

**Lease**

**San Bernardino Economic  
Development Corporation,  
as Landlord**

**and**

**Regal Cinemas, Inc.,  
as Tenant**

**San Bernardino, California**

**Dated the 4th day of January, 2012**

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<u>Exhibit I</u> - COMMON AREAS WORK SCHEDULE [Section 3.01];	
<u>Exhibit J</u> - FORMER THEATRE SPACE WORK SCHEDULE [Section 3.01]; and	
<u>Exhibit K</u> - DCIP EQUIPMENT [Section 21.01].	

## LEASE

This Lease (the "Lease") is made and entered into as of the 4th day of January, 2012 (the "Effective Date"), by and between **SAN BERNARDINO ECONOMIC DEVELOPMENT CORPORATION**, a nonprofit public benefit corporation ("LANDLORD"), and **REGAL CINEMAS, INC.**, a Tennessee corporation ("TENANT").

**LANDLORD** and **TENANT** have the following notice addresses on the Effective Date:

**LANDLORD:**

San Bernardino Economic Development  
Corporation  
201 North E Street, Suite 301  
San Bernardino, California 92401  
Attn: Emil A. Marzullo  
Telephone: 909-663-1044  
Facsimile: 909-888-9413

**TENANT:**

Regal Cinemas, Inc.  
7132 Regal Lane  
Knoxville, Tennessee 37918  
Attn: Real Estate Department  
Telephone: 865-925-9619  
Facsimile: 865-925-9754

With a copy to:

Herbert S. Sanger, Jr., Esq.  
Wagner, Myers & Sanger, P.C.  
1801 First Tennessee Plaza  
Knoxville, Tennessee 37929  
Telephone: 865-525-4600  
Facsimile: 865-524-5731

## **ARTICLE 1: INTRODUCTORY PROVISIONS**

### **Section 1.01: FUNDAMENTAL LEASE PROVISIONS**

The following fundamental lease provisions are presented in this Section to facilitate convenient reference by the parties, subject to further definition and elaboration in the respective referenced sections or elsewhere in this Lease.

(a) **Rent Term:** Ten (10) Rent Years, with four (4) successive options to extend for five (5) Rent Years each, followed by one (1) option to extend for four (4) Rent Years, and subject to earlier termination as provided by this Lease. (Sections 4.01 and 4.03)

(b) **Premises:** A multiple-auditorium motion picture theatre building located as part of the Theatre Square in downtown San Bernardino, California, with the Premises (also referred to as the "Theatre") to be remodeled as provided in this Lease so as to contain approximately 70,200 gross square feet and approximately 65,791 leaseable square feet of main floor area, with between approximately 3,000 and 3,400 auditorium seats within approximately fourteen (14) auditoriums. The Premises includes any fixtures and equipment owned by **LANDLORD** and existing in the Theatre as of the Rent Commencement Date ("**Landlord's Equipment**"), provided that **TENANT** shall have the right to remove such Landlord's Equipment as part of Tenant's Work and have the right to replace such Landlord's Equipment during the Rent Term. (Section 1.03(j))

(c) **GLA of the Premises:** Approximately 65,791 square feet. (Section 1.05)

(d) **Security Deposit:** None. (Section 2.03)

(e) **Rent Commencement Date:** The earlier of (a) the day on which **TENANT** opens for business in the Premises to the general public with all required use and occupancy permits (such day not including up to five (5) days devoted solely to grand opening events), or (b) subject to satisfaction of the Initial Development Requirements, Ongoing Development Requirements and the Title Contingency, the day that is two hundred seventy (270) days after the Delivery Date, provided that such period of two hundred seventy (270) days shall be extended upon the occurrence of any Force Majeure Event. (Section 5.02)

(f) **Base Rent:** The following amounts per Rent Year:  
Rent Years 1 through 10: \$850,000.00 per year, \$70,833.33 per month

Rent Years 11 through 15:	\$920,250.00 per year, \$76,687.50 per month
Rent Years 16 through 20:	\$990,500.00 per year, \$82,541.67 per month
Rent Years 21 through 25:	\$1,060,750.00 per year, \$88,395.83 per month
Rent Years 26 through 30:	\$1,131,000.00 per year, \$94,250.00 per month
Rent Years 31 through 34:	\$1,201,250.00 per year, \$100,104.17 per month.

(Section 5.03)

(g) **Percentage Rent:** Fifteen Percent (15%) of Gross Sales per Rent Year, payable only to the extent Fifteen Percent (15%) of Gross Sales per Rent Year exceeds the Base Rent payable for such Rent Year. (Section 5.04)

(h) **Additional Rent:** None. Base Rent and Percentage Rent shall, together, be an all-in, gross rent. However, Special Rent may be payable in lieu of Base Rent and Percentage Rent, as provided in Section 5.03(c) and Section 5.03(d). (Section 5.01)

(i) **Permitted Use:** The TENANT shall use the Premises solely for the operation of a first-class motion picture theatre, including the following: the operation of a video arcade with game machines for theatre patrons; the sale of popcorn, drinks, candy, specialty café items, and other foods and beverages sold in motion picture theatres; the sale and rental to theatre patrons of retail items, such as video cassettes, video discs, records, compact discs, dvds, books, magazines, toys and novelties; the making available of facilities and devices to further the operation of the Premises, including, without limitation, satellite dish transmission and reception facilities, telecommunications facilities and services, change machines, vending machines, automated teller machines and automated ticketing machines; depiction of advertising; meeting rooms; style shows; childcare services; live performances; presentations of concerts, sporting events, and simulcast events via satellite, hard lines and recorded transmissions; and sit-down restaurant or café use including, in accordance with applicable law, the sale of alcoholic beverages. The Permitted Use shall include such other components as may become appropriate due to changes in the circumstances of the motion picture theatre business. The Permitted Use is further subject to the provision that the Theatre shall not be used for display, presentation or advertisement of "X" rated or pornographic movies or presentations. (Section 8.01)

(j) **Landlord's Maintenance and Repair:** All structural components of the Theatre, including roof and roofing (including roof membrane); exterior walls, including painting and exterior lights on the Theatre (except the Building Signs and lights that are part of the Building Signs); the site for the Theatre, and all related site amenities; the HVAC system serving the Theatre, including to all HVAC units located on the ground or the Theatre's roof and all ductwork and thermostats that are a part of the HVAC system; all plumbing and utility (including gas, electrical, water, sanitary sewer and storm drainage) lines, conduits and facilities serving the Theatre other than minor maintenance and repair which is TENANT's responsibility pursuant to this Lease; any vertical transpiration serving the Premises; and all other maintenance and repairs except such maintenance and repairs for which TENANT is expressly responsible pursuant to this Lease. (Section 13.01)

(k) **Tenant's Maintenance and Repair:** Interior, non-structural elements of the Theatre, including general cleaning within the Theatre and maintaining the cleanliness, glass and doors of the Theatre storefront; Tenant's Equipment; Building Signs, including the lights that are part of the Building Signs; and minor maintenance and repair of plumbing (such as clearing stoppages in pipes that originate inside the Premises and can be cleared from within the Premises, and repair and replacement of faucets within the Premises) and utility (such as repair and replacement of light fixtures, bulbs and ballasts within the Premises) pipes and lines located within the interior surface of the walls, ceilings and floors of the Theatre (but not between the interior and exterior walls, ceilings and floors). (Section 13.02)

## Section 1.02: REFERENCES AND CONFLICTS

References appearing in the Fundamental Lease Provisions (set forth in Section 1.01) are to designate some of the other places in this Lease where additional provisions appear. Each reference in this Lease to any of the Fundamental Lease Provisions of this Lease shall be construed to incorporate all of the terms of both those provided in the Fundamental Lease Provisions and elsewhere in this Lease applicable thereto. If there is any conflict between any of

the Fundamental Lease Provisions and any other provisions of this Lease, the other provisions of this Lease shall control.

### **Section 1.03: GENERAL DEFINITIONS**

(a) The term “**Center**” means the “Theatre Square” entertainment and retail center in downtown San Bernardino, California, located east of Interstate 215 on 4th Street and E Street. The Center has been developed on the land owned by **LANDLORD** that is described on Exhibit A (the “**Land**”). A site plan showing the configuration of the Center is shown on Exhibit B (the “**Site Plan**”), and the Site Plan shows, without limitation, the location and configuration of the Premises, the Parking Retention Areas and the other Common Areas of the Center.

(b) The term “**Common Areas**” means all areas, facilities and improvements operated or provided at or in connection with the Center and the Parking Retention Areas from time to time for the non-exclusive common use or enjoyment of more than one lessee or occupant of the Center (including without limitation **TENANT**) and their employees, customers, clients, guests, patrons and invitees. The Common Areas include, without limitation: (1) automobile parking areas (including without limitation those within the Parking Retention Areas (defined in Section 1.07) and related striping, curbing and signage); (2) ingress and egress ways which connect the Center and Parking Retention Areas to public streets, privately owned streets which extend through the Center, driveways, walkways and plazas or open space areas; (3) landscaping, plaza areas, park areas and water features; (4) means of vertical transportation, which may include without limitation handicap accessible ramps, stairways, escalators and elevators; and (5) improvements, equipment, vehicles and facilities utilized to operate any such areas, such as lighting, irrigation, storm water drainage, storm water management, fire response equipment and systems, security systems, and methane or other environmental monitoring and remediation systems. All areas, facilities and improvements located outside the exterior walls of the Theatre that is not within other leaseable space within the Center, including without limitation entrance areas, sidewalks, landscaping and curbing immediately adjacent to the Theatre, shall be deemed part of the Common Areas and not part of the Theatre. The contents, location and configuration of the Common Areas, once complete, shall be generally as shown on the Site Plan; provided, however, that the Common Areas of the Center may not be located precisely within the areas shown on the Site Plan, as **LANDLORD** may make changes to the Center as provided in Section 1.06.

(c) The term “**Development Agreement**” means that certain Development Agreement between **TENANT** and the City of San Bernardino, California, a municipal corporation (the “**City**”) dated on or about the Effective Date. **LANDLORD** and the San Bernardino Economic Development Corporation, a California non-profit corporation (“**SBEDC**”), also joined in the execution of the Development Agreement. The Development Agreement has, or shall be, placed of record by the City.

(d) The term “**Force Majeure Event**” means any matter beyond the reasonable control of **LANDLORD** or **TENANT**, as the case may be, including, but not limited to, interference by governmental authorities, civil disturbance, strikes, lockouts, labor disputes, inability to procure labor or materials, failure of electric power, restrictive governmental laws or regulations, governmental intervention, riots, insurrection, war, fire, casualty, severe weather, acts of terrorism, and acts of God, subject to the provision that such party’s lack of funds or the unavailability of a particular contractor or personnel shall not be deemed a Force Majeure Event. The party affected by a Force Majeure Event shall give notice to the other party of the occurrence of such Force Majeure Event within thirty (30) days after the occurrence of the Force Majeure Event; provided, however, that in the event the non-affected party has actual notice of the Force Majeure Event, delivery of specific notice by the affected party shall not be required.

(e) The term “**Former Theatre Space**” means the two areas immediately adjacent to the storefront of the Premises, which Former Theatre Space was comprising six (6) auditoriums within the then twenty (20) auditorium motion picture theatre existing in the Center prior to the Effective Date. The location of the Former Theatre Space is shown on the Site Plan.

(f) The term “**GLA of the Center**” means the sum of: (1) total square footage of the floor area of all of the leaseable spaces of the Center (but not including the square footage of the Premises) as measured from the outside of the exterior walls and doors (or the fences or

barricade in the case of leaseable or commercially usable areas enclosed by fence or similar barricade) and from the center of any interior demising walls, not including any mezzanines or balconies which are not used to display stock for sale and not otherwise open to customers, clients, guests, patrons or the public, and not including any areas and space defined herein as part of Common Areas; plus (2) the GLA of the Premises. From time to time during the Rent Term, **LANDLORD** may give **TENANT** written notice of the GLA of the Center, at a given time or for a given period of time, as such GLA of the Center may be revised because of expansions or other alterations of buildings within the Center.

(g) The term “**GLA of the Premises**” means the total square footage of the main level footprint of the Premises as measured from the outside of exterior walls and doors and from the center of any interior demising walls, but not including (i) areas occupied by columns, escalators, elevators, stairways and emergency exit corridors; (ii) internal mezzanines (whether or not open to the general public), lobby areas necessary as a means of secondary access to larger auditoriums, the Theatre’s upper level support areas, and other areas located on any upper level of the Theatre; (iii) any cold weather vestibule (if such area is reasonably determined by **TENANT** to be necessary) and enclosed exit corridors and staircases; and (iv) any trash enclosure, trash compactor area or trash chute. The GLA of the Premises shall be determined as provided in Section 1.05.

(h) The term “**Initial Development Requirements**” means occurrence and completion of all the following: (1) availability of all Parking Retention Areas for non-exclusive use by **TENANT** and the employees, customers, clients, guests, patrons and invitees of the Theatre, and availability of all vehicular and pedestrian ingress and egress throughout the Center from the surrounding public streets and sidewalks, all as reasonably determined by **TENANT**; (2) Substantial Completion of all Common Areas Work (defined in Section 3.01), so that the Center is completed as shown on the Site Plan and generally appears open for business to the general public, provides unobstructed access to the Premises and is reasonably clean, quiet and secure, all as reasonably determined by **TENANT**; and (3) Substantial Completion of all exterior Former Theatre Space Work (defined in Section 3.01), so that the Former Theatre Space Work generally appears available for use and is reasonably clean, quiet and secure, all as reasonably determined by **TENANT**.

(i) The term “**Ongoing Development Requirements**” means Substantial Completion, opening and operation to the general public of at least two (2) full service or fast casual dining restaurants in the Former Theatre Space totaling at least two thousand five hundred (2,500) square feet of floor area, as measured consistent with the definition of GLA of the Center. Notwithstanding the foregoing, in the event the Ongoing Development Requirements are not satisfied solely due to the closure of a restaurant that was previously operating in the Center, the Ongoing Development Requirements shall be deemed to continue to be satisfied for a period of six (6) months after closure of such restaurant, to allow **LANDLORD** a six (6) month period to locate a new restaurant tenant, negotiate a new restaurant lease and complete any required improvements to the restaurant space.

(j) The terms “**Theatre**” and “**Premises**” are interchangeable, and each means the multiple-auditorium motion picture theatre building located as part of the Center, to be remodeled as provided in this Lease so as to contain approximately 70,200 gross square feet and approximately 65,791 leaseable square feet of main floor area, with between approximately 3,000 and 3,400 auditorium seats within approximately fourteen (14) auditoriums. The Premises includes any fixtures and equipment owned by **LANDLORD** and existing in the Theatre as of the Rent Commencement Date (“**Landlord’s Equipment**”), provided that **TENANT** shall have the right to remove any or all of such Landlord’s Equipment as part of Tenant’s Work and have the right to remove any or all of such Landlord’s Equipment during the Rent Term. **TENANT** shall dispose of any Landlord’s Equipment removed from the Theatre, and any replacement equipment installed by **TENANT** shall become part of Tenant’s Equipment (defined in Section 3.01(a)(20)). **TENANT** shall have no obligation to compensate **LANDLORD** for any Landlord’s Equipment removed from the Theatre and shall have no obligation to replace any such Landlord’s Equipment. A preliminary layout plan of the Theatre, showing the anticipated configuration of the Theatre, is set forth on Exhibit C, which preliminary layout plan has been approved by **LANDLORD** and **TENANT**. The Premises shall not include the Former Theatre Space.



#### **Section 1.04: EXHIBITS**

The following items are attached hereto as exhibits and hereby incorporated into and made a part of this Lease:

- Exhibit A - Legal Description of the Land [Section 1.03];
- Exhibit B - Site Plan of the Center [Section 1.03];
- Exhibit C - Layout Plan of the Theatre [Section 1.03];
- Exhibit D - Landlord's Work and Tenant's Work [Section 3.01];
- Exhibit E - Completion Certificate [Section 1.05];
- Exhibit F - Non-Disturbance Agreement [Section 18.01];
- Exhibit G - Landlord Estoppel Certificate [Section 19.01];
- Exhibit H - Memorandum of Lease [Section 23.11];
- Exhibit I - Common Areas Work Schedule [Section 3.01];
- Exhibit J - Former Theatre Space Work Schedule [Section 3.01]; and
- Exhibit K - DCIP Equipment [Section 21.01].

#### **Section 1.05: GLA OF THE PREMISES**

The actual GLA of the Premises shall be as shown on the final Approved Plans (defined in Section 3.01) consistent Section 1.03(g), as verified and approved by both **LANDLORD** and **TENANT**. The actual GLA of the Premises, as so determined shall be set forth in the completion certificate which shall be based on the form which is attached hereto as Exhibit E (the "Completion Certificate") and executed by **LANDLORD** and **TENANT** on or about the Rent Commencement Date.

#### **Section 1.06: CHANGES TO CENTER**

**LANDLORD** covenants that the Center shall be constructed in accordance with the Site Plan and, once constructed, no material changes shall be made to the Center or to the Parking Retention Areas or to the height, size and general configuration of the buildings of the Center, subject to the provision that changes may be made which do not: (a) materially adversely affect the visibility of the Premises from the roads, streets, highways, Center patron access ways and public transportation access points inside and outside of the Center; (b) materially adversely affect public access (vehicular and pedestrian) to the Premises; (c) materially adversely affect public access (vehicular and pedestrian) to the Parking Retention Areas; (d) add any new building floors open to the general public directly above the Theatre; (e) decrease the number of parking spaces of the Parking Retention Areas or result in any building or structure being constructed in the Parking Retention Areas; or (f) materially diminish any rights or privileges of **TENANT** under this Lease without **TENANT**'s prior written consent, which may be withheld in **TENANT**'s sole and absolute discretion. Any work performed by **LANDLORD** in making changes to the Center shall be performed so as to not materially adversely affect public access to the Premises and Parking Retention Areas during the performance of such work, and **LANDLORD** shall make all reasonable efforts to minimize any impact on **TENANT**'s operations in the Theatre during the performance of such work, including working at night or in the morning, if appropriate.

