as beneficiary, which Letter of Credit shall be held by Landlord for the entire Term of this Lease; provided, however, that Tenant shall, within thirty (30) days prior to the first anniversary of issuance of the Letter of Credit, and within thirty (30) days prior to the expiration each successive anniversaries of issuance, automatically renew the Letter of Credit. In the event Tenant has been in default beyond the applicable period of time for cure thereof at any time during the term of this Lease, then Landlord shall have the right to collect on the Letter of Credit to the extent that Landlord expends money or suffers damages by reason of Tenant's default.

**ARTICLE XXVII**

**MISCELLANEOUS**

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

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

1  
2           **Section 27.02 ENTIRE AGREEMENT.**

3           The Data Sheet and all exhibits and/or addendum(s), and/or rider(s), if any, attached to this Lease  
4 are hereby made a part of this Lease, with full force and effect as if set forth herein. This Lease supersedes  
5 all prior agreements between the parties and sets forth all the covenants, promises, agreements and  
6 conditions, and understandings between Landlord and Tenant concerning the Premises and there are no  
7 actual or implied covenants, promises, agreements, conditions or understandings, either oral or written,  
8 between them other than as are set forth herein and none thereof shall be used to interpret, construe,  
9 supplement or contradict this Lease. Landlord has made no representations or warranties regarding the  
10 profitability the Premises, or the Shopping Center, and Tenant has not entered into this Lease in reliance on  
11 any such representations, warranties or financial projections prepared or furnished to Tenant by Landlord.  
12 Although the printed provisions of this Lease were drawn by Landlord, the parties hereto agree that this  
13 circumstance alone shall not create any presumption, canon of construction or implication favoring the  
14 position of either Landlord or Tenant. The parties agree that any deletion of language from this Lease prior  
15 to its mutual execution by Landlord and Tenant shall not be construed to have any particular meaning or to  
16 raise any presumption, canon of construction or implication, including, without limitation, any implication  
17 that the parties intended thereby to state the converse, obverse or opposite of the deleted language. No  
18 alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless  
19 reduced to writing and signed by each party. Tenant shall pay all of Landlord's costs, expenses and  
20 reasonable fees of its attorney(s) in connection with any assignment of this Lease, subletting of the Premises  
21 or amendment, change or addition to this Lease made at the request of or to accommodate Tenant (not to  
22 exceed \$750.00 in each instance.  
23

24           **Section 27.03 INTERPRETATION; USE OF PRONOUNS; AUTHORITY.**

25           Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party,  
26 as creating the relationship of principal and agent or of partnership or of joint ventures between the parties  
27 hereto, it being understood and agreed that neither the method of computation of Rental, nor any other  
28 provision contained herein, nor any acts of the parties herein, shall be deemed to create any relationship  
29 between the parties hereto other than the relationship of landlord and tenant. Whenever herein the singular  
30 number is used the same shall include the plural, and the masculine gender shall include the feminine and  
31 neuter genders. If this Lease is signed on behalf of a corporation, partnership or other entity, such entity is  
32 authorized to enter into and the signer is duly authorized to execute this Lease on behalf of such corporation,  
33 partnership or entity.  
34

35           **Section 27.04 DELAYS; FORCE MAJEURE.**

36           In the event either party hereto shall be delayed in the performance of its initial construction, or  
37 maintenance and/or repair obligations, by reasons of strikes; lockouts; labor disputes; Acts of God; inability  
38 to procure labor, materials, or reasonable substitutes therefor; or shall at any time be so delayed by reason  
39 of the diminution of power or power failure(s); restrictive governmental laws or controls; judicial orders;  
40 enemy or hostile governmental action; civil commotion; fire or other casualty, or reasons of a similar nature  
41 not the fault of the party delayed in performing work or doing acts required under the terms of this Lease,  
42 then performance of such act shall be excused for the period of the delay and the period for the performance  
43 of any such act shall be extended for a period equivalent to the period of such delay; provided, however,  
44 that the time for performance shall in no event be extended due to financial or economic problems of either  
45 party, their architects, contractors, agents or employees, or delay caused by the inability of architects,  
46 contractors, suppliers or other employees and agents to meet deadlines, delivery or contract dates (unless  
47 such inability is caused by Acts of God, war, civil disobedience or strike). Notwithstanding anything to the  
48 contrary, the occurrence of any of the events of force majeure herein described shall not excuse Tenant's  
49 obligations to pay Minimum Annual Rental, Percentage Rental and Additional Rent (unless the provisions  
50 of Article XVII or Article XVIII apply) or excuse such obligations as this Lease may otherwise impose on  
51 the party to obey, remedy or avoid such event; moreover should the work performed by Tenant or Tenant's  
52 contractor result in a strike, lockout and/or labor dispute, such strike, lockout and/or labor dispute shall not  
53 excuse Tenant's performance. Further, Landlord's reduction of heat, light, air conditioning, or any other  
54 services whatsoever to the Shopping Center because of any similar or dissimilar event constituting a cause  
55 for excusable delay hereunder shall not relieve Tenant from its obligations pursuant to Article VII of this  
56 Lease. It shall be a condition of Tenant's right to claim an extension of time as a result hereof that Tenant  
57 notify Landlord in writing within ten (10) calendar days after the first occurrence of any such event, and  
58 the cause, specifying the nature thereof and the period of time contemplated or necessary for performance.  
59

60           **Section 27.05 NOTICES.**

61           Notwithstanding the fact that certain descriptions elsewhere in this Lease of notices required to be  
62 given by one party to the other may omit to state that such notices shall be in writing, any notice, demand,  
63 request or other instrument which may be or is required to be given under this Lease shall be in writing and  
64 sent by (i) United States certified mail, return receipt requested, postage prepaid, (ii) telegram, mailgram,  
65 or other electronic medium using a third party carrier, (iii) United States express mail, (iv) air courier (such  
66 as Federal Express), (v) personal delivery or (vi) any other method creating a receipt, waybill or other

1 indication of delivery, and shall be addressed (a) if to the Landlord, at the address set forth on the Data  
2 Sheet, or such other address or addresses as Landlord may designate by written notice, together with copies  
3 thereof to such other parties designated by Landlord and, (b) if to Tenant, at the address set forth on the  
4 Data Sheet, or such other address or addresses as Tenant shall designate by written notice provided that  
5 Tenant's address for notices shall be a street address and not a post office box. Notices shall be deemed to  
6 be given upon receipt or attempted delivery (if refused).

7  
8 **Section 27.06 CAPTIONS AND SECTION NUMBERS.**

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

12  
13 **Section 27.07 BROKER'S COMMISSION.**

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

18  
19 **Section 27.08 RECORDING.**

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

23  
24 **Section 27.09 FURNISHING OF FINANCIAL STATEMENTS.**

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

37  
38 Notwithstanding anything to the contrary, so long as Tenant is a publicly traded entity whose financial  
39 information is readily available to the public, Tenant shall not be required to provide any information to  
40 Landlord regarding its financial condition and/or evidence of ownership or partnership.

41  
42 **Section 27.10 WAIVER OF COUNTERCLAIM OR DEFENSES IN ACTION FOR**  
43 **POSSESSION.**

44 Landlord and Tenant agree that in any action brought by Landlord to obtain possession of the  
45 Premises, the parties desire an expeditious resolution of such litigation. Accordingly, Tenant shall not file  
46 and hereby waives the right to file any non-compulsory counterclaim in such action.

47  
48 **Section 27.11 TRANSFER OF LANDLORD'S INTEREST.**

49 In the event of any transfer or transfers of Landlord's interest in the Premises including a so-called  
50 sale-leaseback, the transferor shall be automatically relieved of any and all obligations on the part of  
51 Landlord accruing from and after the date of such transfer, provided that (a) the interest of the transferor,  
52 as Landlord, in any funds then in the hands of Landlord in which Tenant has an interest shall be turned  
53 over, subject to such obligations, to the then transferee; and (b) notice of such sale, transfer or lease shall  
54 be given to Tenant as required by law. Upon the transfer of any such lease in a sale-leaseback transaction  
55 prior to termination of this Lease, the former lessee thereunder shall become and remain liable as Landlord  
56 hereunder until a further transfer. No holder of a mortgage to which this Lease is or may be subordinate,  
57 and no lessor under a so-called sale-leaseback, shall be responsible in connection with the security deposited  
58 hereunder, unless such mortgagee or holder of such deed of trust or lessor shall have actually received the  
59 security deposited hereunder.

60  
61 **Section 27.12 FLOOR AREA.**

62 (a) "Floor Area" as used in this Lease means with respect to any leasable area in the Shopping  
63 Center, the aggregate number of square feet of floor space of all floor levels therein, including any  
64 mezzanine space, measured from (i) the outside faces of all perimeter walls thereof other than any demising  
65 wall separating such premises from other leasable premises, (ii) the center lines of any such demising wall,

1 (iii) the outside face of any interior wall, and (iv) the building and/or leaseline adjacent to any entrance to  
2 such premises.

3  
4 (b) For the purposes of this Lease, in determining the gross leasable Floor Area or the gross  
5 leased and occupied Floor Area of the Shopping Center, there shall be excluded therefrom any premises  
6 leased for the operation of a U.S. Government Post Office facility or other governmental facility, a child  
7 care center, community room, library, project offices and related rooms, movable retail merchandising units  
8 and temporary uses or units located in the Common Areas. No deduction or exclusion from Floor Area  
9 shall be made by reason of columns, ducts, stairs, elevators, escalators, shafts or other interior construction  
10 or equipment. At the Commencement Date, the gross leased and occupied Floor Area in effect for the  
11 whole of any lease year shall be the average gross leased and occupied Floor Area in effect during such  
12 lease year. Landlord reserves the right during the Term to change the method of computation to determine  
13 Floor Area on a monthly or quarterly "average" basis.

14  
15 **Section 27.13 INTEREST ON PAST DUE OBLIGATIONS.**

16 Any amount due from Tenant to Landlord hereunder which is not paid within ten (10) days after  
17 Tenant has received written notice from Landlord that it has failed to make payment of any such amount  
18 when due (including, without limitation, amounts due as reimbursement to Landlord for costs incurred by  
19 Landlord in performing obligations of Tenant hereunder upon Tenant's failure to so perform) shall bear  
20 interest at the lesser of (a) the "Prime Rate" as published in Wall Street Journal plus two percent (2%); or  
21 (b) the highest rate then allowed under the usury laws of the state where the Shopping Center is located  
22 from the date due until paid, unless otherwise specifically provided herein, but the payment of such interest  
23 shall not excuse or cure any default by Tenant under this Lease.

24  
25 **Section 27.14 LIABILITY OF LANDLORD.**

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

35  
36 **Section 27.15 ACCORD AND SATISFACTION.**

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

43  
44 **Section 27.16 EXECUTION OF LEASE; NO OPTION.**

45 The submission of this Lease to Tenant shall be for examination purposes only, and does not and  
46 shall not constitute a reservation of an option for Tenant to lease, or otherwise create any interest by Tenant  
47 in the Premises or any other premises in the Shopping Center. Execution of this Lease by Tenant and the  
48 return of same to Landlord shall not be binding upon Landlord, notwithstanding any time interval, until  
49 Landlord has executed and delivered this Lease to Tenant.

50  
51 **Section 27.17 GOVERNING LAW.**

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

57  
58 **Section 27.18 SPECIFIC PERFORMANCE OF LANDLORD'S RIGHTS.**

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

62  
63 **Section 27.19 SURVIVAL OF TENANT'S OBLIGATIONS.**

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

1  
2 **Section 27.20 CERTAIN RULES OF CONSTRUCTION.**

3 Time is of the essence in Landlord's and Tenant's performance of this Lease. Notwithstanding the  
4 fact that certain references elsewhere in this Lease to acts required to be performed by Landlord's or Tenant  
5 hereunder, or to breaches or defaults of this Lease by Landlord's or Tenant, omit to state that such acts shall  
6 be performed at Landlord's or Tenant's sole cost and expense, or omit to state that such breaches or defaults  
7 by Landlord or Tenant are material, unless the context clearly implies to the contrary, each and every act to  
8 be performed or obligation to be fulfilled by Landlord or Tenant pursuant to this Lease shall be performed  
9 or fulfilled at such party's sole cost and expense, and all breaches or defaults by Landlord or Tenant  
10 hereunder shall be deemed material. Tenant shall be fully responsible and liable for the observance and  
11 compliance by concessionaires of and with all the terms and conditions of this Lease, which terms and  
12 conditions shall be applicable to concessionaires as fully as if they were the Tenant hereunder; and failure  
13 by a concessionaire fully to observe and comply with the terms and conditions of this Lease shall constitute  
14 a default hereunder by Tenant. Nothing contained in the preceding sentence shall constitute a consent by  
15 Landlord to any concession, subletting or other arrangement proscribed by Article XIV.

16  
17 **Section 27.21 CONFIDENTIALITY.**

18 Any and all information contained in this Lease or provided to or by Tenant and/or Landlord by  
19 reason of the covenants and conditions of this Lease, economic or otherwise, shall remain confidential  
20 between Landlord and Tenant and shall not be divulged to third parties; provided, however Landlord shall  
21 be permitted to divulge the contents of statements and reports derived and received in connection with the  
22 provisions of Article III and Article IV in connection with any contemplated sales, transfers, assignments,  
23 encumbrances or financing arrangements of Landlord's interest in the Shopping Center or in connection  
24 with any administrative or judicial proceedings in which Landlord is involved where Landlord may be  
25 required to divulge such information.

26  
27 **Section 27.22 ATTORNEY FEES.**

28 If at any time after the date that this Lease has been executed by Landlord and Tenant, either  
29 Landlord or Tenant institutes any action or proceeding against the other relating to the provisions of this  
30 Lease or any default hereunder, the non-prevailing party in such action or proceeding shall reimburse the  
31 prevailing party for the reasonable expenses of attorneys' fees and all costs and disbursements incurred  
32 therein by the prevailing party, including, without limitation, any such fees, costs or disbursements incurred  
33 on any appeal from such action or proceeding. Subject to the provisions of local law, the prevailing party  
34 shall recover all such fees, costs or disbursements as costs taxable by the court or arbiter in the action or  
35 proceeding itself without the necessity for a cross-action by the prevailing party.

36  
37 **Section 27.23 INDEX.**

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

48  
49 **Section 27.24 WAIVER OF TRIAL BY JURY.**

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

58  
59 **Section 27.25 MORTGAGEE CHANGES.**

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



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

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

13  
14           **Section 27.27 EQUAL EMPLOYMENT OPPORTUNITY.**

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

19  
20  
21           [BALANCE OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE FOLLOWS]

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

**AE RETAIL WEST LLC,**  
a Delaware limited liability company

By: 

Print Name: SCOTT HURO

Its: VICE PRESIDENT

By: 

Print Name: ALAN R. SILHOL

Its: ASSISTANT SECRETARY

**TENANT**

**S.F. CENTRE LIMITED PARTNERSHIP,**  
a Delaware limited partnership

By: S.F. Centre LLC,  
a Delaware limited liability company,  
its general partner

By: S.F. Shopping Centre Associates, LP  
a Delaware limited partnership,  
its sole member

By: WEA San Francisco GP, LLC,  
a Delaware limited liability company,  
its general partner

By: Westfield Growth LP,  
a Delaware limited partnership,  
its sole member

By: Westfield Growth II LP,  
a Delaware limited partnership,  
its general partner

By: Westfield Centers LLC,  
a Delaware limited liability company,  
its general partner