#### **Section 1.07: PARKING RETENTION AREAS**

(a) The "Parking Retention Areas" means the following automobile parking spaces of the Common Areas shown on the Site Plan, together with all driveways providing vehicular passageway to and from such parking spaces, all walkways providing pedestrian passageway between such parking spaces and the Theatre, and all related curbing, lighting, and landscaping: (i) all parking spaces that are part of the Center; (ii) all parking spaces located within the Central City Mall parking garage (the "Mall Garage"), as shown on the Site Plan; and (iii) all parking spaces within the CalTrans parking garage (the "CalTrans Garage"), as shown on the Site Plan. Throughout the Rent Term, **LANDLORD** shall provide all of the Parking Retention Areas for the non-exclusive use by **TENANT** and **TENANT**'s employees, customers, clients, guests, patrons and invitees (use thereof being shared by use by the employees, customers, clients, guests, patrons and invitees of the other premises of the Center, and in connection with the Mall Garage and CalTrans Garage, employees, customers, clients, guests, patrons and invitees of others), in a properly lighted, secured, maintained, unblocked and unimpeded environment, with appropriate security, safety, cleanliness, proper striping, traffic controls, and timely maintenance

and repairs. TENANT and TENANT's employees, customers, clients, guests, patrons and invitees also shall have the right of use on a non-exclusive basis of all of the other Common Areas of the Center. LANDLORD has represented to TENANT that the CalTrans Garage is owned by persons or entities other than LANDLORD, but that LANDLORD has the right, throughout the Rent Term, to use (and permit TENANT and other Center occupants to use) such CalTrans Garage pursuant to easement or contractual arrangements. Further, LANDLORD has represented to TENANT that the Mall Garage is owned by LANDLORD, and covenants that any conveyance or other alienation of the Mall Garage by LANDLORD shall be subject to TENANT's rights pursuant to this Lease. In the event any Parking Retention Areas, as above-described, are no longer available for the use by TENANT and TENANT's employees, customers, clients, guests, patrons and invitees during the Rent Term, LANDLORD shall provide any replacement spaces necessary to ensure that at all times during the Rent Term no less than eight hundred (800) parking spaces are available within one thousand one hundred (1,100) feet from the front entrance of the Theatre for the use by TENANT and TENANT's employees, customers, clients, guests, patrons and invitees without interruption, and any such replacement spaces shall be deemed included in the Parking Retention Areas (with any spaces no longer available for the use by TENANT and TENANT's employees, customers, clients, guests, patrons and invitees being deemed omitted from the Parking Retention Areas).

(b) Throughout the Rent Term, each of TENANT's employees, customers, clients, guests, patrons and invitees shall be permitted to use any of the automobile parking spaces of the Common Areas (including without limitation those within the Parking Retention Areas) without any charge or fee being imposed for such use. In the event that a charge or fee is imposed by governmental authority or other person or entity for use of the automobile parking spaces of the Common Areas, LANDLORD shall establish a validation or similar system whereby TENANT's employees, customers, clients, guests, patrons and invitees will be relieved of any obligation to pay such charge or fee.

(c) LANDLORD shall not be prohibited from operating, or causing to be operated, a valet parking service whereby those who voluntarily use such service are charged a fee, provided that the parking spaces used for such valet parking service are located outside of the Parking Retention Areas. TENANT shall not be prohibited from operating, or causing to be operated, a valet parking service for the customers, clients, guests, patrons and invitees of the Theatre, provided that the parking spaces used for such valet parking service are located within the Parking Retention Areas.

#### **Section 1.08: WAGE REQUIREMENTS**

(a) LANDLORD has informed TENANT that the Center is currently subject to a Housing and Urban Development 108 loan and related deed of trust ("HUD 108 Financing"), which would result in the federal Davis-Bacon Act prevailing wage requirements being applicable to the Theatre. Prior to the Delivery Date, LANDLORD shall remove the HUD 108 Financing from the Center, so that the federal Davis-Bacon Act prevailing wage requirements are not applicable to the Center.

(b) Pursuant to the Development Agreement, the City shall agree that neither it, nor the Mayor or Common Council of the City, shall enact a "living wage ordinance" (as defined in the Development Agreement) that would be applicable to the Theatre or TENANT's operations at the Theatre from the Effective Date until the end of the Rent Term (as provided in the Development Agreement, the "City Living Wage Covenant"). Any default of the City Living Wage Covenant by the City shall be deemed a breach by LANDLORD under this Lease, entitling TENANT to all rights and remedies for breach in addition to all other rights and remedies provided by this Lease (including without limitation the Wage Requirements Reimbursement provided in Section 1.08(c)).

(c) Notwithstanding anything else provided in this Section 1.08 or the Development Agreement, in the event any ordinance similar to a "living wage ordinance" (as defined in the Development Agreement) is enacted on the basis that it is mandated pursuant to any State or Federal law, rule or regulations, and in the event such State or Federal wage mandate or the adoption of such ordinance is not uniformly applicable across the State of California (a "Non-Uniform Wage Requirement"), LANDLORD shall reimburse to TENANT on a monthly basis all additional costs incurred by TENANT due to such Non-Uniform Wage Requirements (the

**“Wage Reimbursement”**). TENANT shall have the right to recover the Wage Reimbursement by offset against Rent as Rent becomes due, which right to offset against rent shall not be subject to any limitation of the amount of Rent per month which may be subject to the offset.

## **ARTICLE 2: PREMISES**

### **Section 2.01: LEASE OF PREMISES**

In consideration of the Rent to be paid and the covenants to be performed by **TENANT**, **LANDLORD** hereby grants, demises and leases unto **TENANT** the Premises, together with all rights and privileges appurtenant thereto, and **TENANT** hereby leases and takes from **LANDLORD** the Premises, together with all rights and privileges appurtenant thereto, for the Rent Term, at the Rent, and upon the covenants, conditions and other terms herein set forth.

### **Section 2.02: TITLE AND SUITABILITY**

**LANDLORD** covenants, represents and warrants to **TENANT** that:

(a) as of the Effective Date, **LANDLORD** is the sole owner of fee simple absolute title to the Land;

(b) **LANDLORD's** fee simple absolute title to the Land, as of the Effective Date, is, and from the Effective Date until the Expiration Date (defined in Section 4.01) shall be, free and clear of any encumbrance, covenant, obligation, limitation or restriction which would prevent or interfere with the remodeling of the Premises in the manner provided for in this Lease, **TENANT's** possession and use of the Premises for the Permitted Use (defined in Section 8.01), or any other rights or privileges of **TENANT** under this Lease;

(c) as of the Effective Date, **LANDLORD** has the right to use (and the right to permit **TENANT** and other Center occupants, and their respective employees, customers, clients, guests, patrons and invitees) to use, all Parking Retention Areas, including without limitation any portions of the Parking Retention Areas not located on the Land;

(d) **LANDLORD's** rights to the Parking Retention Areas, as of the Effective Date is, and from the Effective Date until the Expiration Date (defined in Section 4.01) shall be, free and clear of any encumbrance, covenant, obligation, limitation or restriction which would prevent or interfere with the free parking use of the Parking Retention Areas by **TENANT**, and **TENANT's** employees, customers, clients, guests, patrons and invitees;

(e) from the Effective Date until the Expiration Date, the Premises shall be subject to no leasehold or possession interest, other than the leasehold interest hereby created in **TENANT**, provided that **LANDLORD** shall have the right to enter into a ground lease on the Land provided that such ground lease shall not affect, limit or restrict any rights or privileges of **TENANT** under this Lease;

(f) **LANDLORD** has all necessary right and authority to lease the Premises to **TENANT** and to grant to **TENANT** the rights to use of all of the Common Areas pursuant to this Lease and in accordance with the terms of this Lease;

(g) all applicable governmental zoning, land use, planning, site plan, development and environmental requirements and restrictions will permit the remodeling (subject only to obtaining any necessary Development Approvals and Building Permits, each defined in Section 3.01) and operation (subject only to obtaining any necessary use or occupancy permit and any necessary business license) of the Premises in the manner provided for in this Lease;

(h) the soil conditions of the location for the Premises are suitable for the Premises or, without any cost or expense to **TENANT**, shall be made suitable for the Premises; and

(i) there are no existing, valid, un-terminated or outstanding leases, grants of use rights, grants of possession rights, or grants of property rights to any other person or party applicable to the site for the Premises, which will not be permanently removed and extinguished of record by **LANDLORD** at the sole cost and expense of **LANDLORD** before the Delivery Date.

### **Section 2.03: SECURITY DEPOSIT**

No security deposit shall be required.

#### **Section 2.04: TITLE CONTINGENCY**

(a) With **LANDLORD** being the owner of fee simple title to all of the Land, the Effective Date shall be deemed to be the "**Title Date**" as used herein.

(b) **TENANT** shall have no obligation to perform Tenant's Work (defined in Section 3.01), to pay any portion of Tenant's Share (defined in Section 3.01), to accept physical possession of the Premises, to open for business in the Premises, or to pay any Rent until after the occurrence of all of the following (which are collectively referred to herein as the "**Title Contingency**"):

(1) **LANDLORD's** delivery to **TENANT's** attorney (identified on Page 1.1 hereof) of a contemporary title report or title policy identifying **LANDLORD** as the owner of fee simple absolute title to the Land as of the Effective Date;

(2) **LANDLORD's** delivery to **TENANT's** attorney (identified on Page 1.1 hereof) of satisfactory documentation of **LANDLORD's** right to use (and permit use of) the Parking Retention Areas as provided by this Lease (copies of each easement or agreement by which **LANDLORD** has such rights as to the Parking Retention Areas shall be deemed to be satisfactory documentation);

(3) **LANDLORD's** delivery to **TENANT's** attorney (identified on Page 1.1 hereof) of the Memorandum of Lease (no less than two counterparts) required by Section 23.11 hereof in the form of Exhibit H fully executed by **LANDLORD**;

(4) **LANDLORD's** delivery to **TENANT's** attorney of any Non-Disturbance Agreement (defined in Section 18.01) (no less than two counterparts) which is required by Section 18.03 hereof, with respect to any Loan Encumbrance (defined in Section 18.01) existing prior to the recording of the Memorandum of Lease, fully executed by **LANDLORD** and fully executed by the Loan Encumbrance Holder (defined in Section 18.01); and

(5) if applicable, **LANDLORD's** delivery to **TENANT** of a non-disturbance agreement (no less than two counterparts) reasonably acceptable to **TENANT** with respect to any situation in which fee title to the Land is owned by a third party or third parties and the Land is leased to **LANDLORD** or **LANDLORD's** fee title to the Land is not fee simple absolute title, but instead is fee simple defeasible title or fee simple determinable title with a reversion or remainder interest held by a third party, fully executed by **LANDLORD** and, with respect to the situation of **LANDLORD** holding leasehold title to the Land, fully executed by the owner or owners of the fee title or, with respect to **LANDLORD's** title to the Land being fee simple defeasible or determinable, by the owner or owners of the reversionary or remainder interest, as the case may be.

(c) The first day on which the Title Contingency has been fully satisfied is referred to herein as the "**Title Contingency Date**."

## ARTICLE 3: CONSTRUCTION

### Section 3.01: DEFINITIONS AND OVERVIEW

(a) As used in this Lease, the following definitions are applicable:

(1) **"Approved Plans"** means the Plans (defined below) which are approved by both **LANDLORD** and **TENANT** pursuant to the provisions of this Lease, together with any changes to such plans which are approved by both **LANDLORD** and **TENANT** pursuant to the provisions of this Lease.

(2) **"Building Permits"** means all governmental permits, consents and approvals that are necessary for performance and completion of **TENANT's** Work, other than the Development Approvals.

(3) **"Building Permits Date"** means the date on which all Building Permits have been issued and obtained by the applicable governmental authority.

(4) **"Common Areas Work"** means performance, in a good and workmanlike manner, in compliance with all applicable governmental requirements, and in conformity with this Lease, of the construction of all improvements of the Center constituting the Common Areas, substantially consistent with the Site Plan, to the extent that such improvements do not exist in a first-class condition, so that the Common Areas will be properly designed, engineered, sound and of first quality. Common Areas Work shall include without limitation all items described on the Common Areas Work Schedule attached as Exhibit I, and also the construction of all of the vehicular passage ways from the streets surrounding the Center to the parking areas of the Center and the Parking Retention Areas, and all pedestrian passage ways between the parking areas, including without limitation the Parking Retention Areas, and the buildings of the Center; and such Common Areas Work shall include without limitation construction of hard surface walkways, hard surface automobile parking areas (including the Parking Retention Areas), access driveways, private streets, ramps, handicap accessible ramps, vertical transportation, parking lot lighting, planters, landscaping, storm water drainage, and utilities. The Common Areas Work shall be part of Landlord's Work (defined below).

(5) **"Delivery Date"** means the day that all of the following has occurred: (a) Substantial Completion of all Theatre Site Work in compliance with this Lease, including without limitation in compliance with Exhibit D and the Approved Plans, and in compliance with all applicable governmental requirements, (b) **LANDLORD** has delivered to **TENANT** an accurate written notice of Substantial Completion of all of the Theatre Site Work, (c) **LANDLORD** has delivered to **TENANT** unconditional physical possession of the Premises, in order that **TENANT** may complete Tenant's Work, (d) the occurrence of the Title Contingency Date and the Development Approvals Date, and (g) **LANDLORD** has deposited Landlord's Share into the Escrow pursuant to the Fund Control Agreement.

(6) **"Development Approvals"** means all applicable zoning, zoning variance, development plan, site plan, elevation, design, environmental impact, utility impact, and other approvals, consents, permits and authorizations that are necessary for the presence of the Theatre at the Center, implementation and engagement in the Permitted Use at the Theatre, the presence of the Common Areas as configured and shown on the Site Plan, and the performance of all of Landlord's Work (but not including the Building Permits, any certificate of occupancy for the Theatre, or any permits or licenses required for the operation of **TENANT's** business at the Theatre, such as a business license), whether or not obtainable from governmental authority or a third person (pursuant to any restrictive covenant, lease, exclusive, agreement or other arrangement).

(7) **"Development Approvals Date"** means the day on which the Development Approvals have been issued, and if all of the Development Approvals have been issued prior to the Effective Date, then the Effective Date shall be deemed to be the Development Approvals Date.

(8) **"Escrow"** shall mean the escrow established by the Fund Control Agreement, in which Landlord's Share shall be deposited for use by TENANT in TENANT's Work.

(9) **"Essential Contingencies"** means occurrence of the Development Approvals Date, the Plans Approval Date, the Building Permits Date, the Title Contingency Date and the Delivery Date.

(10) **"Essential Contingencies Date"** means the first day on which all of the Essential Contingencies have occurred.

(11) **"Former Theatre Space Work"** means all work required to and within the separated Former Theatre Space to make it usable or leaseable, including all work described on the Former Theatre Space Work Schedule attached as Exhibit J.

(12) **"Fund Control Agreement"** shall mean that certain Fund Control Agreement dated on or about the Effective Date, entered into by and among LANDLORD, TENANT, California Fund Control, Inc., and the general contractor selected by TENANT for Tenant's Work.

(13) **"Landlord's Share"** shall mean Four Million Seven Hundred Thousand Dollars (\$4,700,000.00).

(14) **"Landlord's Work"** means all of the Common Areas Work, all of the Former Theatre Space Work and all of the Theatre Site Work, including, without limitation, the items designated as Landlord's Work on Exhibit D.

(15) **"Plans"** means all of the architectural and engineering plans, specifications, schematics and drawings for the Theatre Building Work, including without limitation design and development plans, construction drawings and final plans for submission for the building permit, which are prepared by Tenant's Architect.

(16) **"Plans Delivery Date"** means the first day on which all of the Plans have been delivered to LANDLORD.

(17) **"Plans Approval Date"** means the day on which LANDLORD and TENANT first reach agreement on approval of the Plans as provided in this Lease, resulting in such Plans being deemed to be the Approved Plans.

(18) Each of **"Substantially Complete"** or **"Substantially Completed"** or **"Substantial Completion"** means the completion of the construction work in question in accordance with plans for such work prepared by qualified architects and engineers, consistent with the requirements of this Lease, in accordance with all applicable laws and governmental requirements, in a good and workmanlike condition and consistent with a first-class mixed-use center, with use of new materials, and with all debris, construction materials and construction equipment removed.

(19) **"Tenant's Architect"** means the architect(s) and engineer(s) selected by TENANT in TENANT's sole discretion to prepare the Plans and to perform other tasks at the discretion of TENANT.

(20) **"Tenant's Equipment"** means theatre seats; screens and related equipment; drapes (but not the insulation behind the drapes and not the trim board); acoustical wall panels; slide and film projection and presentation equipment; audio equipment; ticket system; ticket ATM/kiosks, concessions equipment (including without limitation drink dispensing equipment, bulk CO2 system and popcorn poppers); point-of-sale devices; telecommunications equipment; change machines; automated ticket or cash dispensing machines, or both; game machines; office equipment; menu boards; food service equipment; signs (both interior and exterior), sign faces on Center monument and pylon sign structures; aisle lighting; lighting control systems; marquees; mini-marquees; directories; waste receptacles; satellite dishes and related equipment; keyless locks; safes; planters; lockers; benches; lobby art; cabinets; box office case work; box office window communications equipment; ice machines;

poster cases; burglar systems; ropes and poles; ash urns; burglar alarm systems; interior security cameras; background music system; computer systems; lobby art; and the trash compactor.