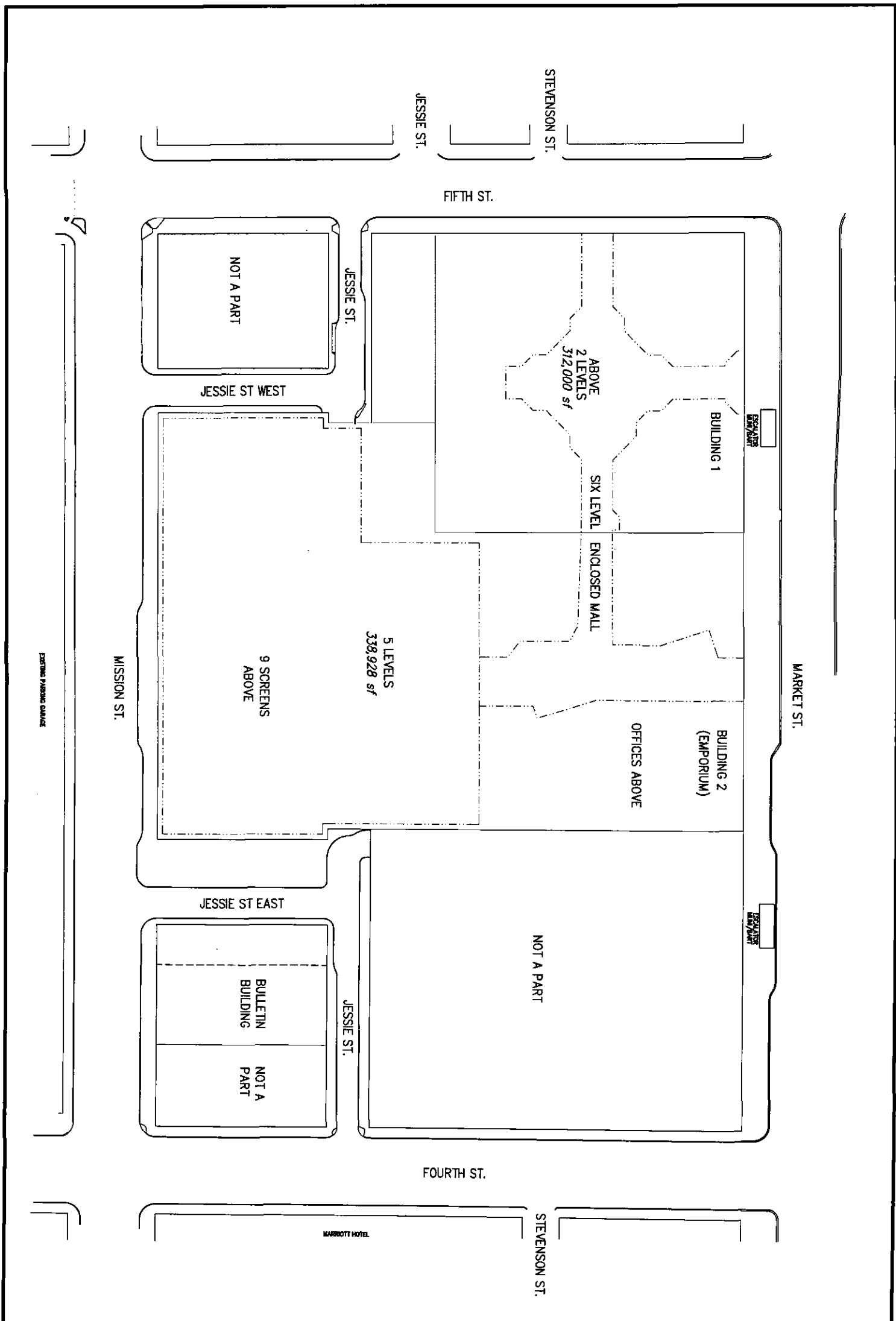
By: Westfield America Limited Partnership,  
a Delaware limited partnership,  
its sole member

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

By: 

John Kim  
**Assistant Secretary**

**LANDLORD**



# EXHIBIT A1

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

## SITE PLAN

N.T.S  
SCALE

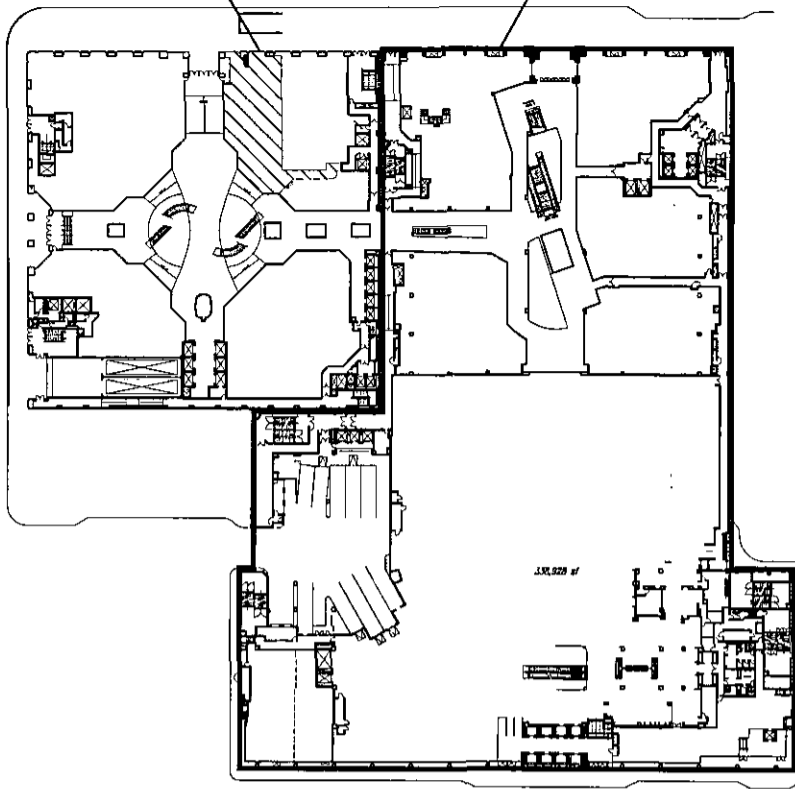
**Westfield**  
San Francisco Centre

865 MARKET ST. SAN FRANCISCO, CALIFORNIA 94103 (415) 512-8776



San Francisco  
M.G. 013

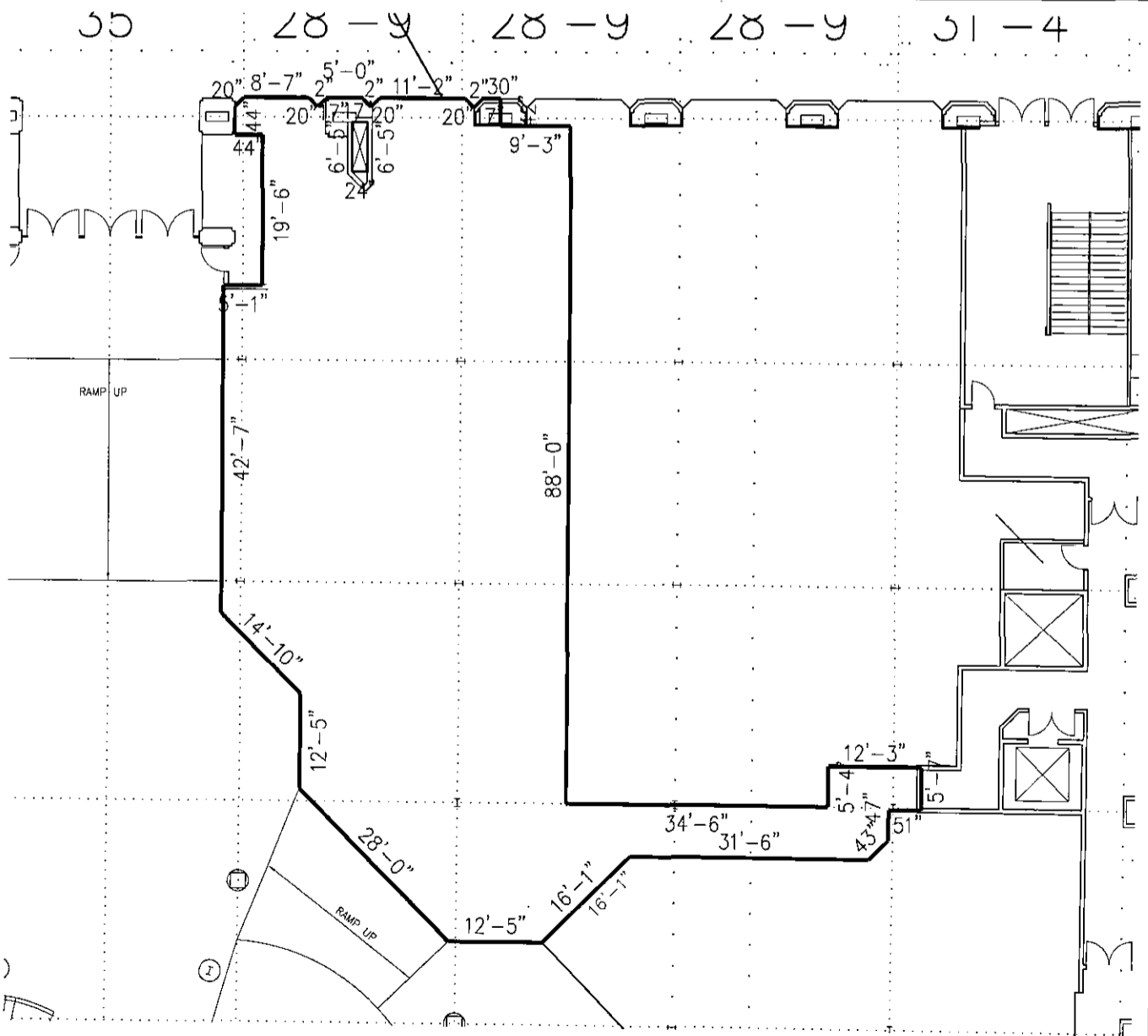
**A1**



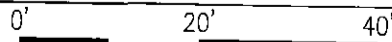
The document is diagrammatic and is intended only to show the demised premises of the project (hatched area.) It does not purport to show exact dimensions nor the final location of any mechanical, electrical, structural or architectural element. Further, the landlord reserves the right to add, eliminate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

VERSION C



**SAN FRANCISCO CENTRE**



**EXHIBIT  
A2**

Level 1  
12/01/16

148 AMERICAN EAGLE OUTFITTERS

LEVEL 1: 4,639 S.F.  
LEVEL 2: 8,087 S.F.  
TOTAL: 12,726 S.F.

**EXHIBIT B**  
**DESIGN AND CONSTRUCTION OF THE**  
**BUILDING AND THE PREMISES**

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

**II. GENERAL REQUIREMENTS AND PROVISIONS**

- A. Tenant's Work shall be subject to Landlord's prior approval and shall be designed and constructed to comply with the requirements set forth in the most current edition of Landlord's criteria for the Shopping Center (the "Tenant Design Criteria Manual"). All details and information contained in the Tenant Design Criteria Manual, whether appearing on Tenant's plans or not, shall be considered a part of Tenant's plans and construction requirements. By this reference, the Tenant Design Criteria Manual is incorporated herein and made a part of this Lease. This Exhibit B and the Tenant Design Criteria Manual are hereinafter collectively referred to as "Tenant's Construction Requirements".
- B. The design and construction of Tenant's Work must comply with the following requirements (collectively, the "Standards"):
  - 1. This Exhibit B;
  - 2. The Tenant Design Criteria Manual;
  - 3. Tenant's Final Working Drawings, as approved by Landlord; and
  - 4. All applicable laws, ordinances, codes, regulations and the requirements of all jurisdictional authorities.

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. Notwithstanding anything to the contrary contained herein, in the event of a conflict between the Lease, this Exhibit B, or Tenant's Landlord approved *Final Working Drawings*, *Tenant's Final Working Drawing as approved by Landlord shall prevail* (except as to the scope of work of Landlord and Tenant, which scope of work shall in any event be governed by the provisions of the Lease and Exhibit B).

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

**III. LANDLORD'S WORK AT LANDLORD'S EXPENSE**

Landlord's Work to be performed or provided at Landlord's sole cost and expense shall be limited to the following:

- A. A basic building structure, with finished Common Areas, to Landlord specifications.
- B. Any building frontage above the storefront lines, and, where required in Landlord's sole determination, building frontage vertical neutral strips centered upon the lease lines of the Premises.
- C. The installation of metal studs, as necessary, to separate the Premises from adjacent spaces and/or Common Areas.
- D. Common use service corridors, located as required by code and/or as selected by Landlord, with such corridor walls finished on the corridor side only.
- E. All building finishes outside of the Premises that are not specifically made the responsibility of Tenant or another occupant of the Shopping Center.
- F. A main electrical service distribution system of a type and capacity set forth in the Tenant Design Criteria Manual and consisting of the following facilities:
  - 1. A remote electrical service area outside the Premises;
  - 2. Main electrical service distribution equipment within the remote electrical service area, from which Tenant's main electrical service will be available.
- G. A main telephone service terminal board located outside the Premises, from which Tenant's main telephone service shall be available.
- H. A domestic water service main for the Premises, from which Tenant's domestic water service shall be available:
- I. A sanitary sewer service main for the Premises, from which Tenant's sanitary sewer service shall be available.
- J. A fire sprinkler service main, or branch line, for the Premises, from which Tenant's fire sprinkler service shall be available.
- K. Landlord to install an elevator and escalators within the Premises in accordance with applicable laws, codes and regulations. Prior to Landlord's commencement of such elevator and vertical escalator work, the parties will cooperate in good faith to agree on a responsibilities matrix setting forth each party's responsibilities with respect to the elevator and vertical escalator work.

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

- A. Landlord may provide for Tenant's account, as Landlord deems necessary or practical, in Landlord's sole opinion, or as may be requested of Landlord by Tenant or Tenant's General Contractor, items of construction, equipment, improvements or services at Tenant's cost. For Tenant's convenience, Landlord shall charge Tenant's General Contractor directly for these various items, prior to the start of Tenant's construction, 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. Landlord may install a temporary construction barricade (including Landlord's graphics program) along the storefront lease line of the Premises in an amount set forth on the Data Sheet, if the same shall not have timely been installed by Tenant.
  - 2. Landlord may provide Tenant's General Contractor with mall tile for use at Tenant's storefront.
  - 3. Landlord may provide, as Landlord deems practical or necessary if not otherwise available to Tenant, electrical power or other temporary services 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 temporary power is available.
- B. Tenant shall not be obligated to pay for any chargeback items under Exhibit B, except for any temporary trash removal, temporary utilities, sewer usage reimbursement, mall tile, and sprinkler shut down fees, plus the barricade charge and the cost of graphics therefor (if applicable). All other references to work set forth in this Exhibit B performed by Landlord and payable by Tenant are by this reference deleted from Exhibit B; provided, however, if Tenant requests Landlord to perform any Tenant's Work on its behalf, then Tenant shall pay Landlord the reasonable and competitive rates for such work.

V. TENANT'S WORK. Notwithstanding Section IV.A.1 above, Tenant shall be permitted to erect and install its temporary construction barricade and/or graphics therefor in accordance with Landlord's criteria, including compliance with Landlord's barricade graphics program, at Tenant's expense. Further, Tenant shall have the right to

utilize any of the existing systems in the Premises, including the existing components of the mechanical, plumbing, electrical and HVAC systems; provided, however that any repair or maintenance to such systems shall be the obligation of Tenant at Tenant's sole cost and expense.

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

1. Tenant shall perform any and all demolition work required to return the Premises to a shell condition or such other demolition work as may be required in order for Tenant to complete Tenant's Work. Such work shall include, but not be limited to, the removal of existing ceiling structures, finish materials, storefront, light fixtures, partitions (excluding demising partitions) and any plumbing, mechanical or electrical installations that will not be reused to serve the Premises. No existing plumbing, mechanical or electrical systems or system components shall be abandoned in place without Landlord's prior written approval. Tenant will be required to submit demolition plans for Landlord's review and approval. All items of existing construction that Tenant may wish to re-use, modify or abandon shall be subject to Landlord's prior written approval.
2. Tenant shall be responsible to provide, finish and level any concrete floor slab(s) within the Premises, as may be required to accept Tenant's finished floor material and eliminate any tripping hazards. Where floor slab elevations within the Premises are above or below Common Area floor elevations, Tenant shall provide the necessary transitions at storefront areas and rear service door areas to make the floor of the Premises even with any adjoining floor elevation.
3. Installation of a finished floor in all sales areas and all storage areas within the Premises visible to the public. Exposed finished concrete slab floors, vinyl tile or similar materials shall not be deemed to be a "finished floor" in any of the areas referenced above and therefore are not acceptable. As may be required by Landlord, in the area between Tenant's storefront lease line to the store's closure line, Tenant shall match the Shopping Center finished floor material. Tenant may install an exposed finished sealed concrete slab floor with Landlord approval not to be unreasonably withheld, conditioned or delayed.
4. Installation of a finished ceiling throughout the Premises (or as may otherwise be approved by Landlord and all jurisdictional authorities).
5. Installation of fire rated partitioning and/or enclosures throughout the Premises as may be required by Landlord, all governing codes and all jurisdictional authorities.
6. Installation of interior partitioning and completion of demising walls (fire rated gypsum board or other required finish) throughout the Premises, as may be required to complete the Premises.
7. Supply and install Premises storefront facing the interior of the Shopping Center.
8. Installation of all construction and finish materials throughout the Premises and the storefront of the Premises which are not specifically made the responsibility of Landlord. Such material installations shall include, but not be limited to, all wall coverings, floor coverings, ceiling materials and Tenant's storefront construction.
9. Where required by any applicable codes, ordinances or jurisdictional authorities, Tenant shall provide a trash storage room of adequate capacity and fire rating; or, if such a room is not required, Tenant shall provide a designated area within the Premises which is adequate, in Landlord's judgment, to store Tenant's trash.
10. Tenant shall construct, where applicable, a recessed doorway to provide access from the Premises to a service area or egress corridor. The door swing shall not encroach past Tenant's lease line.
11. Installation of all interior doors and associated hardware as may be required to complete the Premises. Such doors and hardware shall comply with all required fire ratings, where applicable.
12. Installation of all furniture, fixtures, cabinetwork, shelving, personal property and equipment as may be required to complete the Premises.
13. Tenant shall ensure that all roof and slab penetrations made as a part of Tenant's Work are properly sealed and remain watertight to prevent possible damage. Failure to do so shall be at the sole risk and expense of Tenant in the event damage occurs. 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; provided, however, the cost of said contractor shall be reasonable and competitive.