(21) **"Tenant's Share"** shall mean all costs and expenses for TENANT's Work in excess of Landlord's Share, provided that in no event shall Tenant's Share be less than One Million Two Hundred Forty Thousand Dollars (\$1,240,000.00) or greater than Three Million Dollars (\$3,000,000.00).

(22) **"Tenant's Work"** means the Theatre Building Work and the Theatre Equipment Work, and the items constituting Tenant's Work are identified on Exhibit D.

(23) **"Theatre Building Work"** means, except for the Common Areas Work, Theatre Site Work, Theatre Equipment Work and the Former Theatre Space Work, the work required to remodel the Theatre in conformity with the Approved Plans, in a good and workmanlike manner, with use of new materials, in compliance with all applicable governmental requirements and by use of workers and a contractor or contractors selected by TENANT. The Theatre Building Work includes the **"Demising Work"**, defined as construction of demising walls and severance of utility lines, conduits, pipes and facilities appropriate to separate the six (6) auditoriums comprising the Former Theatre Space (defined in Section 1.03(e)) from the Theatre; provided, however, that the neither the Demising Work nor the Theatre Building Work shall include (and TENANT shall have no responsibility or obligation for) any Former Theatre Space Work. LANDLORD and TENANT acknowledge that the Former Theatre Space includes two (2) restrooms that formerly served the Theatre, and the Theatre Building Work and Demising Work shall include the addition of two (2) new restrooms within the Theatre as a replacement for such Former Theatre Space restrooms (provided that the Theatre Building Work shall not include, and TENANT shall have no responsibility or obligation for, any work appropriate to the two (2) restrooms located in the Former Theatre Space, as such shall be included in the Former Theatre Space Work).

(24) **"Theatre Building Work Budget"** means the detailed budget of the expected hard construction cost for the Theatre Building Work based on this Lease and the Approved Plans (not including any costs in connection with any of the following: work performed prior to the Plans Approval Date; preparation and review of the Plans; performance and completion of the Theatre Site Work; performance and completion of the Common Areas Work; performance and completion of the Theatre Equipment Work; obtaining and maintaining the Development Approvals; construction, installation and obtaining approvals for any signage; impact, development and other governmental fees, special assessments and charges for the development and any other governmental assessment or fee; and any soft costs, including without limitation any architectural, surveying, environmental, accounting, legal, consultant, land acquisition and financing costs).

(25) **"Theatre Equipment Work"** means, except for the Common Areas Work, Theatre Site Work, Theatre Building Work and Former Theatre Space Work, and except to the extent Tenant's Equipment exists within the Premises on the Effective Date, all work appropriate for installation within or about the Theatre of Tenant's Equipment.

(26) **"Theatre Site Work"** means performance and completion of the following:

(A) all necessary environmental clean up, conditioning and stabilization work on the site for the Theatre, including without limitation any methane remediation systems;

(B) any necessary structural or foundation work for the Theatre, including without limitation any foundation support system or any piers, pilings, caissons, pile caps, grade beams or tie beams, to the extent provided in the Approved Plans or otherwise reasonably deemed appropriate by Tenant's Architect or engineers engaged by either LANDLORD or TENANT; and

(C) completion of the pad, enclosure or structure for TENANT's trash compactor, together with related screening, fencing, walls and utility (water, sewer and electric) lines, conduits and facilities serving the trash compactor to be located on or with such pad, enclosure or structure.



(b) Pursuant to this Lease and in the manner provided in this Lease, in summary: **LANDLORD** shall obtain the Development Approvals (as provided in Section 3.02), Tenant's Architect shall prepare the Plans and submit them to **LANDLORD** (as provided in Section 3.03), the Plans shall be approved by **LANDLORD** and **TENANT** (as provided in Section 3.03), **LANDLORD** shall perform the Theatre Site Work and cause the occurrence of the Delivery Date (as provided in Section 3.06), **TENANT** shall obtain the Building Permits (as provided in Section 3.04), **LANDLORD** shall provide **TENANT** the Staging Area (as provided in Section 3.07), **LANDLORD** shall perform the Common Areas Work (as provided in Section 3.06), and **TENANT** shall perform Tenant's Work (as provided in Section 3.08).

### **Section 3.02: DEVELOPMENT APPROVALS**

To the extent that all of the Development Approvals have not been obtained before the Effective Date, **LANDLORD** shall apply for and use diligent effort to obtain all of the Development Approvals and shall pay all costs therefor. **LANDLORD** shall pay all impact, development and other governmental fees, assessments, taxes and charges for the development, including (without limitation) all utility tap fees, utility impact fees, utility connection fees, traffic impact fees, excise taxes, development taxes and special assessments. Further, and without limiting the foregoing, **LANDLORD** shall pay all amounts that may be required due to changes in applicable codes, ordinances, regulations or standards from the date of this Lease, including without limitation any (a) changes in the City of San Bernardino's building, plumbing, electrical, fire and grading codes and ordinances, (b) increases in development fees, (c) imposition of new fees, (d) changes in State or Federal law, and (e) imposition of mitigation measures (such as requirements to improve public improvements and facilities like public streets, roadways, landscaping, utilities, drainage, flood control improvements, water and sewer facilities, street lighting and street light, or monetary payments in lieu thereof). **TENANT** shall assist and cooperate with **LANDLORD** in obtaining the Development Approvals without out-of-pocket cost to **TENANT**. **TENANT**'s cooperation with **LANDLORD** to obtain the Development Approvals shall include, without limitation, approval of modification of the Plans as necessary to meet applicable governmental requirements, subject to the provision that if **TENANT** is not reasonably satisfied with any such necessary modifications to the Plans, **TENANT** shall have the right to terminate this Lease by providing written notice to **LANDLORD**. This written notice shall not be subject to Section 17.01(b). In the event **LANDLORD** is unable to obtain Development Approvals and this Lease is terminated, **LANDLORD** shall pay to **TENANT** an amount equivalent to the costs incurred by **TENANT** for architectural and engineering services on the Plans, subject to the provision that such reimbursement shall not exceed Three Hundred Thousand Dollars (\$300,000.00). The provisions of this Section 3.02 shall survive any termination or cancellation of this Lease.

### **Section 3.03: PLANS**

(a) To the extent any such items have not been provided by **LANDLORD** to **TENANT** before the date of this Lease, within fourteen (14) days after the date of this Lease, at **LANDLORD**'s sole cost and expense, **LANDLORD** shall provide **TENANT** the following items (the "**Background Items**"): (1) all applicable design criteria for the Center imposed by governmental authorities or existing as of the date of this Lease; (2) a CAD version of the site plan for the Center, if available (including a scale and a north arrow); (3) a civil engineering report specific to the Theatre building, if available, from the date of the original construction of the Theatre; (4) an environmental report specific to the Theatre or specific to the Center, if available, from the date of the original construction of the Theatre; and (5) the Americans with Disabilities Act survey conducted by Charles Bell Associates in 2010.

(a) **TENANT** shall have the Plans prepared by Tenant's Architect and use diligent efforts to deliver the Plans to **LANDLORD** within one hundred twenty (120) days after the later of the date of this Lease or **LANDLORD**'s delivery to **TENANT** of the Background Items. The Plans shall: (1) be in conformity with all applicable building codes and other governmental requirements (including without limitation requirements of the Americans with Disabilities Act), (2) be based on the configuration for the Theatre set forth on the layout plan attached hereto as Exhibit C, and (3) contain (without limitation) specifications necessary to provide that the background noise from all sources outside of the Theatre will be reduced within the Theatre to a

level no louder than NC 25. Various segments of the Plans may be prepared by Tenant's Architect and presented to LANDLORD for review and approved incrementally, at various times before the end of the one hundred twenty (120) day period, but the overall objective is that all of the Plans shall be prepared and submitted to LANDLORD within the one hundred twenty (120) period above provided.

(b) The Plans shall be subject to LANDLORD's prior approval, which approval shall not be unreasonably withheld, delayed or conditioned by LANDLORD. The Plans shall be deemed approved by LANDLORD unless within thirty (30) days after LANDLORD's receipt of all of the Plans, LANDLORD provides TENANT written notice specifying all reasons for LANDLORD's disapproval of the Plans. If LANDLORD provides TENANT such notice of disapproval within such thirty (30) days, TENANT and LANDLORD shall engage in a good faith effort without delay to resolve all disapproved aspects of the Plans.

(c) Once approved by LANDLORD and TENANT, no changes or change orders shall be made to the Approved Plans without the prior written approval of LANDLORD and TENANT, which approval shall not be unreasonably withheld, delayed or conditioned. LANDLORD and TENANT shall promptly and diligently respond to any change order request made by the other party, and all change orders shall require the agreement of both LANDLORD and TENANT to be effective. The costs for any work performed pursuant to a change order shall be the responsibility of LANDLORD and TENANT as follows:

(1) The costs for any change order related to Landlord's Work shall be the responsibility of LANDLORD.

(2) TENANT shall be responsible for all change orders approved by TENANT that relate to Tenant's Work (subject to payment of Landlord's Share), unless LANDLORD agrees to pay such costs as part of the change order.

(3) If any construction work is performed although its performance is not provided for in the Approved Plans or in a written change order signed by both LANDLORD and TENANT, then all costs for such construction work shall be paid by the party who requested or authorized performance of such construction work.

(d) Within sixty (60) days after the Plans Approval Date, TENANT shall prepare and deliver to LANDLORD the Theatre Building Work Budget. In the event the Theatre Building Work Budget exceeds Four Million Dollars (\$4,000,000.00), either LANDLORD or TENANT shall be entitled to terminate this Lease by delivering written notice to the other party on or before thirty (30) days after the date the Theatre Building Work Budget was delivered to LANDLORD. In the event either party elects to exercise its right to terminate this Lease pursuant to this Section 3.03(d), the Lease shall terminate with no further obligation of either LANDLORD or TENANT, provided that LANDLORD shall pay to TENANT an amount equivalent to the costs incurred by TENANT for architectural and engineering services on the Plans, subject to the provision that such reimbursement shall not exceed Three Hundred Thousand Dollars (\$300,000.00). The provisions of this Section 3.03(d) shall survive any termination or cancellation of this Lease.

#### **Section 3.04: BUILDING PERMITS**

From and after the Plans Approval Date, TENANT shall apply for and use diligent effort to obtain the Building Permits, including without limitation and permits and approvals for TENANT's Building Signs (defined in Section 14.02). LANDLORD shall assist and cooperate with TENANT in obtaining the Building Permits, with LANDLORD's cooperation with TENANT including, without limitation, approval of modification of the Plans as necessary to meet applicable governmental requirements.

#### **Section 3.05: CONTINGENCIES**

In the event that the Essential Contingencies Date has not occurred within three hundred sixty (360) days from and after the date of this Lease, regardless of any delay caused by any Force Majeure Event (defined in Section 1.03(d)), at any time thereafter until the Essential

Contingencies Date occurs, **TENANT** may terminate this Lease by providing **LANDLORD** written notice of such termination. This written notice shall not be subject to Section 17.01(b) of this Lease. In the event of such termination, **LANDLORD** shall pay to **TENANT** an amount equivalent to the costs incurred by **TENANT** for architectural and engineering services on the Plans, subject to the provision that such reimbursement shall not exceed Three Hundred Thousand Dollars (\$300,000.00). The provisions of this Section 3.05 shall survive any termination or cancellation of this Lease.

#### **Section 3.06: LANDLORD'S WORK**

(a) As soon as reasonably practicable after the Plans Approval Date, **LANDLORD** shall commence and thereafter diligently perform the Theatre Site Work at **LANDLORD**'s sole cost and expense, and cause the Delivery Date to occur. The Theatre Site Work shall be performed in accordance with this Lease and the Approved Plans.

(b) **LANDLORD** shall use diligent efforts to cause Substantial Completion of the Common Areas Work prior to the anticipated Rent Commencement Date.

(c) **LANDLORD** shall use diligent efforts to cause Substantial Completion of all exterior Former Theatre Space Work prior to the anticipated Rent Commencement Date, and shall cause Substantial Completion of all interior Former Theatre Space Work diligently after commencement.

(d) **LANDLORD** shall cause all of Landlord's Work to be performed in compliance with applicable building codes and other governmental requirements, in a good and workmanlike manner, and with use of new and sound quality materials.

#### **Section 3.07: STAGING AREA**

Commencing on the Delivery Date and continuing thereafter until completion of all of Tenant's Work, **LANDLORD** shall provide **TENANT** an area, fenced, protected from weather, convenient to and with access to the site of the Premises, to be used for storage of supplies, materials and equipment to be used in performance of Tenant's Work (the "Staging Area"), with the size and location of the Staging Area shown on the Site Plan. Access from public streets to the Staging Area over an unimpeded, paved access road (or roads) shall be provided by **LANDLORD**. The size of the Staging Area shall be no less than an area sufficient to contain twenty-five 45-foot cargo trailers or storage containers, access and turnaround areas for tractor-trailer trucks, and an area for trash and construction debris dumpsters. Any appropriate or necessary mechanized means of vertical transportation between the Staging Area and the site of the Premises also shall be provided by **LANDLORD**. Security to protect all of the items stored at the Staging Area shall be provided by **LANDLORD**. **LANDLORD** shall pay all costs for providing the Staging Area, the security for the Staging Areas, the access road (or roads) and the mechanized means of vertical transportation. **TENANT** shall be provided unimpeded access to all sides of the site for the Premises during performance of Tenant's Work.

#### **Section 3.08: TENANT'S WORK AND PAYMENT OF COSTS**

(a) From and after the Delivery Date, **TENANT** shall cause the performance of all of Tenant's Work, by use of contractors and suppliers selected by **TENANT**, in **TENANT**'s sole and absolute discretion, in accordance with the Approved Plans, in accordance with all applicable laws and governmental requirements, in a good and workmanlike manner, and with use of new and sound quality materials. In no event shall **TENANT** be required to bid any portion of Tenant's Work or select contractors and suppliers based on the lowest cost or union requirements. **TENANT** shall be permitted to dispose of any item of furniture, fixtures or equipment within the Theatre on the Delivery Date, with the understanding that **TENANT** shall install replacement Tenant's Equipment as part of Tenant's Work.

(b) **LANDLORD** shall deposit Landlord's Share into the Escrow as provided by the Fund Control Agreement. As Tenant's Work progresses, **TENANT** shall request and receive disbursements from the Escrow as provided by the Fund Control Agreement, for use in paying the costs and expenses incurred by **TENANT** for Tenant's Work.

(c) Once the full amount of Landlord's Share has been paid, TENANT shall thereafter be solely responsible for paying Tenant's Share. In no event shall Tenant's Share be less than One Million Two Hundred Forty Thousand Dollars (\$1,240,000.00), provided that TENANT shall be permitted to allocate up to Four Hundred Thousand Dollars (\$400,000.00) of TENANT's investment in digital projection, sound equipment and other equipment and services provided by TENANT at the Theatre (but not personnel or staffing expenses) as an in-kind investment in Tenant's Share. It is the intention of LANDLORD and TENANT that all of Tenant's Share shall be used for the purchase and installation of Tenant's Equipment, and not for the Theatre Building Work.

(d) In the event the costs and expenses of Tenant's Work are such that Tenant's Share would otherwise exceed Three Million Dollars (\$3,000,000.00), LANDLORD and TENANT shall work in good faith to agree on allocation of the amount exceeding Three Million Dollars (\$3,000,000.00) between LANDLORD and TENANT, provided that if the parties cannot agree on such allocation within sixty (60) days after the date such costs and expenses first exceed Three Million Dollars (\$3,000,000.00), TENANT shall have the right to terminate this Lease by delivery of written notice to LANDLORD, with the amount of Tenant's Share actually paid by TENANT reimbursed by LANDLORD.

(e) Notwithstanding anything provided by this Section 3.08, TENANT shall perform the Demising Work at LANDLORD's sole cost and expense. As Tenant's Work progresses, TENANT shall request and receive disbursements from the Escrow as provided by the Fund Control Agreement for use in paying the costs and expenses incurred on the Demising Work; provided, however, that upon completion of the Demising Work LANDLORD shall reimburse TENANT the costs and expenses incurred on the Demising Work, using LANDLORD's own funds from outside the Escrow (the "Demising Work Reimbursement"). TENANT shall have the right to recover the Demising Work Reimbursement by offset against Rent as Rent becomes due, which right to offset against rent shall not be subject to any limitation of the amount of Rent per month which may be subject to the offset.

### **Section 3.09: MECHANIC'S LIENS**

Neither LANDLORD nor TENANT shall allow to remain un-discharged any lien, encumbrance or other charge arising out of any work done or materials or supplies furnished by any contractor, subcontractor, mechanic, laborer or materialman which might be or become a lien or encumbrance or other charge against or upon the Premises or the Land (collectively, a "Mechanic's Lien"). If any Mechanic's Lien or notice of a Mechanic's Lien on account of an alleged debt of TENANT or LANDLORD, or any person engaged by TENANT, LANDLORD or either parties' contractor to work on the Premises or the Center shall be filed against or upon the Premises or the Land, the party whose act or omission resulted in the filing or notice shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise within a reasonable time, not to be less than thirty (30) days, from and after such party's receipt of notice from the other party about the presence of the lien.