14. If applicable, Tenant must install a waterproof membrane to waterproof all floor/slab and slab penetrations in all lavatories, kitchens and similar water prone areas where water is used for food preparation or cleaning. Perimeter walls of such areas must be waterproofed to a point of no less than twelve inches (12") above the slab. In addition, Tenant must slope floor surfaces to prevent the passage of water, waste and other liquids out of such areas. All waterproofing must be performed or supervised by Landlord's required waterproofing consultant and Tenant shall pay all costs directly to such waterproofing consultant.
  15. Installation of thermal and acoustical insulation within the Premises as required to comply with the following provisions:
    - a. Installation of thermal insulation shall meet with the requirements of all governing codes and jurisdictional authorities, as may be required to complete the Premises for Tenant's occupancy.
    - b. Installation of acoustical insulation or sound dampening material shall meet with the requirements of all governing codes and Landlord's criteria. At a minimum, Tenant shall install sufficient acoustical insulation to prevent the transmission of any sound or noise in excess of 40 decibels (db) from the Premises. Tenant agrees that the 40 db sound level may be verified by Landlord through the use of a portable sound level meter, and in the event Landlord determines that Tenant is transmitting sound or noise outside the Premises in excess of the 40 db level, Tenant will immediately resolve this condition in a manner approved by Landlord.
    - c. Those premises located below or immediately adjacent to a theater shall be subject to and comply with any noise limits and mitigation requirements provided by Landlord.
  16. 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 all governing codes, and the requirements of the Landlord and all jurisdictional authorities.
- B. Design, fabrication and installation of Tenant's sign(s) and menu boards (if applicable) shall be performed by Tenant as a part of Tenant's Work and shall comply with the following provisions:
1. Tenant's sign(s) shall be subject to the prior approval of Landlord, and where applicable, the prior approval of all jurisdictional authorities.
  2. Tenant shall submit all required plans, details and specifications necessary to obtain Landlord's approval for Tenant's sign(s), prior to fabrication and installation of the sign(s).
  3. Tenant's sign(s) shall be designed and constructed to comply with the standard tenant sign criteria established by Landlord for the Shopping Center.
- C. Installation and completion of utility services for the Premises and connection to the utility facilities provided by Landlord shall be performed by Tenant as a part of Tenant's Work in accordance with the requirements set forth in the Tenant Design Criteria Manual and the following provisions:
1. Tenant's main electrical service shall be of a type and capacity set forth in the Tenant Design Criteria Manual. If Tenant requires electrical service capacity in excess of that provided by Landlord, all costs of providing such increased service shall be paid by Tenant. Tenant shall:
    - a. Make application, where applicable, for metered electrical service to the Premises from the serving utility authority and comply with all utility authority requirements for such metered service, including the procurement and installation of all required meters, meter bases and current transformers, if applicable.
    - b. As may be required, provide all required electrical system installations within the remote electrical service area provided by Landlord in accordance with all applicable codes, ordinances and as specified in the Tenant Design Criteria Manual.
    - c. As may be required, provide all required conduit and conductor installations to complete Tenant's main electrical service to and within the Premises.



- d. Provide all required electrical system installations within the Premises in accordance with all applicable codes, ordinances and as specified in the Tenant Design Criteria Manual.
2. Tenant's telephone service will be available from the main terminal board located outside the Premises and provided by the serving telephone company. Tenant shall apply for telephone service and system wiring to and within the Premises as required by the serving telephone company and comply with all their requirements and regulations.
  3. Tenant shall install a fire/smoke detection system within the Premises. Such detection system shall include all required wiring, conduit, devices, equipment and controls, and shall comply with all system requirements set forth by Landlord and all jurisdictional authorities. Where applicable, Tenant shall use Fire-Life Safety contractor as specified by Landlord for certain portions of Tenant's Work, including, without limitation, final programming and connection to Landlord's fire alarm system; provided, however, the cost of said contractor specified by Landlord shall be reasonable and competitive.
  4. 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.
  5. Tenant shall make all required plumbing system installations to serve the Premises. Where provided, Tenant shall connect to, and extend from, the sanitary sewer and domestic water service mains provided by Landlord for the Premises. All such installations shall comply with the following provisions:
    - a. Tenant shall make application for metered water service as required.
    - b. Tenant shall procure and install a water meter and pressure regulating valve as required.
    - c. Tenant shall provide and install toilet facilities within the Premises in accordance with governing codes and Landlord's standard criteria. Where required by code, Tenant shall provide and install at least one (1) toilet room facility for use by Tenant's employees.
    - d. Tenant shall install grease and hair traps as required to comply with all governing codes, and the requirements of the Landlord and all jurisdictional authorities. Wherever possible, such traps are to be located within the Premises.
  6. Tenants located within the food use areas of the Shopping Center shall be required to install a grease trap/collection system within the Premises. The system may be either above-ground or semi-recessed; provided that in either event access for maintenance of the grease trap/collection system shall be through the Premises only.  
  
 Restaurant tenants shall be required to furnish and install a grease interceptor/collection system outside of the Premises in a location determined by Landlord.
  7. Tenant shall install a branch piped fire sprinkler system within the Premises. Tenant shall connect to Landlord's fire sprinkler supply main, or branch, and extend piping for branches, drops and heads as required to complete the fire sprinkler system within the Premises in accordance with Landlord's insurance carrier requirements, the requirements of the local fire marshal, all governing building codes, applicable NFPA standards and the Tenant Design Criteria Manual. Tenant sprinkler system shop drawings must be submitted for review and approval by all local authorities having jurisdiction prior to installation of the sprinkler system. Final connection to Landlord's fire sprinkler supply main shall not be made until the entire system within the Premises is completed, pressure tested and ready for service.
  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 approved in writing by Landlord. The design and installation of the HVAC system shall be in accordance with the provisions of the Tenant Design Criteria Manual.
  9. Tenant shall provide, as required, all exhaust air systems, including air filtration systems (electrostatic precipitators), to serve the Premises in accordance with the Standards, including the provisions of the Tenant Design Criteria Manual and Landlord's base building drawings.
  10. In the event Tenant desires the use of a natural gas service, such service shall be subject to Landlord's prior approval. If such service is approved by Landlord, Tenant shall provide all required natural gas piping valves, regulators and meters from the central manifold and

meter area provided by Landlord outside the Premises, from which Tenant's natural gas service will be available, to a location within the Premises. All pipe routing, earthquake valves and installation details shall be in accordance with all applicable governing codes and subject to Landlord's prior approval.