### **Section 3.10: INSURANCE**

Throughout the performance of the construction, LANDLORD with respect to Landlord's Work, and TENANT with respect to Tenant's Work, shall maintain or require their contractors to maintain: (a) public liability insurance coverage of no less than Two Million Dollars (\$2,000,000.00) per occurrence and in the aggregate for personal injury, bodily injury, death or property damage; (b) builder's risk insurance for full replacement; and (c) workers' compensation insurance as required by applicable law. Each of LANDLORD and TENANT upon written request shall provide to the other evidence (certificates of insurance or copies of policies) of the maintenance of the insurance coverage required by this Section. TENANT's policy shall name LANDLORD as additional insured party and loss payee. LANDLORD's policy shall name TENANT as an additional insured party and loss payee.

### **Section 3.11: ACCESS**

At all times during performance of Landlord's Work and during performance of Tenant's Work, both LANDLORD and TENANT and their employees, contractors, agents and invitees shall have access to the Premises for purpose of observing the work in progress, subject to the condition that performance of the construction work shall not be interfered with by such access

and observation. Neither **LANDLORD** nor **TENANT** shall be obligated to observe or inspect the construction work of the other, and if either does observe the work of the other, such observation or inspection, or both, shall not place upon such party any obligation or relieve the party responsible for such work of the obligations and requirement of this Lease.

**Section 3.12: FORCE MAJEURE**

Except as expressed to the contrary, the time periods set forth in this Article 3 shall be extended for periods of time equal to periods of delay caused by any Force Majeure Event (defined in Section 1.03(d)).

## ARTICLE 4: TERM

### Section 4.01: TERM OF THIS LEASE

The "Rent Term" means the period commencing on the Rent Commencement Date (defined in Section 5.02) and ending on the Expiration Date (defined below) unless sooner terminated or extended pursuant to the extension options provided herein. The "Expiration Date" means the last day of the Tenth (10th) Rent Year (defined in Section 4.02) following the Rent Commencement Date, or, if the initial 10-year term is extended by TENANT's exercise of one or more of the Extension Period(s) (defined in Section 4.03), then the Expiration Date shall be the last day of the last exercised Extension Period. The period from the Effective Date until the Rent Commencement Date is hereby referred to as the "Initial Term", it being understood that this Lease shall be effective in accordance with its terms during the Initial Term though no Rent shall be payable by TENANT during the Initial Term.

### Section 4.02: RENT YEAR

The term "Rent Year" means each successive twelve (12) month period occurring during the Rent Term, and "Rent Years" means more than one Rent Year. The first Rent Year shall begin on the Rent Commencement Date (defined in Section 5.02) and extend through the next twelve (12) full calendar months. If the Rent Commencement Date occurs on a day other than the first day of a calendar month, then the first Rent Year extends from the Rent Commencement Date until the first day of the first full calendar month occurring after the Rent Commencement Date and then for the next twelve (12) full calendar months. For example, if the Rent Commencement Date is April 18, 2012 the first Rent Year will extend from April 18, 2012, to and including April 30, 2012.

### Section 4.03: OPTIONS TO EXTEND

(a) Provided that no Event of Default (defined in Section 16.01) exists at the time written notice thereof is given under the next sentence of this Section 4.03, TENANT shall have four (4) options to extend the Rent Term for successive and consecutive periods of five (5) Rent Years each, followed by one (1) option to extend the Rent Term for a period of four (4) Rent Years (each such five-year period and four-year period being herein referred to herein as an "Extension Period") on the same terms, covenants and conditions as set forth in this Lease, including the amounts of Base Rent as specified for such period in Section 5.03. To exercise an option for an Extension Period, TENANT must give LANDLORD written notice of its election to exercise the option at least two hundred seventy (270) days prior to the expiration of: (a) the initial 10-year Rent Term for the first Extension Period or (b) the immediately preceding Extension Period for the second and subsequent Extension Periods.

(b) LANDLORD and TENANT acknowledge that the number and length of the Extension Periods provided in Section 4.03 were structured to ensure certain tax and accounting benefits, including without limitation to ensure that this Lease is not classified as a capitalized lease pursuant to the Financial Accounting Standards Board or other governmental or regulatory entity. LANDLORD and TENANT agree to cooperate with each other in good faith, to the extent reasonable, to ensure that this Lease is not classified as a capitalized lease, provided that the foregoing shall not be construed to require LANDLORD to take any action which would increase LANDLORD's obligations or reduce LANDLORD's rights under the Lease.

### Section 4.04: TERMINATION RIGHTS

(a) Commencing with the completed fifth (5th) Rent Year, within sixty (60) days of each Rent Year, TENANT shall prepare and deliver to LANDLORD a written statement (the "Box Office Statement") of the Box Office Receipts (defined in Section 5.04(b)(1)(A)) for the most recently completed Rent Year. For each Rent Year commencing with and following the completed fifth (5th) Rent Year, in the event Box Office Receipts for the Rent Year in question, as shown on the Box Office Statement, are less than Two Million Five Hundred Thousand Dollars (\$2,500,000.00) (the "Termination Box Office Threshold"), TENANT shall have the right to terminate this Lease by delivery of written notice to LANDLORD (the "Tenant Termination Notice") within sixty (60) days after LANDLORD's receipt of the Box Office Statement, which Tenant Termination Notice shall not be subject to Section 17.01(b). In the event TENANT delivers a Tenant Termination Notice, LANDLORD shall have the right,

during the sixty (60) day period immediately following **LANDLORD's** receipt of the Tenant Termination Notice (such sixty day period referred to as the "**Landlord Termination Response Period**"), to negate **TENANT's** termination of the Lease by delivering to **TENANT** the difference between the Termination Box Office Threshold and the Box Office Receipts for the Rent Year in question, in which event the Lease and Rent Term shall continue; provided, however, that should Box Office Receipts in any subsequent Rent Year be less than the Termination Box Office Threshold, **TENANT** shall again have the right to terminate this Lease (and **LANDLORD** shall have the right to negate such termination) as provided by this Section 4.04.

(b) Any termination of the Lease and Rent Term pursuant to this Section 4.04 shall be effective as of the day immediately following the last day of the Landlord Termination Response Period. The provisions of this Section 4.04 shall not be affected by **TENANT's** exercise of any option for an Extension Period pursuant to Section 4.03, meaning that (without limitation) (a) this Section 4.04 shall remain effective during the Extension Periods, (b) in the event **TENANT** has exercised an option for an Extension Period but subsequently delivered a Tenant Termination Notice, the Lease shall terminate on the date immediately following the Landlord Termination Response Period unless **LANDLORD** has elected to negate such termination as provided in this Section 4.04, and (c) in the event **LANDLORD** has elected to negate any termination as provided in this Section 4.04, **TENANT** shall have the right to exercise or not exercise any option for an Extension Period, in **TENANT's** sole discretion.

## ARTICLE 5: RENT

### Section 5.01: RENT

TENANT hereby agrees to pay for the lease of and the right of use and occupancy of the Premises and the rights and privileges provided by this Lease, including without limitation the rights and privileges to the use of the Common Areas, during the Rent Term, at the times and in the manner herein provided Base Rent (defined in Section 5.03) and Percentage Rent (defined in Section 5.04); or, if applicable, Special Rent (defined in Section 5.03). As used in this Lease, the term "Rent" means whichever of the above is applicable at the time. TENANT shall have no obligation to pay LANDLORD any amounts pursuant to this Lease other than Rent (except for damages payable due to an Event of Default and interest as expressly provided by this Lease), it being acknowledged by LANDLORD and TENANT that Rent is intended to be an all-in, gross rental amount.

### Section 5.02: RENT COMMENCEMENT DATE

As used in this Lease, the term "Rent Commencement Date" means earlier of (a) the day on which TENANT opens for business in the Premises to the general public with all required use and occupancy permits (such day not including up to five (5) days devoted solely to grand opening events), or (b) subject to satisfaction of the Initial Development Requirements, Ongoing Development Requirements and the Title Contingency, the day that is two hundred seventy (270) days after the Delivery Date, provided that such period of two hundred seventy (270) days shall be extended upon the occurrence of any Force Majeure Event. In the event TENANT occupies and uses the Premises pursuant to temporary use and occupancy permits, and TENANT's right of use and occupancy of the Premises subsequently is revoked, not due to the fault of TENANT, because the temporary use and occupancy are not continued or are not made final, then, for the period during which TENANT does not have a right to use and occupy the Premises, TENANT's obligation to pay Rent shall abate. TENANT shall have no obligation to open for business in the Premises until all Initial Development Requirements (defined in Section 1.03(h)) and Ongoing Development Requirements (defined in Section 1.03(i)) have been satisfied, and the Title Contingency Date (defined in Section 2.04) has occurred.

### Section 5.03: BASE RENT OR SPECIAL RENT

(a) **Base Rent.** Throughout the Rent Term, except for any period during which Special Rent (defined in Section 5.03(c)) is applicable, TENANT shall pay to LANDLORD base rent ("Base Rent") in the following amounts:

(1) If the Rent Commencement Date does not occur on the first day of a calendar month, then for the period from the Rent Commencement Date to and including the last day of the month during which the Rent Commencement Date occurs, the Base Rent shall be Seventy Thousand Eight Hundred Thirty-Three Dollars and Thirty-Three Cents (\$70,833.33) multiplied by a fraction, the numerator of which is the number of days from and including the Rent Commencement Date to and including the last day of the month during which the Rent Commencement Date occurs and the denominator of which is the total number of days of such calendar month, and the Base Rent for such partial month shall be payable on the Rent Commencement Date;

(2) Commencing with the first day of the first full calendar month after the Rent Commencement Date (or, if the Rent Commencement Date is the first day of a calendar month, commencing on the Rent Commencement Date), and continuing thereafter for the remainder of the first (1st) Rent Year, Base Rent for such period shall be Eight Hundred Fifty Thousand Dollars (\$850,000.00), payable in equal monthly installments of Seventy Thousand Eight Hundred Thirty-Three Dollars and Thirty-Three Cents (\$70,833.33).

(3) For the second (2nd) through tenth (10th) Rent Years, Base Rent for each such Rent Year shall be Eight Hundred Fifty Thousand Dollars (\$850,000.00), payable in equal monthly installments of Seventy Thousand Eight Hundred Thirty-Three Dollars and Thirty-Three Cents (\$70,833.33).

(4) If TENANT exercises its option for the first Extension Period, for the eleventh (11th) through fifteenth (15th) Rent Years, Base Rent for each such Rent Year shall be



Nine Hundred Twenty Thousand Two Hundred Fifty Dollars (\$920,250.00), payable in equal monthly installments of Seventy-Six Thousand Six Hundred Eighty-Seven Dollars and Fifty Cents (\$76,687.50).

(5) If TENANT exercises its option for the second Extension Period, for the sixteenth (16th) through twentieth (20th) Rent Years, Base Rent for each such Rent Year shall be Nine Hundred Ninety Thousand Five Hundred Dollars (\$990,500.00), payable in equal monthly installments of Eighty-Two Thousand Five Hundred Forty-One Dollars and Sixty-Seven Cents (\$82,541.67).

(6) If TENANT exercises its option for the third Extension Period, for the twenty-first (21st) through twenty-fifth (25th) Rent Years, Base Rent for each such Rent Year shall be One Million Sixty Thousand Seven Hundred Fifty Dollars (\$1,060,750.00), payable in equal monthly installments of Eighty-Eight Thousand Three Hundred Ninety-Five Dollars and Eighty-Three Cents (\$88,395.83).

(7) If TENANT exercises its option for the fourth Extension Period, for the twenty-sixth (26th) through thirtieth (30th) Rent Years, Base Rent for each such Rent Year shall be One Million One Hundred Thirty-One Thousand Dollars (\$1,131,000.00), payable in equal monthly installments of Ninety-Four Thousand Two Hundred Fifty Dollars (\$94,250.00).

(8) If TENANT exercises its option for the fifth Extension Period, for the thirty-first (31st) through thirty-fourth (34th) Rent Years, Base Rent for each such Rent Year shall be One Million Two Hundred One Thousand Two Hundred Fifty Dollars (\$1,201,250.00), payable in equal monthly installments of One Hundred Thousand One Hundred Four Dollars and Seventeen Cents (\$100,104.17).

(b) **Completion Certificate.** The annual sum of Base Rent and the monthly installments thereof which shall be paid by TENANT to LANDLORD shall be set forth in the Completion Certificate (defined in Section 1.05), which shall be executed by LANDLORD and TENANT on or about the Rent Commencement Date. The Completion Certificate shall set forth the calendar dates of the Rent Commencement Date and the Expiration Date of the initial ten (10) Rent Year Rent Term of this Lease.

(c) **Special Rent Defined.** As used in this Lease, the term "Special Rent" shall mean Eight Percent (8%) of all Gross Sales (defined in Section 5.04) received by TENANT for the period in question, to the extent such amount does not exceed the total Base Rent and Percentage Rent which otherwise would be applicable during such period. The accounting and the payment of the Special Rent shall be made on a monthly basis as soon following the end of each month as reasonably practicable.

(d) **When Special Rent Payable.** Notwithstanding the other provisions of this Lease, Special Rent shall be payable in lieu of Base Rent and Percentage Rent in the following instances:

(1) In the event the Rent Commencement Date occurs between January 1 and March 31, Special Rent shall be payable in lieu of Base Rent and Percentage Rent from the Rent Commencement Date until the next occurring April 1; and if the Rent Commencement Date occurs between August 1 and October 31, Special Rent shall be payable from the Rent Commencement Date until the next occurring November 1.

(2) In the event all Initial Development Requirements (defined in Section 1.03(h)) are not satisfied yet TENANT does open for business in the Theatre to the general public so that the Rent Commencement Date occurs under Section 5.02, Special Rent shall be payable in lieu of Base Rent and Percentage Rent from the period from the Rent Commencement Date through the last day of the calendar month in which all Initial Development Requirements are satisfied.

(3) In the event at any point during the Rent Term the Ongoing Development Requirements (defined in Section 1.03(i)) are not satisfied, Special Rent shall be payable in lieu of Base Rent and Percentage Rent for each such period from the first day of the calendar month

after such Ongoing Development Requirements are not satisfied through the last day of the calendar month in which all Ongoing Development Requirements are satisfied.

(4) In the event of an Exclusive Right Inconsistency, Special Rent shall be payable as provided in Section 23.14(c).

#### **Section 5.04: PERCENTAGE RENT**

(a) **Percentage Amount and Percentage Rent.** As used in this Lease, the term "Percentage Amount" shall be the amount determined by multiplying the Gross Sales during a Rent Year by Fifteen Percent (15%). For each Rent Year during the Rent Term, TENANT shall pay as "Percentage Rent" the amount by which the Percentage Amount exceeds the Base Rent payable for such Rent Year; provided that if the Percentage Amount is equal to or less than Base Rent in any Rent Year, no Percentage Rent shall be payable for such Rent Year.

(b) **Gross Sales.**

(1) **Definitions.** The phrase "Gross Sales" wherever used herein is defined to mean the aggregate, less Applicable Exclusions and Deductions (defined below), of Box Office Receipts, Concessions Receipts, and Game Machine Receipts of the Theatre, which are defined as follows:

(A) "Box Office Receipts," is defined to mean the aggregate amount of the actual sale price of all tickets and other admissions to the Theatre after excluding therefrom all federal, state and local admission, sales, value-added, excise, luxury and gross receipts taxes, and taxes of the same or similar nature, and any rebates to charitable organizations in connection with benefits sponsored by them (as adjusted in the manner provided in Section 5.04(c)).

(B) "Concession Receipts" means the following which are obtained from business done in, at or from the Theatre: (i) all proceeds received from the sale of all food and drink sold from or on the Premises and of refreshments, unless sold from vending machines; (ii) all proceeds received from the sale of records, books, magazines, toys or novelties sold in connection with a particular presentation (except that if TENANT receives only a commission on such sales, only the commission shall be included); (iii) all proceeds received from the sale of video cassettes and video discs; (iv) all proceeds received from any vending machines (including without limitation those from which refreshments are sold), pay telephones, change machines and automated teller machines owned by TENANT or by any entity which is a subsidiary, affiliate or parent of TENANT, after excluding all royalty fees, if applicable; (v) all proceeds (whether designated as commissions or otherwise designated) received by TENANT from vending machines, pay telephones, change machines and automated teller machines, which are not owned by TENANT or any entity which is a subsidiary, affiliate or parent of TENANT, after deducting from the gross receipts therefrom all amounts provided by TENANT to the owners of such vending machines, pay telephones, change machines and automated teller machines as royalties or otherwise; and (vi) all proceeds received by TENANT from all other business done in, at or from the Theatre except the business covered by subsections (A) and (C) hereof; and

(C) "Game Machine Receipts," means the following which are obtained from business done in, at or from the Theatre: (i) all proceeds from any mechanical, electronic, video or token operated amusement, entertainment or game machine or device owned by TENANT or by any subsidiary, affiliate or parent of TENANT; and (ii) the proceeds received as commissions or otherwise by TENANT from any mechanical, electronic, video or token operated amusement, entertainment or game machine or device which is not owned by TENANT or by a subsidiary, affiliate or parent of TENANT.

(2) **Applicable Exclusions or Deductions.** The following "Applicable Exclusions and Deductions" shall be omitted, deducted or excluded from Box Office Receipts, Concession Receipts, Game Machine Receipts and Gross Sales:

(A) all federal, state and local admission, sales, value-added, excise, luxury and gross receipts taxes, and taxes of the same or similar nature;

(B) rebates to charitable organizations in connection with benefits sponsored for them;

(C) license, concession, agency and royalty fees, which are paid to third persons, who are not an entity which is a subsidiary, affiliate or parent of TENANT;

(D) discounts, allowances or cash or credit refunds made to customers in the ordinary course of business;

(E) goods returned to sources or transferred to another store or warehouse owned or leased by or affiliated with TENANT when such return or transfer is not related to a sale of merchandise in the Theatre or is made solely for the convenient operation of TENANT's business;

(F) sums and credits received in the settlement of claims for loss of or damage to food or merchandise;

(G) interest, service or service carrying charges or other charges, however denominated, paid by customers for extension of credit on sales where those charges are not included in the ticket or merchandise sales price;

(H) proceeds from sales of fixtures, equipment or property not in the course of normal business; and

(I) proceeds from sales to employees, to the extent the total amount does not exceed two percent (2%) of all other Gross Sales for the applicable period.