11. 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 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.
- D. Tenant's Work shall include the procurement of all necessary permits, licenses, variances and utility services required to facilitate Tenant's construction and occupancy of the Premises, and the payment of any fees and taxes associated with such permits, licenses, variances and utility services, as may be required by public authorities and serving utility companies. Tenant shall make all necessary applications, provide all necessary information, pay all required monies and take all necessary actions to obtain such items from the applicable jurisdictional authorities and serving utility companies.
- E. Tenant shall not use any materials in connection with Tenant's Work that contain asbestos or other materials or substances that are hazardous or toxic. In the event that Tenant introduces or allows to be introduced in the Premises any asbestos containing material or other material or substance that is now or may hereafter be defined as hazardous or toxic or is otherwise regulated as a material or substance posing a potential health threat to persons, then prior to the expiration or earlier termination of this Lease or as required by applicable federal, state or local laws, rules or regulations, Tenant shall, at Tenant's sole cost and expense, remove any such materials or substances in accordance with all applicable federal, state or local laws, rules or regulations and in the manner that Landlord may direct which may include the use of contractors and/or consultants specified by Landlord.
- F. Tenant's plans and specifications must be designed to accommodate and provide access to any ducts, pipes, or conduits installed within the Premises that serve the Shopping Center or any part thereof, including, but not limited to, the premises of any occupant. If there is a conflict and relocation of any mechanical or electrical component is necessary, Tenant must submit to Landlord for approval, all plans, details and specifications required by Landlord for such relocation. If approved, the complete relocation shall be performed as directed by Landlord, and at Tenant's sole cost and expense.
- G. Tenant may be required to provide additional items of work or services as a part of Tenant's Work. If applicable, such work or services shall be provided in accordance with the provisions of the Tenant Design Criteria Manual.

## VI. PLANS

- A. Landlord shall furnish to Tenant or, at Tenant's direction, to Tenant's agent, certain design and construction information pertinent to the Premises, including, but not limited to, one (1) copy of the Tenant Design Criteria Manual, one (1) electronic copy of Landlord's base building drawings, if available, and one (1) lease outline drawing (Exhibit A-2).
- B. Tenant shall pay all fees of its Architect and Engineers. In addition, Tenant shall pay to Landlord upon receipt of a statement therefor for Plan Coordination and Administrative Services a fee based on the Floor Area of the Premises at the rate set forth on the Data Sheet.
- 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 Manual. Tenant's submittal shall include, but not be limited to, the following:
  1. One (1) sample board of Tenant's final storefront and 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 Manual 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 Shopping Center 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 be insured as required under the provisions of this Lease. By this reference, Tenant agrees not to act as its own general contractor.
- B. Each contractor and subcontractor participating in the construction of Tenant's Work shall be duly licensed, and each contract and subcontract shall contain the guaranty of the contractor or subcontractor that the portion of Tenant's Work covered thereby will be free from any and all defects in workmanship and materials for the period of time which customarily applies in good contracting practices, but in no event less than one (1) year after the completion of Tenant's Work. The aforesaid guaranty shall include the obligations to repair or replace in a first-class and workmanlike manner, and without any additional charge, any and all of Tenant's Work done or furnished by said contractor or subcontractor, or by any of his subcontractors, employees or agents, which shall be or become defective because of faulty materials or workmanship within the period covered by such guaranty (and of which notice is given to such contractor or subcontractor within such period); and the correction, as aforesaid, of any such matter shall include, without any additional charge therefor, all expenses and damages in connection with the removal, replacement or repair in a first-class manner of any other part of Tenant's Work which may be damaged or disturbed thereby. All warranties or guarantees as to materials or workmanship on or with respect to Tenant's Work shall be written so that they shall inure to the benefit of Landlord and Tenant as their respective interests may appear and can be directly enforced by either, and Tenant shall give to Landlord any assignments or other assurance necessary to effectuate the same.
- C. Tenant shall submit to Landlord at least five (5) days prior to the commencement of construction the following information:
  1. The name and address of the General Contractor Tenant intends to engage for the construction of the Premises, including names and telephone numbers of on-site and off-site representatives.
  2. The names and addresses of Tenant's mechanical, electrical and plumbing subcontractors, including names and telephone numbers of on-site and off-site representatives.
  3. A schedule setting forth key dates relating to Tenant's construction.
  4. Copies of insurance certificates required by Article IX below.
- D. The following provisions with respect to construction procedures and materials shall apply to Tenant's Work at Tenant's expense:
  1. Tenant and Tenant's General Contractor participating in Tenant's Work shall comply with the following:

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

- c. Tenant will comply with the instructions of Landlord or Landlord's General Contractor for the purpose of avoiding, ending and/or minimizing labor disputes. Upon notice from Landlord or Landlord's General Contractor, Tenant will take such action, including the prosecution of legal proceedings in court or with agencies such as the National Labor Relations Board, as Landlord or Landlord's General Contractor shall deem appropriate.
  - d. Intentionally Deleted.
  - e. **For Westfield San Francisco Centre only:** Westfield San Francisco Centre is a union site. General contractors are required to be signatory to the local carpenters union. All subcontractors and laborers must be signatory to their respective local trade unions.
- E. Intentionally deleted.
- F. During construction Tenant's General Contractor shall be required to comply with the following:
- 1. The work of Tenant's General Contractor and subcontractors shall be subject to inspection by Landlord and its supervisory personnel. Any defects and/or deviations from the Final Working Drawings shall be rectified by Tenant's General Contractor and/or subcontractors at no expense to Landlord.
  - 2. Unless otherwise approved by Landlord, Tenant shall cause its General Contractor and/or subcontractors to limit their access to the Premises via the rear entrances and no access will be allowed from or to the Shopping Center Common Areas unless no rear access is available.
  - 3. Repair of damage caused to Landlord's Work by Tenant's General Contractor or subcontractors shall be at Tenant's expense. Landlord will carry out necessary repairs without notice and Tenant shall pay for the cost of such repairs upon demand.
  - 4. Tenant's General Contractor will be required to comply with all construction rules and regulations of the Shopping Center, 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 fully refundable deposits with and/or payments in amount(s) set forth in the Data Sheet to Landlord in accordance with such requirements, less any amounts due to Landlord for damages or unpaid charges for services provided by Landlord. Notwithstanding such requirements, Tenant shall indemnify and protect Landlord with respect to any breach of such construction rules and regulations by Tenant's General Contractor or the failure of Tenant's General Contractor to make any required deposits or payments in amount(s) set forth in the Data Sheet.
- G. Landlord shall have the right to perform, on behalf of and for the account of Tenant, which shall be subject to reimbursement of the cost thereof by Tenant, any and all of Tenant's Work which Landlord determines in its sole discretion should be performed immediately and on an emergency basis for the best interest of the project, including without limitation, work which pertains to structural components, mechanical, sprinkler and general utility systems, roofing and removal of unduly accumulated construction material and debris. The cost of such Tenant's Work carried out by Landlord on behalf of Tenant shall be the cost paid by Landlord and based on the cost of similar work and to include any loading for overtime or any other loading as a result of carrying out emergency work. Whenever Landlord shall have elected to perform any or all of Tenant's Work, whether pursuant to this Paragraph G or any other provision of the Lease, Landlord may revoke such election by written notice to Tenant. In such event, full responsibility for such work shall revert to Tenant.

Except for an emergency, Landlord shall not perform any work on behalf or for the account of Tenant until Landlord has notified Tenant of the need for such work and Tenant fails to perform such work within ten (10) days.

## VIII. COMPLETION OF CONSTRUCTION

*(remainder of page intentionally left blank)*

A. Tenant shall not be permitted to, and shall not, open for business in the Premises until the "Opening Requirements" set forth below are met. In order that Landlord shall have assurance that the Premises shall be in a good and safe condition, in compliance with all laws, that adequate insurance has been obtained, that the Premises has been constructed in accordance with the Final Working Drawings and that Tenant's obligations under the Lease have been performed, the following requirements (the "Opening Requirements") shall be satisfied:

1. At least five (5) days prior to the opening of the Premises for business, Tenant shall deliver to Landlord (a) insurance certificates evidencing Tenant's compliance with Article XI of the Lease; (b) a permanent certificate of occupancy or its equivalent; and (c) all evidence typically required in the jurisdiction where the Shopping Center is located to provide evidence of compliance with all applicable building and fire codes and all other government requirements.
2. Tenant shall give Landlord at least five (5) days' notice of the date of completion of Tenant's Work in the Premises, and Landlord shall have inspected the Premises to determine whether Tenant's Work is complete in accordance with the requirements of the Lease and Landlord shall have approved all such work. 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.
3. Tenant shall pay Landlord all Minimum Annual Rental and Additional Rent which has then accrued under the Lease.