(c) **Payment.** TENANT shall pay all applicable Percentage Rent to LANDLORD for each and every Rent Year on or before the ninetieth (90th) day from and after the last day of such Rent Year.

(d) **Reporting of Gross Sales.** TENANT shall deliver to LANDLORD within ninety (90) days after the end of each Rent Year a complete statement (the "Annual Report"), certified by an officer of TENANT, showing in reasonable detail the amount of Gross Sales during such Rent Year and the amount of Percentage Rent, if any, payable for such Rent Year. The Annual Report required by this subsection shall be delivered to LANDLORD at the notice address of LANDLORD set forth on Page 1.1 of this Lease or to such other person or to such other place as may be designated from time to time by written notice from LANDLORD to TENANT.

(e) **Records and Review.**

(1) TENANT shall keep at all times during the Rent Term, at the Premises or at the home or regional office of TENANT, materially complete and accurate books of account and records in accordance with accepted accounting principles of all Gross Sales for each Rent Year for no less than the period of three Rent Years (or equivalent period at the end of the Rent Term) following the end of such applicable Rent Year, or for such reasonable longer period, if during such period of three Rent Years (or equivalent period) TENANT is provided written notice of LANDLORD's intention to conduct a review of such books and records, until such review is completed.

(2) LANDLORD may at any reasonable time, upon no less than fourteen (14) days' prior written notice to TENANT, cause a complete review to be made of TENANT's books and records of Gross Sales which TENANT is required to maintain pursuant to subsection (1) above. Such review may be performed only by LANDLORD's employees and personnel or by a qualified third party who is not paid a percentage of any recovery and whose compensation is not contingent on a finding that a recovery is due LANDLORD. All information obtained from such review shall remain strictly confidential and shall not be disclosed to any third party, without the prior written consent of TENANT in each instance, unless such disclosure is required by applicable law, or unless a dispute results in a lawsuit and disclosure is required as part of such lawsuit.

(3) If a review pursuant to subsection (2) above reveals a deficiency in payment of Percentage Rent by TENANT, LANDLORD shall have the right to bill TENANT the amount of such deficiency in Percentage Rent, and, within thirty (30) consecutive days following receipt of such bill together with a copy of the review report, TENANT shall pay to LANDLORD the amount of the deficiency and Late Payment Interest (defined in Section 5.06).

If such review shall disclose that: (A) any Annual Report understates the total amount of Gross Sales during the reporting period of the Annual Report to the extent of three percent (3%) or more; or (B) TENANT has not kept complete books and records of Gross Sales, as required by subsection (1) above; then, in addition to billing TENANT the amount of such deficiency, LANDLORD shall have the right to bill TENANT the reasonable cost of said review, and, within thirty (30) consecutive days following receipt of such bill together with a copy of the review report, TENANT shall pay to LANDLORD the reasonable cost of such review.

(4) If a review pursuant to subsection (2) above reveals that TENANT has paid more Percentage Rent than TENANT was obligated to pay pursuant to this Lease, upon LANDLORD's receipt of notice thereof from the reviewing party, the amount of such overpayment by TENANT shall be applied to the next payment of Base Rent, together with Late Payment Interest for the period from the date such amount was paid to LANDLORD until the date such amount is deducted from Base Rent.

(5) In addition to the books and records of Gross Sales provided in this Section 5.04, TENANT shall also, upon reasonable request of LANDLORD (but no more often than annually), provide to LANDLORD a copy of TENANT's corporate annual report, to be maintained in accordance with Generally Accepted Accounting Principles (GAAP).

#### **Section 5.05: RENT PAYABLE TO AND WHERE**

All installments of Rent payable by TENANT under this Lease shall be paid when due without prior demand therefor (unless such prior demand is expressly provided for in this Lease), and shall be paid by TENANT to LANDLORD at the address of LANDLORD set forth as its rent payment address on Page 1.1 of this Lease, or to such other payee at such other address as may be designated from time to time by written notice from LANDLORD to TENANT.

#### **Section 5.06: LATE PAYMENT INTEREST**

Any Rent amount, which is not paid by TENANT to LANDLORD within ten (10) calendar days after it is due, thereafter shall bear interest at the Prime Rate per annum as published in the *Wall Street Journal* under the heading of "Money Rates" plus two percent (2%) per annum or if such interest rate is deemed unlawful because it exceeds the highest rate permitted under the laws of the state the Premises is located in, then the highest rate permitted under the laws of the state the Premises is located in, for the period from such tenth (10th) day until such amount is paid (the "Late Payment Interest"). Late Payment Interest shall not be applicable to any period to which interest at the Default Rate (defined in Section 16.04) is applicable.

## ARTICLE 6: TAXES AND ASSESSMENTS

### Section 6.01: LANDLORD'S TAXES

**LANDLORD** shall be solely responsible for payment before delinquency of all *ad valorem* real estate taxes and assessments applicable to the Center, including the Premises, throughout the Rent Term (the "Taxes"). **TENANT** shall have no obligation to pay or reimburse any portion of such Taxes. **LANDLORD** shall also be responsible for payment before delinquency of all taxes and assessments not required of **TENANT** pursuant to Section 6.02, including without limitation all income, franchise, excise, gift, estate, inheritance, sales, use, succession, capital gains, transfer, gross receipts and rental receipts taxes applicable to **LANDLORD** or the Center. **LANDLORD** shall also pay any impact, development and other governmental fee, special assessment and charge for the development, including without limitation any such fee, assessment or charge imposed in connection with or related to the utilities provided for the Theatre, such as any utility line costs, transformer costs and tap or capacity fees with respect to the utilities for the Theatre.

### Section 6.02: TENANT'S TAXES

**TENANT** shall pay before delinquency to the taxing authority any and all taxes, assessments, impositions, excises, fees and other charges levied, assessed or imposed upon **TENANT** by a governmental authority having the jurisdiction to do so on **TENANT's** business operation or on **TENANT's** Property.

## **ARTICLE 7: UTILITIES AND SERVICES**

### **Section 7.01: UTILITIES**

The Theatre shall be separately metered to enable **TENANT** to be billed directly by each appropriate utility provider based on use or consumption, as measured by such meters, for utility services throughout the Rent Term. **LANDLORD** shall be solely responsible for the payment of any and all taxes, charges and fees imposed with respect to the installation of, or connection to, utility systems, including, without limitation, any tap fees and any taxes, charges and fees based on the impact of the development of the Theatre or the Center on utility services. **LANDLORD** shall ensure that throughout the Rent Term, such utilities shall deliver, at a minimum, the strength, capacity, volume, pressure, voltage and size required to service the Theatre at full capacity, as specified on the MEP drawings that are part of the Approved Plans.

### **Section 7.02: CHARGES FOR UTILITY SERVICES**

Commencing on the Rent Commencement Date and thereafter throughout the Rent Term, **TENANT** shall pay without delinquency to the utility provider all charges for **TENANT**'s use or consumption of sanitary sewer, gas, electricity, water, telephone utility services and any other utility services exclusively serving the Theatre. Prior to the Rent Commencement Date, **LANDLORD** shall pay without delinquency to the utility provider all charges for use or consumption of sanitary sewer, gas, electricity, water, telephone utility services and any other utility services.

### **Section 7.03: TRASH AND GARBAGE REMOVAL**

As part of the Theatre Site Work, an exclusive pad or structure for the housing of **TENANT**'s trash compactor, with sufficient overhead room to enable easy access for removal of trash, and with electric, water and sewer utility services extended and connected thereto, shall be constructed at a location proximate to the Theatre. Throughout the Rent Term, the trash and garbage generated at the Theatre shall be deposited by **TENANT** into the trash compactor supplied by **TENANT** and housed on the pad or in the structure, which trash compactor shall be available exclusively to **TENANT**. Trash and garbage shall be removed therefrom, hauled away and disposed of pursuant to a service obtained by **TENANT**, and **TENANT** shall be responsible for keeping the trash compactor pad or structure area clean and neat, and preventing accumulations of debris, refuse, or garbage outside of the trash compactor. Within the Premises, **TENANT** shall keep debris, refuse and garbage in containers shielded from the view of the general public, until removed and deposited in the trash depositor compactor.

### **Section 7.04: PARKING AREA LIGHTING**

Throughout the Rent Term, **LANDLORD** shall provide (or ensure that such is provided) as part of the CAM Obligation (defined in Section 9.02) appropriate and adequate lighting of all of the automobile parking areas of the Parking Retention Areas (defined in Section 1.07(a)) and of all other Common Areas. Lighting in the Parking Retention Areas and the walkways and driveways serving the Parking Retention Areas and the Theatre shall be kept turned on until at least one (1) hour after completion of the showing of the last motion picture in the Theatre each night. **LANDLORD** has assured **TENANT** that applicable governmental requirements do not require that such lighting be ended before 2 A.M. each night. **LANDLORD** shall ensure that the lighting of the Parking Retention Areas shall at all times meet a standard of no less than three (3) foot candle minimum and that the lighting around the exterior of the Theatre shall at all times meet a standard of no less than five (5) foot candle minimum, which standards as to the Parking Retention Areas and exterior of the Theatre are acknowledged by **TENANT** to be appropriate and adequate.

## ARTICLE 8: USE OF PREMISES

### Section 8.01: USE AND TRADE NAME

(a) The "Permitted Use" means that the **TENANT** shall use the Premises solely for the operation of a first-class motion picture theatre, including the following: the operation of a video arcade with game machines for theatre patrons; the sale of popcorn, drinks, candy, specialty café items, and other foods and beverages sold in motion picture theatres; the sale and rental to theatre patrons of retail items, such as video cassettes, video discs, records, compact discs, dvds, books, magazines, toys and novelties; the making available of facilities and devices to further the operation of the Premises, including, without limitation, satellite dish transmission and reception facilities, telecommunications facilities and services, change machines, vending machines, automated teller machines and automated ticketing machines; depiction of advertising; meeting rooms; style shows; childcare services; live performances; presentations of concerts, sporting events, and simulcast events via satellite, hard lines and recorded transmissions; and sit-down restaurant or café use including, in accordance with applicable law, the sale of alcoholic beverages. The Permitted Use shall include such other components as may become appropriate due to changes in the circumstances of the motion picture theatre business. The Permitted Use is further subject to the provision that the Theatre shall not be used for display, presentation or advertisement of "X" rated or pornographic movies or presentations.

(b) **LANDLORD** covenants that throughout the Rent Term, the Permitted Use may be conducted at the Premises. Any use of the Premises other than for the Permitted Use shall be subject to the prior written consent of **LANDLORD**, with **LANDLORD**'s consent to be in the sole and absolute discretion of **LANDLORD** while the Covenant to Continuously Operate (defined in Section 8.07(b)) is applicable, and with **LANDLORD**'s consent not to be unreasonably withheld, delayed or conditioned while the Covenant to Continuously Operate is not applicable.

(c) **TENANT** shall operate in the Premises under the trade name "Theater Square", "Regal Cinemas", "Edwards Theatres", or another trade name incorporating the word "Regal" or "Edwards", or another trade name selected by **TENANT** used for theatres owned and operated by **TENANT** in Southern California.

(d) Subject to compliance with the Permitted Use, **TENANT** shall have the sole right to select the motion pictures and other attractions exhibited in the Theatre, and **LANDLORD** shall have no expressed or implied right of censorship over any motion pictures or other attractions exhibited in the Theatre.

(e) **TENANT** shall have the right to install, operate, maintain and repair poster cases, signs, automated ticket machines (which may include cash dispensing capabilities) on the exterior walls of the Premises and in the Common Areas adjacent to the box office area and public entranceway of the Premises.

### Section 8.02: HOURS

The hours and days of operation of the motion picture theatre business at the Premises shall be consistent with the hours that are reasonable and customary for motion picture theatre operations at the location of the Premises. **TENANT** and **LANDLORD** hereby acknowledge and agree that motion picture theatre operations customarily commence later in the day and continue until later in the evening than ordinary retail operations, and **TENANT** shall be permitted to operate during such customary motion picture theatre hours.

### Section 8.03: OPERATIONAL REQUIREMENTS

**TENANT** agrees that it will:

(a) not, at the Premises, conduct or permit to be conducted any auction, fire, bankruptcy or going out of business sale, or similar type sale, or utilize any unethical method of business; provided, however, that this provision shall not restrict the absolute freedom (as between **LANDLORD** and **TENANT**) of **TENANT** to determine its own selling prices nor shall

it preclude the conduct of periodic, seasonal promotional or clearance sales of the products which **TENANT** may sell pursuant to this Lease;

(b) not use or permit the use of any apparatus for sound reproduction or transmission, including loudspeakers, phonographs, radios, televisions, and musical instruments, in such manner that the sounds so reproduced, transmitted or produced shall be unreasonably audible beyond the Premises;

(c) not cause or permit unreasonably strong, offensive or objectionable sound, sights, odors, fumes, dust or vapor to emanate or be dispelled from the Theatre, and will use the grease traps and ventilation systems installed as part of Landlord's Work;

(d) comply with all applicable federal, state and local environmental and other laws, rules, regulations, and guidelines, with respect to the use or occupancy of the Premises by **TENANT**;

(e) not use or permit the use of any portion of the Premises for any unlawful purpose;

(f) provide, or cause to be provided all security within the Theatre as **TENANT** determines to be appropriate; and

(g) conduct motion picture theatre operations with a full staff of employees and a complete stock of merchandise and other goods consistent with the use of the Theatre.

#### **Section 8.04: ALTERATIONS**

Throughout the Rent Term, **TENANT** shall have the right, from time to time, at **TENANT**'s expense, to make interior, nonstructural alterations and to remodel the interior of the Theatre, including without limitation any changes appropriate to provide in some or all auditoriums Regal Premium Experience (RPX), IMAX, or both. Once commenced, **TENANT** shall diligently pursue completion of any remodeling or alterations. **TENANT** shall be responsible for performance of any remodeling or alterations in a good and workmanlike manner, maintaining the Premises as a first class theatre operation in the context of the Center. **TENANT** shall not permit any mechanic's or materialman's lien to attach against the Premises as a consequence of any alterations or remodeling by **TENANT**. **TENANT** shall not enlarge the Theatre, make structural changes, or make alterations to the exterior of the Theatre without the prior written consent of **LANDLORD**.

#### **Section 8.05: SATELLITE DISHES**

One or more satellite dishes will be installed on the roof of the Theatre as part of Tenant's Work, and throughout the Rent Term, **TENANT** shall be permitted to maintain, repair and operate such satellite dishes or any replacement or additional dishes in connection with the operation of **TENANT**'s business at the Theatre. Any damage to the roof caused by the maintenance, repair, operation, replacement and installation of the satellite dishes shall be repaired by **TENANT** at **TENANT**'s sole cost and expense. **TENANT** shall obtain any necessary governmental permits for **TENANT**'s satellite dishes, and shall refrain from any action which would void the roof warranty.

#### **Section 8.06: PROXIMATE SALES**

(a) Throughout the Rent Term and so long as **TENANT** is open and operating in the Premises for the Permitted Use, **LANDLORD** shall prohibit within the Common Areas and the Former Theatre Space (each defined in Section 1.03) the sale or distribution of any popcorn (the "**Popcorn Restriction**"). The Popcorn Restriction shall apply at all times during the Rent Term, without exception.

(b) Throughout the Rent Term and so long as **TENANT** is open and operating in the Premises for the Permitted Use, **LANDLORD** shall prohibit within the Common Areas and the Former Theatre Space the sale or distribution of all candy, soft drinks, ice cream, yogurt, pizza, hamburgers or hot dogs (the "**Concession Items Restriction**"). Notwithstanding the prior sentence, the Concession Items Restriction shall not apply to the following businesses operating within a permanent tenant space: a sit-down restaurant, defined as any food establishment



offering at least twenty-five (25) seats for customers, such as Five Guy's Burgers and Fries; provided, however, that TENANT's prior written approval (not to be unreasonably withheld or delayed, with such approval deemed granted by TENANT if TENANT does not respond within fifteen (15) days after TENANT's receipt of a written request by LANDLORD) shall be required for any first generation restaurant that is not one of the following: (i) part of a national or regional chain of restaurants that operates at least twenty-five (25) units, (ii) a gourmet chocolatier, such as Godiva, See's or Teuscher, (iii) a national or regional coffee store, such as Starbucks, or (iv) a specialty ice cream or yogurt store, such as Cold Stone Creamery.

(c) All pushcarts, kiosks, vending machines or any other temporary structures or devices, other than those operated by TENANT, shall be prohibited by LANDLORD in the Common Areas proximate to the front face of the Premises, including but not limited to the plaza area in front of the Premises. Any pushcarts, kiosks, vending machines or other temporary structures or devices located in areas permitted by this Section 8.06 shall at all times during the Rent Term be subject to the Popcorn Restriction and the Concession Items Restriction.

#### **Section 8.07: OPENING AND CONTINUOUS OPERATION**

(a) Upon completion of Landlord's Work and Tenant's Work, receipt of final use and occupancy permits for the Theatre, and satisfaction of the Initial Development Requirements, Ongoing Development Requirements and the Title Contingency, TENANT shall open its business in the Premises consistent with the Permitted Use.