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

B. Within fifteen (15) days after completion of Tenant's Work, Tenant shall deliver to Landlord the following:

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

Notwithstanding anything to the contrary contained in the Lease or Exhibit B, in the event Tenant is required to submit the same affidavit(s), statement(s), waiver of lien document(s) and/or certificate(s) pursuant to the Lease, Exhibit B and the Addendum to Exhibit B, Tenant's initial delivery of said required affidavit(s), statement(s), waiver of lien document(s), certificate(s) shall be deemed to satisfy the requirements of the Lease, Exhibit and the Exhibit B-1 so long as said documents are sent via USPS Certified Mail.

## IX. INSURANCE

A. Prior to performing any Tenant's Work, Tenant shall procure and maintain, or shall cause Tenant's General Contractor to procure and maintain, during all periods of construction and fixturing work within the Premises, all of the insurance policies required in the amounts and/or limits as set forth below (hereinafter referred to as "Required Insurance"). Tenant or Tenant's General Contractor shall not be permitted to commence any work until all Required Insurance has been obtained and certificates evidencing such insurance have been delivered to Landlord. In the event Tenant's construction and fixturing work within the Premises is identified as "cosmetic" or "partial" in nature, then after the Commencement Date, Tenant may make a written request of Landlord to lower the

below-referenced limits of the Required Insurance, and Landlord may reduce the Required Insurance limits, which reduction shall be based upon Landlord criteria and determined in Landlord's sole discretion.

- B. Tenant's General Contractor's and Subcontractor's Required Minimum Coverages and Limits to Liability.
1. Worker's Compensation, as required by State law, and including Employer's Liability Insurance with a limit of not less than amounts set forth on the Data Sheet per each accident, per each employee by disease, with a policy aggregate by disease in the amount set forth on the Data Sheet; 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 the amount set forth on the Data Sheet 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 set forth on the Data Sheet 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 the amount set forth on the Data Sheet combined single limit, bodily injury and property damage.
- D. Tenant's Builder's Risk Insurance - Completed Value Builders' Risk Material Damage Insurance policy covering the work to be performed for Tenant in the Premises as it relates to the building within which the Premises is located. The policy shall include as insureds Tenant, its General Contractor, all subcontractors and Landlord, as their interests may appear. The amount of insurance to be provided shall be at the percentage set forth on the Data Sheet of the replacement cost.
- E. All such insurance policies required under this Exhibit, except as noted above, shall include Landlord, its Architect, its Consultant, its General Contractor, subcontractors, and parties set forth in the Lease and any other parties designated by Landlord from time to time as additional insured entities, except the Worker's Compensation Insurance; further provided, said Worker's Compensation Insurance shall contain an endorsement waiving all rights of subrogation against Landlord, its Architect, its Consultant, its General Contractor and subcontractors.
- F. Certificates of insurance shall provide that no reduction in the amounts or limits of liability or cancellation of such insurance coverage shall be undertaken without thirty (30) days prior written notice to Landlord.
- G. The insurance required under this Exhibit shall be in addition to the insurance required to be procured by Tenant pursuant to the Lease.

END

**EXHIBIT C**

**ADDITIONAL INSURED ENTITIES**

**WESTFIELD SAN FRANCISCO CENTRE**

S.F. Centre Limited Partnership, Westfield America, Inc., Westfield America Limited Partnership, Westfield Property Management LLC, and any and all of their respective parents, partners, subsidiaries and affiliates, assigns, employees, agents, officers and representatives, together with any mortgagee from time to time of the Landlord's interest, are named as additional insured, as their interests may appear.



EXHIBIT D

WESTFIELD SAN FRANCISCO CENTRE

VENTILATING AND AIR CONDITIONING/COOLING TOWER SYSTEM CHARGE

The Exhibit D is hereby attached to and made a part of Lease between Landlord and Tenant. Tenant shall be responsible to pay a Ventilating and Air Conditioning Charge and, as may be applicable, a Cooling Tower System Charge as set forth below:

A. Ventilating and Air Conditioning Charge

1. As Additional Rent, Tenant shall pay to Landlord an annual ventilating and air conditioning charge (the "Annual VAC Charge"), payable in twelve (12) equal consecutive monthly installments at the time and in the manner provided in the Lease for the payment of Minimum Annual Rental. The Annual VAC Charge shall be calculated as follows:

- (a) The "Tenant Premises Area" shall be the Floor Area of the Premises expressed in square feet as set forth in the Data Sheet.
- (b) The unit rate for ventilating and air conditioning ("Unit Rate") shall be taken from the ventilating and air conditioning charge curve attached hereto. The Unit Rate shall be subject to adjustment by Landlord in accordance with subsection A.2 hereinbelow.
- (c) The Annual VAC Charge shall be determined by multiplying the Unit Rate by the Tenant Premises Area.

2. Landlord may make adjustments to the Unit Rate and correspondingly the Annual VAC Charge at any time and from time to time as provided herein:

- (a) Design Load Adjustment. The Unit Rate shown on the attached curve is predicated on a maximum internal heat-producing load of 4.5 watts per square foot for lighting and 1.5 watts per square foot for people and other internal loads. Should Landlord determine (after review of Tenant's Working Drawings and Specifications and/or inspection of the completed Premises for the purpose of verification of actual lighting and other heat-producing devices therein) that Tenant's actual installation exceeds such loads, the Unit Rate and correspondingly the Annual VAC Charge will be increased by ten percent (10%) for each watt per square foot, or fraction thereof, in excess of 6.0 watts per square foot for people and other internal loads.
- (b) Excess Air Adjustment. If Tenant requests and Landlord approves conditioned air in excess of 1.0 cubic feet per minute ("CFM") for each 6.0 watts per square foot for people and other internal loads, the Unit Rate will be increased as follows:

$$\text{Increase} = [\text{Initial Unit Rate: } \$0.70] \times 0.75 \times \frac{\text{CFM}}{\text{sq.ft.}} - \frac{\text{Watts}}{\text{sq. ft.}} \times \frac{1}{6}$$

- (c) Operating Expense Adjustment. The Unit Rate (including any design load adjustment and excess air adjustment) may be further increased from time to time by Landlord as follows:

(i) Increase = [Initial Unit Rate: \$0.70] X 0.75 X

The percentage increase in the rate for electrical power per kilowatt hour charged to Landlord from June 2003 to the effective date of adjustment

$$(ii) \quad \text{Increase} = [\text{Initial Unit Rate:}\$0.70] \times 0.25 \times \text{The percentage increase in the "Index" (as defined herein) to the Index for the month of the effective date of adjustment.}$$

Landlord shall have the right to adjust the Unit Rate and correspondingly the Annual VAC Charge retroactively and invoice Tenant for adjusted charges attributable to periods prior to the effective date of adjustment. The Unit Rate and correspondingly the Annual VAC Charge as from time to time adjusted shall be applicable until further adjusted by Landlord. All adjustments shall be made at such times and in such manner as Landlord may in its sole discretion determine. In no event shall the Unit Rate and the Annual VAC Charge be reduced below the rates set forth on the curve attached hereto.

**B. Cooling Tower System Charge**

1. For those restaurant, other food vending operators and other retailers with a water-cooled air-conditioning unit, Landlord may, at its election, charge Tenant, in addition to the Annual VAC Charge, a Central Cooling Tower system charge ("CT Charge"), calculated as follows:

- (a) The "Tenant Premises Area" shall be the Floor Area of the Premises expressed in square feet as set forth in the Data Sheet.
- (b) The unit rate for the CT Charge shall be taken from the Cooling Tower System Charge curve attached hereto ("CT Charge per Ton"). The CT Charge per Ton shall be subject to adjustment by Landlord in accordance with subsection B.2 hereinbelow.
- (c) The CT Charge shall be determined by multiplying the CT Charge per Ton by the Tenant Premises Area.

Tenant shall pay the CT Charge in the same manner as provided in A.1 above for the Annual VAC Charge.