(b) "Permitted Closings" means any period of reasonable duration during which TENANT is unable reasonably to conduct business at the Premises, due to any of the following: the making of alterations (as provided in Section 8.04); damage or destruction (as referenced in Section 12.01); performance by or on behalf of TENANT of any maintenance or repair which prevents the Premises from being open to the public for business; performance by or on behalf of LANDLORD of maintenance or repair which prevents the opening of the Premises for business to the public; or any default under this Lease by LANDLORD. Except for Permitted Closings, once TENANT has opened its business in the Premises TENANT shall continuously operate its business in the Premises consistent with the Permitted Use, during the hours provided in Section 8.02, throughout the Rent Term (the "Covenant to Continuously Operate"), provided that such Covenant to Continuously Operate shall expire upon any earlier termination of this Lease, including without limitation as provided in Section 4.04.

## ARTICLE 9: COMMON AREAS

### Section 9.01: USE OF COMMON AREAS

TENANT and its customers, employees, patrons and invitees are authorized, empowered and privileged during the Rent Term to use on a non-exclusive basis all of the Common Areas for their respective intended purposes. TENANT acknowledges that the Common Areas also may be used on a non-exclusive basis by LANDLORD, the other occupants of Center, and their employees, patrons, customers and invitees (and as to the Mall Garage and CalTrans Garage, may be used by others). The rights of TENANT in and to the Common Areas as provided in this Lease shall at all times be deemed a material aspect of this Lease to TENANT.

### Section 9.02: CAM OBLIGATION

(a) Throughout the Rent Term, LANDLORD agrees to maintain, operate, repair and replace, or cause to be maintained, operated, repaired and replaced, at LANDLORD's sole cost and expense (as between LANDLORD and TENANT), all of the Common Areas, including without limitation the Parking Retention Areas, in a good, orderly and safe condition and manner consistent with a first class entertainment and retail center (the "CAM Obligation"). LANDLORD may cause any or all the CAM Obligation services for the Common Areas to be provided by an independent contractor or contractors or others. The rights of TENANT in and to the Common Areas shall at all times be deemed a material aspect of this Lease to TENANT. The CAM Obligation shall include, without limitation, the following:

- (1) maintenance, repair and replacement of all of the storm water drainage, sanitary sewer facilities, water service, sprinkler system, irrigation systems, electrical systems, gas distribution systems, lighting systems (including, poles, bulbs and fixtures), and other utility systems serving the Common Areas;
- (2) operation of utility services for the Common Areas, including providing electricity, water, sewer service and other utility services,
- (3) trash and garbage removal, snow and ice removal, pest control, litter control, painting, cleaning, and sweeping in the Common Areas;
- (4) operation, maintenance, repair and replacement of all emergency, security, life safety, fire alarm, fire extinguishment and burglar alarm systems serving the Common Areas;
- (5) operation, maintenance, repair and replacement of gazebos, fountains, art features, sculptures, fencing and similar items located within the Common Areas, if any;
- (6) planting, replanting, replacing, pruning, trimming, fertilizing, irrigating, mulching and managing of all flowers, shrubbery, plants, trees and other landscaping within the Common Areas;
- (7) providing security within the Common Areas (including without limitation the Parking Retention Areas) as LANDLORD deems reasonably necessary for a first class entertainment and retail center, including providing visible security personnel patrolling in the open-air areas until the Theatre is closed each night;
- (8) re-paving, re-striping and cleaning of the paved parking areas;
- (9) repairing and cleaning of sidewalks;
- (10) prevention, control and re-mediation of any mold or other form of contamination;
- (11) controlling rodents and other pests;
- (12) prevention and removal of graffiti;
- (13) operation, maintenance, repair and replacement of the structure which will contain the trash compactor used by TENANT;

(14) operation, maintenance, repair and replacement of all stairways, elevators, escalators and other means of vertical transportation in the Common Areas;

(15) operation, maintenance, repair and replacement of the lighting systems for the Common Areas;

(16) taking reasonable lawful steps to prevent loitering, the presence of intoxicated persons, persons engaged in criminal activities, and nuisances; and

(17) maintaining all risk property, commercial general liability, and environmental insurance coverage on the Common Areas, with reasonably appropriate coverage amounts; and

(18) payment before delinquency of all Taxes (defined in Section 6.01) on the Common Areas or the Premises.

(b) In no event shall **TENANT** be obligated to pay any charge, reimbursement or fee for **TENANT**'s use of the Common Areas or the CAM Obligation performed by **LANDLORD**.

(c) Upon written request by **TENANT** (which request shall not be made more than once per Calendar Year), **LANDLORD** shall provide to **TENANT** a copy of the **LANDLORD**'s budget for the CAM Obligation, and **TENANT** shall have the right to comment on and make reasonable suggestions about the budget (though **LANDLORD** shall not be obligated to take any action or make any changes based on **TENANT**'s suggestions).

## **ARTICLE 10: PROMOTION OF THEATRE**

### **Section 10.01: PROMOTION OF THEATRE**

**LANDLORD** and **TENANT** agree that any expenditure for advertising **TENANT**'s operation of the Theatre shall be in an amount which **TENANT**, within its sole discretion, decides is in the best interest of the business of **TENANT**. **TENANT** shall not be required to join, become a member of, or pay any fees or dues to any merchants' association or other organization created for similar purposes, and **TENANT** shall not be required to participate in or contribute to any promotional, advertising or similar program. **TENANT** shall actively market and promote its business at the Theatre, but nothing shall obligate or require **TENANT** to market the Theatre in any specific medium.

## ARTICLE 11: INDEMNITY AND INSURANCE

### Section 11.01: TENANT'S INSURANCE

(a) **TENANT** covenants and agrees that during the Rent Term from and after the Rent Commencement Date, **TENANT** will carry and maintain, at **TENANT**'s sole cost and expense, the following types of insurance coverage, in the amounts specified and in the form hereinafter provided for:

(1) Commercial general liability insurance covering **TENANT**'s use of the Premises against claims for personal injury, bodily injury, death and property damage with protection to the limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence and in the aggregate, with such coverage written on a per location basis;

(2) Property insurance covering Tenant's Property (defined in Section 14.01), in an amount not less than full replacement cost, providing special, earthquake, and flood protection, including, but not limited to, protection against the perils of fire, vandalism, malicious mischief, earthquake, storm and flood subject to the provision that **TENANT** may self insure with respect to such property insurance coverage on Tenant's Property, if at all times during the period of such self insurance by **TENANT**, **TENANT** has a net worth as determined pursuant to generally accepted accounting principles of no less than Twenty Million Dollars (\$20,000,000.00); and

(3) In the event that **TENANT** serves alcoholic beverages within the Premises, liquor liability insurance providing coverage for **LANDLORD** and **TENANT**.

(b) Any insurance provided for in Section 11.01(a) may be maintained by means of a policy or policies of blanket insurance, covering additional items, locations or insured persons or parties, provided that the requirements of Section 11.01(a) are thereby satisfied.

(c) All policies of insurance provided for in Section 11.01(a) shall be issued by insurance companies with a Best's Rating of not less than B+ and a Best's Financial Performance Rating of not less than VII as rated in the most current available *A.M. Best Company Key Rating Guide* and qualified to do business in the state in which the Premises is located. Notwithstanding the foregoing criteria for **TENANT**'s insurance provider, **LANDLORD** agrees that any insurance company providing coverage for a majority of **TENANT**'s properties shall be qualified to provide the insurance required under this Lease.

(d) Each and every policy of insurance provided for in Section 11.01(a) shall:

(1) (or a certificate thereof shall) be delivered to **LANDLORD** within thirty (30) days after the Rent Commencement Date and thereafter within thirty (30) days after renewal or replacement;

(2) contain a provision that the insurer will give to **LANDLORD** at least thirty (30) days notice in writing in advance of any material change, cancellation, termination, lapse, or reduction in the amounts of insurance coverage;

(3) be written as a primary policy which does not contribute to and is not in excess of coverage which **LANDLORD** may carry; and

(4) name **LANDLORD** and **LANDLORD**'s mortgagee (if identified to **TENANT** by **LANDLORD**) as additional insured parties and additional loss payees.

### Section 11.02: INDEMNITY

(a) **TENANT** does hereby agree to and shall defend, indemnify and save harmless **LANDLORD**, **LANDLORD**'s members, partners, officers, directors, shareholders, agents and employees (as the case may be) from all claims, actions, demands, obligations, costs, expenses and liability whatsoever, including reasonable attorneys' fees, on account of any claim, demand, obligation, damage or liability (i) arising within the Premises, or (ii) occasioned in whole or in part by and act or omission of **TENANT**, its agents, contractors, servants, employees or invitees, during the performance of Tenant's Work. This defense, indemnification and save harmless

undertaking by TENANT shall not include, and TENANT shall not be liable for damage, injury, or the defense of any claims occasioned by the willful act or negligence of LANDLORD, which is the cause of any such damage or injury, to the extent that such damage or injury is not covered by insurance maintained by TENANT.

(b) LANDLORD does hereby agree to and shall defend, indemnify and save harmless TENANT, TENANT's members, partners, officers, directors, shareholders, agents and employees (as the case may be) from all claims, actions, demands, obligations, costs, expenses and liability whatsoever, including reasonable attorneys' fees, on account of any claim, demand, obligation, damage or liability (i) arising from any occurrence in or about the Center or Parking Retention Areas but outside the Premises, including the Common Areas, or (ii) occasioned in whole or in part by any act or omission of LANDLORD, its agents, contractors, servants, employees or invitees, during the performance of Landlord's Work. This defense, indemnification and save harmless undertaking by LANDLORD shall not include, and LANDLORD shall not be liable for damage, injury or the defense of any claims occasioned by the willful act or negligence of the TENANT, which is the cause of any such damage or injury, to the extent that such damage or injury is not covered by insurance maintained by LANDLORD.

#### **Section 11.03: MUTUAL WAIVERS**

LANDLORD and TENANT hereby waive any rights each may have against the other on account of any loss or damage occasioned to LANDLORD or TENANT, as the case may be, their respective property, the Premises or other portions of the Center, arising from any risk covered by fire and extended coverage insurance, and to the extent of recovery under valid and collectible policies of such insurance, provided that such waiver does not invalidate such policies or prohibit recovery thereunder. The parties hereto each, on behalf of their respective insurance companies insuring the property of either LANDLORD or TENANT against any such loss, waive any right of subrogation that such insurers may have against LANDLORD or TENANT, as the case may be. The waivers and releases set forth herein are given on behalf of the waiving party and its successors and assigns and its insurers and these waivers shall remain in force so long as the insuring parties insurer shall consent thereto without additional premiums; and if additional premiums are charged then the party requesting the waiver and release shall have the option to pay the same to keep this waiver in force. The foregoing mutual waivers are given in consideration of each other and the termination or suspension of one shall with like effect terminate or suspend the other waiver.

#### **Section 11.04: LANDLORD'S INSURANCE**

(a) LANDLORD covenants and agrees that from and after the Rent Commencement Date, LANDLORD will carry and maintain, at its sole cost and expense, the following types of insurance, in the amounts specified and in the form hereinafter provided for:

(1) Commercial general liability insurance, with TENANT named as an additional insured and additional loss payee, covering the Common Areas, against claims for personal injury, bodily injury, death and property damage with protection to the limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence and in the aggregate for personal injury, bodily injury, death or property damage;

(2) Property insurance covering all improvements of the Common Areas other than the CalTrans Garage, in an amount of not less than full replacement cost, providing special, earthquake, and flood protection, including, but not limited to, protection against the perils of fire, vandalism, malicious mischief, earthquake, storm and flood; and

(3) Property insurance covering the Theatre, in an amount of not less than full replacement cost, providing special, earthquake, and flood protection, including, but not limited to, protection against the perils of fire, vandalism, malicious mischief, earthquake, storm and flood.

(b) Any insurance provided for in Section 11.04 may be maintained by means of a policy or policies of blanket insurance, covering additional items, locations or insured persons or parties, provided that the requirements of Section 11.04 are thereby satisfied.

(c) All policies of insurance provided for in Section 11.04 shall be issued by insurance companies with a Best's Rating of not less than B+ and a Best's Financial Performance Rating of not less than VII as rated in the most current available *A.M. Best Company Key Rating Guide* and qualified to do business in the state in which the Premises is located.

(d) Each and every policy of insurance provided for in Section 11.04(a) shall:

(1) (or a certificate thereof shall) be delivered to **TENANT** within thirty (30) days after the Rent Commencement Date and thereafter within thirty (30) days after renewal or replacement;

(2) contain a provision that the insurer will give to **TENANT** at least thirty (30) days notice in writing in advance of any material change, cancellation, termination, lapse, or reduction in the amounts of insurance coverage;

(3) be written as a primary policy which does not contribute to and is not in excess of coverage which **TENANT** may carry; and

(4) name **TENANT** and **TENANT's** mortgagee (if identified to **LANDLORD** by **TENANT**) as additional insured parties and additional loss payees.

## **ARTICLE 12: DAMAGE OR DESTRUCTION**

### **Section 12.01: DUTY TO RECONSTRUCT FOLLOWING CASUALTY**

(a) In the event the Theatre is damaged or destroyed by any of the perils referred to in Section 11.04(a)(3) against which **LANDLORD** is required to procure insurance, following the issuance of all necessary governmental approvals and building permits and the release by the insurance provider of the proceeds from the insurance with respect to such damage or destruction, unless this Lease is terminated pursuant to Section 12.03 or otherwise terminated, **LANDLORD** shall repair or reconstruct the Theatre. **LANDLORD** shall prosecute all such work diligently to completion, and **LANDLORD** diligently shall pursue completion of such reconstruction work within one year or less following the occurrence of the casualty. If the governmental approvals and building permits are issued and the insurance proceeds are made available to **LANDLORD**, **LANDLORD** shall commence such repair or reconstruction within ninety (90) days after the occurrence of the casualty. The repair or reconstruction shall be in conformity with the original construction plans for the Theatre as modified and supplemented by the Approved Plans, and any deviations therefrom shall be subject to the prior approval of both **LANDLORD** and **TENANT**, which may be withheld in the sole discretion of each party. The repair or reconstruction shall be conducted in compliance with all applicable governmental requirements and in a good and workmanlike manner. Section 3.09 concerning mechanic's liens and Section 3.10 concerning insurance during construction shall be applicable to such repair or reconstruction.

(b) In the event all or any portion of the Common Areas (other than the CalTrans Garage) is damaged or destroyed by any of the perils referred to in Section 11.04(a)(2) against which **LANDLORD** is required to procure insurance, following the issuance of all necessary governmental approvals and building permits and the release by the insurance provider of the proceeds from the insurance with respect to such damage or destruction, unless this Lease is terminated pursuant to Section 12.03 or otherwise terminated, **LANDLORD** shall repair or reconstruct the Common Areas. **LANDLORD** shall prosecute all such work diligently to completion, and **LANDLORD** diligently shall pursue completion of such reconstruction work within one year or less following the occurrence of the casualty. If the governmental approvals and building permits are issued and the insurance proceeds are made available to **LANDLORD**, **LANDLORD** shall commence such repair or reconstruction within ninety (90) days after the occurrence of the casualty. The repair or reconstruction shall be conducted in compliance with all applicable governmental requirements and in a good and workmanlike manner. Section 3.09 concerning mechanic's liens and Section 3.10 concerning insurance during construction shall be applicable to such repair or reconstruction.

### **Section 12.02: DUTY TO REPAIR OR REPLACE EQUIPMENT**

If any of Tenant's Property which **TENANT** is required to insure pursuant to Section 11.01(a)(2) is damaged or destroyed by any of the other perils referred to therein, unless this Lease is terminated pursuant to Section 12.03 or otherwise terminated, **TENANT** shall repair or replace such damaged or destroyed items to at least substantially the same condition in which they were prior to such damage or destruction. **TENANT** shall pursue completion of all such work within one hundred twenty (120) days after completion of any restoration of the Premises by **LANDLORD**. Section 3.09 concerning mechanic's liens and Section 3.10 concerning insurance during construction shall be applicable to such repair or reconstruction.

### **Section 12.03: RIGHT TO TERMINATE**

(a) Each of **LANDLORD** and **TENANT** shall have the option to terminate this Lease upon giving written notice to the other party of the exercise thereof within sixty (60) days after the Theatre is materially damaged or destroyed if:

(1) the Theatre is materially damaged or destroyed to the extent that the Theatre reasonably cannot be operated as a result of any peril which is not covered by insurance which **LANDLORD** is obligated to procure pursuant to Section 11.01(a)(3), provided that either **TENANT** or **LANDLORD** may negate any such termination by agreeing to pay all repair or reconstruction costs therefor; or,



(2) any material damage to or destruction of the Theatre occurs within the last three (3) Rent Years of the Rent Term, if the reasonably estimated cost of repair and reconstruction is twenty-five percent (25%) or a greater percentage of the reasonably estimated cost to reconstruct the Theatre in its entirety.

(b) Unless this Lease is terminated as provided in subsection (a) above, this Lease shall continue in full force and effect, **LANDLORD** shall perform all of its obligations under Section 12.01 and **TENANT** shall perform all of its obligations under Section 12.02.

(c) Upon any termination of this Lease under any of the provisions of this Section 12.03, the Rent shall be adjusted as of the date of such termination and the Lease shall terminate as if such date were the natural expiration date of the Rent Term coincident with the surrender of possession of the Premises to the **LANDLORD**, except for items which have theretofore accrued and are then unpaid; and the insurance proceeds paid on account of damage to the Theatre shall be distributed to **LANDLORD**, while all insurance proceeds paid on account of damage to Tenant's Property shall be distributed to **TENANT**.

#### **Section 12.04: ABATEMENT OF RENT**

If the Theatre is rendered wholly or partially unfit for carrying on **TENANT**'s business by damage or destruction covered by this Article 12, then the Rent payable by **TENANT** under this Lease during the period that the Theatre is so rendered unfit shall be equitably abated or reduced in direct proportion to the percentage of the GLA of the Premises which is rendered unfit for that period, and the accrual and payment of Rent, which was abated or reduced, shall be resumed upon completion of such repair or reconstruction and such reopening, for the period from and after completion of repair or reconstruction as provided in Section 12.01 and in Section 12.02 of this Lease and the reopening of the full Premises for business by **TENANT**.

## ARTICLE 13: MAINTENANCE OF THE THEATRE

### Section 13.01: LANDLORD'S MAINTENANCE DUTY

(a) From and after the Delivery Date and throughout the Rent Term, in addition to maintenance and repair of the Common Areas, **LANDLORD** shall, or shall cause others to, maintain and repair (with replacements as necessary) in a good, first class condition, in compliance with all applicable governmental requirements, and at the sole cost and expense of **LANDLORD**, but at no expense to **TENANT**, all structural components of the Theatre, including without limitation the following: roof and roofing (including roof membrane); exterior walls, including painting and exterior lights on the Theatre (except the Building Signs and lights that are part of the Building Signs); the site for the Theatre, and all related site amenities; the HVAC system serving the Theatre, including to all HVAC units located on the ground or the Theatre's roof and all ductwork and thermostats that are a part of the HVAC system; all plumbing and utility (including gas, electrical, water, sanitary sewer and storm drainage) lines, conduits and facilities serving the Theatre other than minor maintenance and repair which is **TENANT's** responsibility pursuant to this Lease; any vertical transpiration serving the Premises; and all other maintenance and repairs except such maintenance and repairs for which **TENANT** is expressly responsible pursuant to this Lease.

(b) With respect to **LANDLORD's** maintenance and repair obligation pursuant to Section 13.01(a), if: (i) any such repair is not completed within five (5) days after notice from **TENANT**, or if such repair cannot reasonably be completed within such five (5) day period and **LANDLORD** fails to commence prosecution of such repair within such five (5) day period and diligently and continuously prosecute the work to completion, and (ii) such disrepair either (A) materially adversely affects **TENANT's** use of the Premises to conduct **TENANT's** business within the Premises, (B) constitutes a breach of **LANDLORD's** obligation of maintenance in a good, first class condition, or (C) results in material damage to either Tenant's Property or any portion of the Premises for which **TENANT** has the maintenance and repair responsibility pursuant to Section 13.02, then **TENANT** may perform such repair and provide **LANDLORD** a written statement of the reasonable costs incurred for performance of such repair (the "**Self-help Cost Statement**"). However, if an emergency results from any matter for which **LANDLORD** has the maintenance and repair obligation pursuant to Section 13.01(a), which emergency (i) adversely affects **TENANT's** use of the Premises to conduct **TENANT's** business within the Premises or (ii) results (or has the reasonably expected potential to result) in material damage to either Tenant's Property or any portion of the Premises for which **TENANT** has the maintenance and repair responsibility pursuant to Section 13.02 or injury or death to any person, **TENANT** shall have the right immediately upon the occurrence of such emergency to prosecute any and all such necessary repairs, and **TENANT** shall provide **LANDLORD** the Self-help Cost Statement for such repairs as soon as reasonably practicable. In each instance of **TENANT** providing **LANDLORD** a Self-help Cost Statement, if within thirty (30) days after **LANDLORD's** receipt of such Self-help Cost Statement, together with copies of contractors' and suppliers' invoices or other reasonable backup documentation, **LANDLORD** does not deliver to **TENANT** a full reimbursement of the reasonable costs incurred for performance of such repair, **TENANT** may recover the full un-reimbursed amount of such reasonable costs plus interest at the Default Rate (defined in Article 16) by offsetting the reasonable cost of such repairs plus the interest at the Default Rate against the next maturing monthly installment or installments of Rent due hereunder, subject to the provision that the total amount which **TENANT** may offset each month shall be limited to the greater of: (i) twenty-five percent (25%) of the monthly installment of Base Rent or (ii) either (A) if the offset does not commence during the last two Rent Years of the Rent Term, one-twenty-fourth (1/24th) of the total of the un-reimbursed amount of such costs plus interest at the Default Rate or (B) if the off set commences within the last two Rent Years of the Rent Term, the amount per month resulting from the division of the un-reimbursed amount of such costs plus interest at the Default Rate by the number of months remaining during the Rent Term.

### Section 13.02: TENANT'S MAINTENANCE DUTY

Throughout the Rent Term, **TENANT** shall, or shall cause others to, maintain and repair (with replacements as necessary), in good, first class condition, in compliance with applicable governmental requirements, and at the sole cost and expense of **TENANT** or the others, but at no expense to **LANDLORD**: interior, non-structural elements of the Theatre, including general cleaning within the Theatre and maintaining the cleanliness, glass and doors of the Theatre

storefront; Tenant's Equipment; Building Signs, including the lights that are part of the Building Signs; and minor maintenance and repair of plumbing (such as clearing stoppages in pipes that originate inside the Premises and can be cleared from within the Premises, and repair and replacement of faucets within the Premises) and utility (such as repair and replacement of light fixtures, bulbs and ballasts within the Premises) pipes and lines located within the interior surface of the walls, ceilings and floors of the Theatre (but not between the interior and exterior walls, ceilings and floors).

#### **Section 13.03: RIGHT OF ACCESS TO THE PREMISES**

**LANDLORD** and its authorized representative, upon twenty-four (24) hours' prior notice to **TENANT**, may enter the Premises during usual business hours for the purpose of inspecting or making any repairs to the Premises or to any utilities, systems or equipment located in, above or under the Premises which **LANDLORD** may deem necessary or desirable to comply with all applicable governmental requirements, or to comply with any other obligations, that are **LANDLORD's** responsibility under this Lease; provided, however, that **LANDLORD** and its authorized representative may enter the Premises at any and all times as necessary or appropriate in the case of an emergency (which involves or reasonably is expected to involve damage to property or injury or death to any person) without the necessity of prior written notice being provided to **TENANT**.

## ARTICLE 14: TENANT'S PROPERTY AND SIGNS

### Section 14.01: TENANT'S PROPERTY.

As used in this Lease, "**Tenant's Property**" means all of Tenant's Equipment (defined in Article 3) and any other signs, trade fixtures and personal property of TENANT which are located at the Premises. Upon the expiration of the Rent Term or the earlier termination of the Rent Term, all of Tenant's Property may be removed by and retained by TENANT (consistent with Section 21.01). Throughout the Rent Term, TENANT shall have the right from time to time to remove any or all of Tenant's Property and replace it as TENANT determines, in its sole discretion, to be appropriate. TENANT at its expense shall promptly repair and otherwise make good any damage occasioned to the Premises by reason of installation or removal of any of Tenant's Property by TENANT. Throughout the Rent Term, TENANT shall maintain and repair (replacing as necessary) all of Tenant's Property in first class condition at the sole cost and expense of TENANT.

### Section 14.02: TENANT'S SIGNS

(a) TENANT shall have the right to install, maintain, repair, operate and replace, at TENANT's sole cost and expense, prominent signs on the exterior of the Theatre ("**Building Signs**") at the locations shown on the Approved Plans. The design and format of the Building Signs shall be consistent with that typically used at motion picture theatres operated by TENANT, including neon, iLight, fiber optic and up/down lighting.

(b) TENANT shall be entitled to a panel on all directional and way-finding signs within the Center ("**Wayfinding Signs**"). LANDLORD shall maintain and repair such Wayfinding Signs at its sole cost and expense. The Wayfinding Signs shall include prominent signs specific to TENANT that direct customers to the Parking Retention Areas and from the Parking Retention Areas to the Theatre, such TENANT-specific Wayfinding Signs to be subject to TENANT's prior approval, not to be unreasonably withheld or delayed.

(c) TENANT shall be entitled to install a panel on at least one monument sign and one pylon sign (together the "**Center Signs**") within the Center, with the monument sign located near the primary entrance to the Center and the pylon sign located so as to be visible from Interstate 215. The location of TENANT's panel on such Center Signs shall be determined by the GLA of each Center tenant or occupant having a panel on such Center Signs, with the Center tenant or occupant having the largest GLA being entitled to the most prominent position on such Center Signs, the Center tenant or occupant having the second largest GLA being entitled to the second most prominent position on such Center Signs, and so forth. LANDLORD shall install, maintain, repair and replace the Center Signs at its sole cost and expense, and TENANT shall install, maintain, repair and replace its panel on such Center Signs at its sole cost and expense.

(d) TENANT shall obtain all necessary governmental and other approvals for the Building Signs as part of the Building Permits, and LANDLORD shall obtain all necessary governmental and other approvals for the Wayfinding Signs and Center Signs as part of the Development Approvals.

## ARTICLE 15: ASSIGNMENT AND SUBLETTING

### Section 15.01: ASSIGNMENT PERMITTED

(a) Provided that an Event of Default (defined in Section 16.01) then is not in effect, TENANT (and/or TENANT's leasehold mortgagee if such leasehold mortgagee succeeds to the interest of TENANT in this Lease) may, without the prior specific consent of LANDLORD, such consent by LANDLORD being hereby given, assign TENANT's right, title and interest in this Lease to any individual or entity which by written instrument assumes all obligations of TENANT under this Lease and which satisfies one or more of the following criteria (as follows, collectively, the "Specified Assignment Criteria"): (1) wholly owns the corporation (or other entity) which is TENANT; (2) is wholly owned by the corporation (or other entity) which wholly owns the corporation (or other entity) which is TENANT; (3) operates movie theatres with a combined total number of auditoriums of no less than two hundred (200), with at least one hundred (100) of such auditoriums located in the State of California; or (4) in connection with the assignment of the Lease, is acquiring a majority of TENANT's movie theatres in the state in which the Premises is located. In the event that an assignee meets one of the Specified Assignment Criteria, upon such assignee's written agreement of assumption of all of TENANT's obligations under this Lease, the assignor TENANT shall be relieved and discharged from any further liability, obligations and duties under this Lease accruing subsequent to the effective date of such assignment or transfer.

(b) Provided that an Event of Default (defined in Section 16.01) then is not in effect, and provided that the Permitted Use provision set forth in Section 8.01 continues to be applicable, TENANT may, without the prior consent of LANDLORD, sublet or assign TENANT's right, title and interest in this Lease to (1) any entity which is a subsidiary of the corporation which is TENANT and is wholly owned by TENANT; (2) any entity which has the power to direct TENANT's management and operation; or (3) any entity whose management and operation is controlled by TENANT or by a majority of TENANT's shareholders, partners, joint venturers or equity owners, as the case may be, provided that TENANT continues to be obligated under this Lease or TENANT executes a separate guaranty of the obligations under this Lease.

(c) Prior to entering into any transaction described in this Section 15.01, TENANT shall provide LANDLORD with written notice of such transaction no less than twenty (20) days prior to the effective date of the transaction. Upon completion of any transaction described in this Section 15.01, TENANT shall provide LANDLORD with written documentation (such as a lease assignment instrument) that the transaction has been completed. Nothing in this Section 15.01(c) shall be deemed to require LANDLORD's consent or approval to any transaction described in Section 15.01.

### Section 15.02: CONSENT REQUIRED

(a) Except for those assignments, subleases or other transfers expressly allowed in this Article 15 without LANDLORD's prior consent, TENANT shall not transfer, assign, hypothecate or otherwise encumber this Lease or sublet or permit the Premises or any part thereof to be used by others without the prior written consent of LANDLORD in each instance, which consent may be granted or withheld in LANDLORD's sole discretion. Notwithstanding the foregoing, LANDLORD agrees not to unreasonably withhold, condition or delay its consent to an assignment of this Lease or a subletting of the entire Premises by the TENANT named herein, provided that:

(1) At least thirty (30) days before the proposed effective date of the assignment or subletting LANDLORD receives for approval: (1) reasonably detailed information as to the character, reputation and business experience of the proposed assignee or subtenant, and (2) financial information on the proposed assignee or subtenant;

(2) Within ten (10) days after the effective date of the assignment or subletting Landlord receives a fully executed copy of the applicable assignment agreement or sublease;

(3) No Event of Default by TENANT exists at the time of the consent request and at the effective assignment or subletting date;

(4) Any assignment or subletting will be upon and subject to all terms and conditions of this Lease, including those regarding the Permitted Use;

(5) Any assignment must specifically state (and, if it does not, will be deemed to specifically state) that the assignee assumes and agrees to be bound by all terms and conditions of this Lease, and any sublease must specifically state (and, if it does not it will be deemed to specifically state) that at LANDLORD's election the subtenant will attorn to LANDLORD and recognize LANDLORD as TENANT's successor under the sublease for the balance of the sublease term if this Lease is surrendered by TENANT or terminated by reason of an Event of Default; and

(6) No assignment or subletting will be to a then existing tenant or occupant of the Center nor violate or conflict with the rights of any such party.

(b) Notwithstanding any such assignment or subletting under the terms of this Section 15.02, TENANT will not be released or discharged from this Lease unless, in connection with LANDLORD's consent to such assignment or sublease, LANDLORD specifically agrees to release TENANT from such continuing liability.

#### **Section 15.03: MERGER, CONSOLIDATION**

(a) TENANT shall not be restricted in any way from merging or consolidating with any other corporation or entity, if such merger or consolidation is conducted in accordance with applicable law, and the surviving corporation or entity of such merger or consolidation shall be the TENANT of this Lease.

(b) No transfer of any ownership interest in the entity which is TENANT from one person or entity to another person or entity shall be limited or restricted in any way by any provision of this Lease, and TENANT shall continue being legally bound by this Lease after such ownership transfer, the same as if such ownership transfer had not occurred.

(c) TENANT may, without the prior consent of LANDLORD, such consent by LANDLORD being hereby given, assign or transfer its interest in this Lease to any entity in which or with which TENANT, or its corporate successors or assigns, is merged or consolidated, pursuant to applicable statutory provisions for merger or consolidation of corporations, so long as the liabilities under this Lease are assumed by the entity surviving such merger or created by such consolidation and so long as the surviving entity upon completion of such merger or consolidation owns directly or indirectly all of the operating assets of TENANT.

(d) If TENANT or any subsequent assignee or successor of TENANT is a corporation, such TENANT may, without the prior consent of LANDLORD, such consent by LANDLORD being hereby given, enter into or participate with a bona fide unrelated third party in one or more: (1) mergers, entity acquisitions, consolidations, or corporate reorganizations, (2) sales, exchanges, issuances or other transfers of its capital stock (including without limitation any "going public" stock sale), (3) mortgages, pledges or hypothecations of its capital stock, or (4) tender offers, takeovers or similar transactions.

#### **Section 15.04: MORTGAGE OF LEASEHOLD**

(a) TENANT shall have the continuing right, once or more often, without obtaining LANDLORD's consent or approval, such consent and approval being hereby given, to mortgage, grant a deed of trust on, pledge or otherwise encumber TENANT's interest in this Lease, including TENANT's leasehold estate hereunder, and interest in Tenant's Property (defined in Section 14.01) (any and all of which are referred to as a "Leasehold Mortgage," the holder of such Leasehold Mortgage being herein referred to as a "Leasehold Mortgagee") to an institutional lender.

(b) LANDLORD does hereby subordinate its LANDLORD's lien rights, if any, in Tenant's Property to the lien of such Leasehold Mortgagee.

(c) The Leasehold Mortgagee or its assigns may enforce such Leasehold Mortgage and acquire TENANT's leasehold estate created under this Lease in any lawful way, and,

pending foreclosure of such Leasehold Mortgage, may, without further consent of **LANDLORD**, sell and assign **TENANT**'s leasehold estate hereby created, subject, however, to the terms, covenants and conditions contained elsewhere in this Lease; provided that (1) any such sale or assignment is expressly made subject to all of the monetary and non-monetary terms, covenants and conditions of this Lease; (2) prior to any such sale or assignment there exists no uncured Event of Default (defined in Article 16 hereof); (3) the purchaser or transferee would otherwise be a person or entity that satisfies one or more of the Specified Assignment Criteria provided in Section 15.01(a); and (4) any permitted transferee shall assume in writing all of the monetary and non-monetary terms, covenants and conditions of this Lease. Notwithstanding the provisions of Article 16, an Event of Default shall not be deemed to exist solely by reason of Leasehold Mortgagee's enforcement of the Leasehold Mortgage in the manner provided in this paragraph. In the event the purchaser or transferee would not otherwise be a person or entity that satisfies one or more of the Specified Assignment Criteria provided in Section 15.01(a), such purchaser or transferee shall be subject to **LANDLORD**'s prior written consent as provided in Section 15.02.