2. Landlord may make adjustments to the CT Charge per Ton and correspondingly the CT Charge at any time and from time to time as follows:

- (a) **Duration Load Adjustment.** The CT Charge per Ton shown on the attached curve is predicated on the operation of the cooling tower during customary business hours established for tenants of the Shopping Center using the cooling tower. Landlord may increase Tenant's CT Charge per Ton, and correspondingly the CT Charge, if the Premises is open during times in addition to such customary hours. Such increase shall be based on the hours Tenant operates the Premises as compared to the customary business hours established for tenants of the Shopping Center using the cooling tower.
- (b) **Excess Air Adjustment.** If Tenant requests and Landlord approves conditioned air in excess of 1.0 cubic feet per minute ("CFM") for each 6.0 watts per square foot for people and other internal loads, the CT Charge Per Ton will be increased as follows:

$$\text{Increase} = [\text{CT Charge Per Ton:}\$15.00] \times 0.75 \times \frac{\text{CFM}}{\text{sq. ft.}} - \frac{\text{Watts}}{\text{sq.ft.}} \times \frac{1}{6}$$

- (c) **Operating Expense Adjustment.** The CT Charge per Ton (including any Duration Load Adjustment and Excess Air Adjustment) may be further increased from time to time by Landlord as follows:

(i) Increase = [CT Charge per Ton:\$15.00] X 0.75 X

The percentage increase in the rate for electrical power per kilowatt hour charged to Landlord from August 1988 to the effective date of adjustment.

(ii) Increase = [CT Charge Per Ton:\$15.00] X 0.25 X

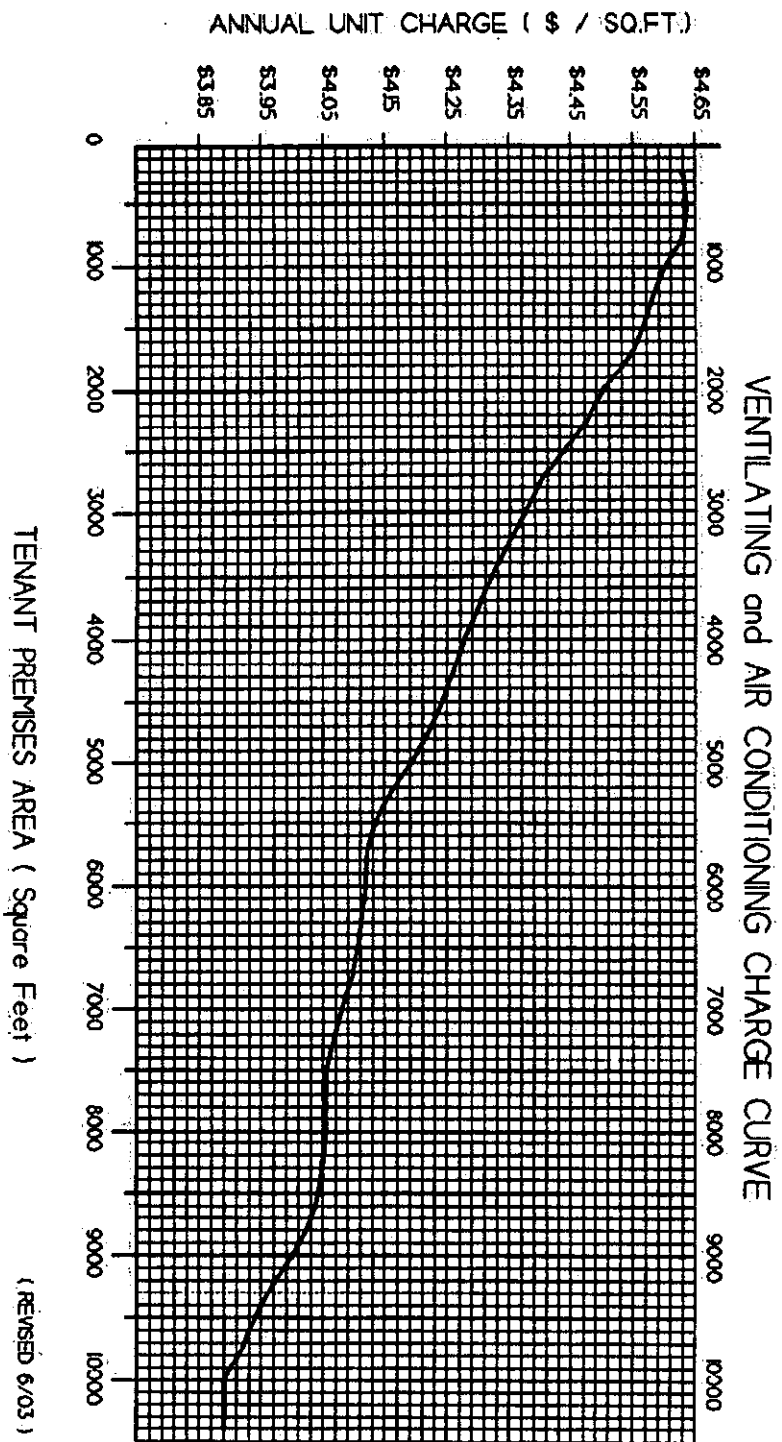
The percentage increase in the "Index" (as defined herein) to the Index for the month of the effective date of adjustment.

Landlord shall have the right to adjust the CT Charge per Ton and correspondingly the CT Charge retroactively and invoice Tenant for adjusted charges attributable to periods prior to the effective date of adjustment. The CT Charge per Ton and correspondingly the CT Charge as from time to time adjusted shall be applicable until further adjusted by Landlord. All adjustments shall be made at such times and in such manner as Landlord may in its sole discretion determine. In no event shall the CT Charge per Ton and the CT Charge be reduced below the rates set forth on the curve attached hereto.

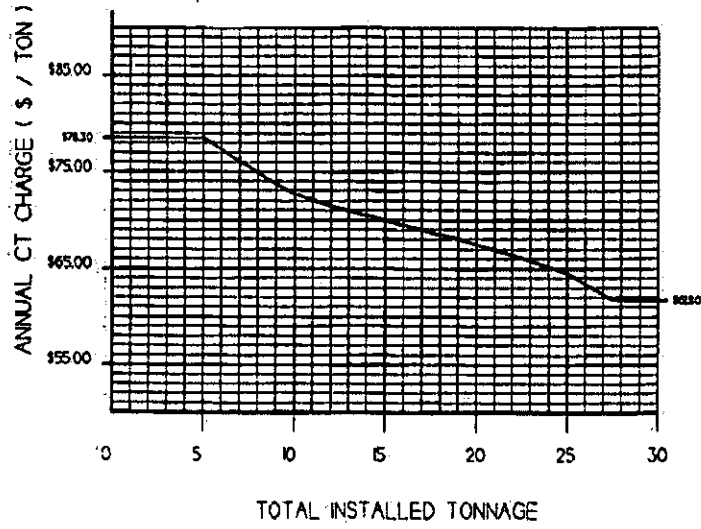
C. Index

The term "Index" shall mean the Consumer Price Index For All Urban Consumers (1982 84=100), U.S. City Average, All Items, published by the Bureau of Labor Statistics of the U.S. Department of Labor. In the event such Index is not published by the Bureau of Labor Statistics or another governmental agency at any time during the Term, the most closely comparable statistics on the purchasing power of the consumer dollar as published by a responsible financial authority and as selected by Landlord shall be used for making any computation under this Agreement otherwise to be made on the basis of the Index.

SAN FRANCISCO CENTRE



SAN FRANCISCO CENTRE  
COOLING TOWER SYSTEM CHARGE CURVE



End

**EXHIBIT "E"**

**DIGITAL MEDIA PROGRAM**

The digital and other technological initiatives of Landlord designed to increase consumer visits and sales and otherwise enhance the overall consumer experience are referred to herein as the "Digital Media Program." Tenant shall not be required to participate in Landlord's Digital Media Program, however, at such time as Tenant has had an opportunity to review and understand the specific components of such program Tenant will cooperate with Landlord to support such component(s) but only to the extent such cooperation (i) does not violate or conflict with Tenant's non-disclosure or other privacy agreements existing as of the date of the Lease, and (ii) will not require Tenant to make any material modifications to its existing technology solely to comply with Landlord's Digital Media Program. In no event shall Tenant's election to not participate or otherwise cooperate in any, or all, component(s) of Landlord's Digital Media Program be deemed a default under this Lease.