(d) If **TENANT** has encumbered **TENANT**'s leasehold estate created under this Lease by a Leasehold Mortgage, and the Leasehold Mortgagee has given **LANDLORD** written notice of the creation thereof (which notice also shall specify the address for notices, the telephone number, the facsimile number and the party or department to whom notices should be given), then **LANDLORD**, at the same time as it gives notice of a default of this Lease to **TENANT**, shall, in addition, give the same notice to the Leasehold Mortgagee, and no such notice shall be deemed to have been given to **TENANT** unless and until a copy thereof shall have been so given to such Leasehold Mortgagee. Said Leasehold Mortgagee (its agents, receivers, trustee and anyone claiming under such Leasehold Mortgagee) upon the receipt of any such notice shall have the immediate right to remedy any default in the payment of money and any other default within the period allowed **TENANT** for rectification thereof and this Lease shall remain in full force and effect during and throughout the period specified in this Section, and the rights and remedies provided **LANDLORD** under Article 16 shall not be exercisable by **LANDLORD** after **TENANT** shall default or be deemed to have defaulted under this Lease unless said Leasehold Mortgagee shall have failed to rectify the same during or within the aforesaid period of time allowed said Leasehold Mortgagee for rectification thereof as hereinabove set out; it being understood that (1) a default of this Lease which cannot be cured by the payment of money shall be deemed to have been rectified within the period allowed said Leasehold Mortgagee by the terms hereof if rectification thereof and such correction thereafter shall be commenced within the period and thereafter prosecuted with reasonable diligence to completion during a cure period which is of the same length as the cure period provided **TENANT** in this Lease, but with the cure period for Leasehold Mortgagee commencing upon notice to Leasehold Mortgagee rather than upon notice to **TENANT**; (2) if the Leasehold Mortgagee cannot reasonably take the action required to cure such default without being in possession of the Premises, the time within which the Leasehold Mortgagee has to rectify such default, as hereinabove set out, shall be deemed extended to include the period of time required by it to obtain such possession (including possession by a receiver) with due diligence; and (3) the time within which such Leasehold Mortgagee shall be required to obtain possession of the Premises (including possession by a receiver) shall be deemed extended by the number of days of delay occasioned by judicial restriction against the initiation of proceedings to obtain such possession or occasioned by any other circumstances beyond such Leasehold Mortgagee's reasonable control. In any event, Leasehold Mortgagee's period within which to cure any default under this Lease by **TENANT** shall not extend beyond one hundred eighty (180) days from and after the expiration of the period provided in this Lease for **TENANT** to cure such default, and all Rent which becomes due and payable pursuant to this Lease during the period within which Leasehold Mortgagee is attempting to cure a default under this Lease by **TENANT** must be paid to **LANDLORD** as it comes due for payment either by **TENANT**, by Leasehold Mortgagee or by some other person, or else such opportunity of Leasehold Mortgagee to cure the default shall extinguish. **TENANT** shall not be release or relieved from liability as the tenant under this Lease by Leasehold Mortgagee's assumption of the role of the tenant of this Lease pursuant to a foreclosure of the Leasehold Mortgage and **LANDLORD**'s recognition of Leasehold Mortgagee as the tenant of this Lease.

(e) All payments so made and all things so done and performed by said Leasehold Mortgagee within the period allowed such Leasehold Mortgagee for rectification of **TENANT**'s default, as set forth in Section 15.04(d), shall be as effective to prevent a forfeiture of the rights of **TENANT** under this Lease as the same would have been if done and performed by **TENANT**

instead of by said Leasehold Mortgagee. Any such Leasehold Mortgage so executed by TENANT may be so conditioned as to provide, as between said Leasehold Mortgagee and TENANT, that said Leasehold Mortgagee, on making good and rectifying any such default on the part of TENANT, shall be thereby subrogated to any and all rights of TENANT under this Lease. No Leasehold Mortgagee shall be considered or become liable to LANDLORD as an assignee of this Lease, or otherwise, until such time as said Leasehold Mortgagee shall by foreclosure or other appropriate proceedings in the nature thereof, or as a result of any other action or remedy provided Leasehold Mortgagee in the event of a default by TENANT pursuant to the Leasehold Mortgage, acquire TENANT's leasehold estate created hereunder or takes possession of the Premises.

(f) All notices by LANDLORD to a Leasehold Mortgagee pursuant to this Section or pursuant to any other provision of this Lease, shall be given in the same manner and effect as provided in Section 23.03 hereof, addressed to such Leasehold Mortgagee at the address last specified to LANDLORD by such Leasehold Mortgagee.

#### **Section 15.05: LICENSE**

TENANT shall not be restricted in any way from granting to any person or entity a license, from time to time, to operate video games and other amusement devices (electronic or otherwise); sell food, beverages and refreshments for on-premises consumption; sell alcoholic beverage for on-premises consumption (subject to compliance with applicable governmental requirements); sell movie theatre related goods, wares, merchandise or services; operate automated ticket or cash dispensing machines, or both; provide childcare services; provide digital (or other) projection for auditoriums; or any other use or purpose included in the Permitted Use. Further, TENANT shall have the right to enter into four-wall licenses, subleases or similar arrangements with third-parties, pursuant to which such third-parties shall be permitted to use on the Premises, or one or more Theatre auditoriums within the Premises on a limited-engagement basis. The proceeds received by TENANT from any license or other arrangement entered into pursuant to this Section 15.05 shall be included in Gross Sales pursuant to Section 5.04(b)(1)(B)(vi), subject to any Applicable Exclusions and Deductions provided in Section 5.04(b)(2).



## ARTICLE 16: DEFAULTS BY TENANT

### Section 16.01: EVENTS OF DEFAULT

Each of the following shall constitute an "Event of Default":

- (a) With respect to each occurrence of **TENANT's** failure to pay the full amount of any installment of Rent when due for which **LANDLORD** provides **TENANT** written notice of such delinquency, if such delinquent amount is not paid by **TENANT** to **LANDLORD** within five (5) days after **TENANT** receives such written notice of delinquency;
- (b) The taking of **TENANT's** leasehold estate on execution or other process of law, except through action taken by or on behalf of the holder of a leasehold mortgage (leasehold deed to secure debt or leasehold deed of trust) of **TENANT's** leasehold estate;
- (c) The failure of **TENANT** to obtain the insurance coverage required in Article 11 hereof and provide to **LANDLORD** the certificates of coverage as required in Article 11 within fifteen (15) consecutive days from and after receipt of written notice from **LANDLORD** of such failure; and
- (d) Except for cases subject to other subsections of this Section 16.01, each failure of **TENANT** to comply fully with any requirement, covenant, term or condition hereof binding on **TENANT** (including without limitation any failure by **TENANT** to comply with Section 8.07) for which **LANDLORD** provides **TENANT** written notice of such failure, if such failure is not corrected or cured within thirty (30) consecutive days following such written notice, or if such correction or cure cannot with reasonable diligence be completed within such thirty (30) consecutive days, then if the correction or cure of such failure is not diligently initiated within such thirty (30) consecutive days and thereafter diligently pursued to completion within a reasonable time.

### Section 16.02: REMEDIES AND DAMAGES

(a) In addition to any and all other rights or remedies of **LANDLORD** expressly stated in this Lease or otherwise provided by law or in equity, upon the occurrence of an Event of Default, **LANDLORD** shall have the right:

(1) To terminate this Lease by providing written notice thereof to **TENANT**, then, after **TENANT** has had the opportunity to remove Tenant's Property, to re-enter the Premises and take possession thereof, and neither **LANDLORD** nor **TENANT** shall have any obligation pursuant to this Lease to the other for the period from and after such termination of this Lease and re-entry of the Premises by **LANDLORD**); or

(2) Upon written notice to **TENANT**, to permit the Lease to continue in effect, with **TENANT** in possession of the Premises, and to collect Rent as it becomes due;

(b) Upon the occurrence of an Event of Default, **LANDLORD** shall be entitled to recover the following damages:

(1) the amount of any unpaid Rent which became due for payment pursuant to this Lease prior to the effective date of the termination of this Lease and re-entry of the Premises by **LANDLORD** based on an Event of Default; and

(2) an amount to compensate **LANDLORD** for reasonable attorneys' fees and litigation costs incurred as a result of the Event of Default.

(c) **TENANT** shall have no liability for any other damages, and specifically but without limitation, shall have no liability for any special, consequential or punitive damages.

### Section 16.03: MITIGATION

[intentionally deleted]

#### **Section 16.04: DEFAULT RATE**

All damages recovered by either **LANDLORD** or **TENANT** due to a default under this Lease shall bear interest at the "**Default Rate**" which is defined as the Prime Rate per annum as published in the *Wall Street Journal* under the heading of "Money Rates" plus two percent (2%) per annum, or if such interest rate is deemed unlawful because it exceeds the highest rate permitted under the laws of the state in which the Premises is located, then the highest rate permitted under the laws of the state in which the Premises is located.

## ARTICLE 17: LIABILITY OF LANDLORD

### Section 17.01: LANDLORD'S DEFAULT

(a) **LANDLORD** shall be in default under this Lease if: (1) any of the representations, warranties or covenants of **LANDLORD** set forth in Article 2 hereof is not accurate in all material respects, (2) **LANDLORD** fails to comply with the obligation in Section 23.11(b) hereof to execute and deliver to **TENANT** the Memorandum of Lease at the same time as this Lease is executed and delivered, or (3) **LANDLORD** fails to comply with the obligation in Section 18.03(a) hereof to execute, obtain execution thereof by the appropriate Loan Encumbrance Holder and deliver to **TENANT** on the Title Date (defined in Section 2.04(a)) the required Non-disturbance Agreement with respect to each Loan Encumbrance effective as of the Title Date.

(b) With respect to all matters, other than those referenced in subsection (a) above, **LANDLORD** shall be in default under this Lease if **LANDLORD** fails to perform any of its obligations under this Lease and said failure continues for a period of thirty (30) consecutive days after written notice thereof from **TENANT** to **LANDLORD** (subject to the provision that the 30-day period shall be extended for the reasonable time necessary if such failure cannot reasonably be cured within thirty (30) consecutive days and **LANDLORD** shall have commenced to cure said failure within said thirty (30) consecutive days and continues diligently to pursue the curing of the same).

(c) In addition to any rights **TENANT** may have under this Lease by law or in equity, including without limitation the right to recover damages, reasonable attorneys' fees and litigation costs incurred in seeking such damages, and the right to terminate this Lease based on a default hereunder by **LANDLORD**, upon written notice to **LANDLORD**, at **TENANT**'s option (exercisable in **TENANT**'s sole and absolute discretion):

(1) in the event of a default of any performance obligation of **LANDLORD** under this Lease, **TENANT** may incur any reasonable expense necessary to perform the obligation of **LANDLORD** specified in such notice and perform such obligation, and, unless **LANDLORD** reimburses **TENANT** the reasonable costs therefor within thirty (30) days following notice thereof from **TENANT**, **TENANT** shall have the right to deduct or offset such reasonable expenses together with interest at the Default Rate (defined in Section 16.04) from the Rent as it comes due, subject to the provision that the total amount which **TENANT** may offset each month shall be limited to the greater of: (i) twenty-five percent (25%) of the monthly installment of Base Rent or (ii) either (A) if the offset does not commence during the last two Rent Years of the Rent Term, one-twenty-fourth (1/24th) of the total of the un-reimbursed amount of such costs plus interest at the Default Rate or (B) if the off set commences within the last two Rent Years of the Rent Term, the amount per month resulting from the division of the un-reimbursed amount of such costs plus interest at the Default Rate by the number of months remaining during the Rent Term;

(2) in the event of a default by **LANDLORD** under this Lease regarding a failure by **LANDLORD** to pay to **TENANT** any amount due **TENANT** pursuant to this Lease, **TENANT** shall be entitled to recover all such unpaid amounts plus interest thereon at the Default Rate by off set against Rent as such Rent comes due for payment under this Lease; and

(3) in the event of a default by **LANDLORD** under this Lease regarding a failure by **LANDLORD** to pay to a third party any amount required by this Lease to be paid by **LANDLORD** to the third party, **TENANT** shall be entitled to pay to the third party the amount due the third party from **LANDLORD** and to recover such amount as **TENANT** pays to the third party plus interest thereon at the Default Rate by off set against Rent as such Rent comes due for payment under this Lease.

(d) If **LANDLORD** has mortgaged its right, title and interest in the Center and **LANDLORD**'s mortgagee has executed and delivered to **TENANT** a Non-disturbance Agreement as provided in Article 18, thereafter such **LANDLORD**'s mortgagee shall have the same time frame as provided herein for **LANDLORD** to cure **LANDLORD**'s defaults, **TENANT** shall accept the cure by such **LANDLORD**'s mortgagee of a default by **LANDLORD**.

(e) The rights and remedies herein reserved by or granted to **TENANT** are distinct, separate and cumulative, and the exercise of any one of them shall not be deemed to preclude, waive or prejudice **TENANT**'s right to exercise any or all others. Whether or not specifically enumerated in this Lease, **TENANT** hereby reserves all rights and remedies at law and in equity, and nothing contained in this Lease shall be construed as a limitation of any such rights or remedies.

(f) **LANDLORD** shall have no liability for any special, consequential or punitive damages.

## ARTICLE 18: NON-DISTURBANCE AGREEMENT

### Section 18.01: SUBORDINATION OF LEASE

(a) Each mortgage, deed of trust, deed to secure debt or other lien against **LANDLORD's** title to the Land, the Center or the Premises is referred to in this Lease as a "Loan Encumbrance", and the mortgagee, beneficiary, or holder of each Loan Encumbrance is referred to herein as a "Loan Encumbrance Holder". Each non-disturbance, attornment and subordination agreement which is substantially the same as the form attached hereto as Exhibit F or which is similar in content to the form attached hereto as Exhibit F and is reasonably acceptable to **TENANT** is referred to herein as a "Non-disturbance Agreement".

(b) Subject to the agreement by the Loan Encumbrance Holder of such Loan Encumbrance that **TENANT's** rights, title, interest and privileges pursuant to the Lease, including without limitation **TENANT's** possession and use of the Premises pursuant to this Lease, shall not be disturbed, adversely affected or extinguished by the exercise of any remedy under the Loan Encumbrance or pursuant to or as a consequence of a foreclosure or conveyance in lieu of a foreclosure pursuant to the Loan Encumbrance, **TENANT** agrees that this Lease is, and shall always be, subordinate to the lien of each Loan Encumbrance, regardless of whether such Loan Encumbrance now exists or may hereafter be created, as such lien applies to any and all advances to be made under such Loan Encumbrance, and as such lien applies to all modifications, consolidations, renewals, replacements and extensions of such Loan Encumbrance. Such subordination shall become effective for each Loan Encumbrance upon the execution by the Loan Encumbrance Holder and **LANDLORD** of a Non-disturbance Agreement and the delivery to **TENANT** of such Non-disturbance Agreement.

(c) **TENANT** agrees that any Loan Encumbrance Holder may elect to have this Lease prior to the lien of its Loan Encumbrance, and in the event of such election and upon notification by such Loan Encumbrance Holder to **TENANT** to that effect, this Lease shall be deemed prior to the lien of the Loan Encumbrance, whether this Lease is dated or placed of record prior to or subsequent to the date of said Loan Encumbrance.

### Section 18.02: TENANT'S ATTORNMENT

In the event of any foreclosure of, the exercise of a power of sale under, a conveyance of title in lieu of foreclosure, or other enforcement of any Loan Encumbrance, provided that a Non-disturbance Agreement has been executed by the Loan Encumbrance Holder and **LANDLORD** and delivered to **TENANT**, **TENANT** shall attorn to and recognize the purchaser or transferee of **LANDLORD's** title to the portion of the Land containing the Premises as **LANDLORD** under this Lease.

### Section 18.03: NON-DISTURBANCE AGREEMENT

(a) With respect to each Loan Encumbrance effective as of the Title Date (defined in Section 2.04(a)), **LANDLORD** shall execute, procure execution by the Loan Encumbrance Holder, and deliver to **TENANT** on the Title Date a Non-disturbance Agreement (no less than two counterparts).

(b) With respect to each Loan Encumbrance caused to be effective commencing after the Title Date (defined in Section 2.04(a)), **LANDLORD** shall execute, procure execution by the Loan Encumbrance Holder, and deliver to **TENANT** a Non-disturbance Agreement (no less than two counterparts) no later than fifteen (15) days after such Loan Encumbrance becomes effective.

(c) Within twenty (20) days following receipt from **LANDLORD** of each Non-disturbance Agreement executed by **LANDLORD** and the Loan Encumbrance Holder, **TENANT** shall execute and deliver to **LANDLORD** or such Loan Encumbrance Holder a counterpart original of such Non-disturbance Agreement.

**Section 18.04: INSTRUMENTS TO CARRY OUT INTENT**

**LANDLORD** and **TENANT** agree that, upon the request of the other party to this Lease, or any Loan Encumbrance Holder, **LANDLORD** or **TENANT** shall execute and deliver whatever instruments may be required for such purposes to carry out the intent of this Article 18.

## **ARTICLE 19: ESTOPPEL CERTIFICATES**

### **Section 19.01: AGREEMENT TO DELIVER**

From time to time and within twenty (20) days after a request in writing therefor from the other party, **LANDLORD** and **TENANT** agree to execute and deliver to the other party, or to such other addressee or addressees as may be designated in the written request, a written certification in form and substance reasonably satisfactory to both **LANDLORD** and **TENANT** (herein called "**Estoppel Certificate**"), certifying, if correct, that: this Lease was executed by both **LANDLORD** and **TENANT**, the Rent Term commenced on a certain date, this Lease has not been assigned, modified, supplemented or amended (except pursuant to the documents identified in such certificate), to the extent of the party's actual, not imputed, knowledge neither party is in default under the provisions of this Lease. Each Estoppel Certificate may also contain other accurate statements about the Lease as may be reasonably requested. **LANDLORD** agrees that the Estoppel Certificate which **LANDLORD** shall provide may be in the form of the **LANDLORD's** Estoppel Certificate attached hereto as Exhibit G, if so requested by **TENANT**. In each event that either **LANDLORD** or **TENANT** is requested to provide more than one Estoppel Certificate within any period of three hundred sixty-five (365) consecutive days, the requesting party shall pay to the requested party One Thousand Dollars (\$1,000.00) as a precedent condition to the requested party's obligation to provide such Estoppel Certificate to the requesting party.

## **ARTICLE 20: QUIET ENJOYMENT**

### **Section 20.01: QUIET ENJOYMENT**

**LANDLORD** agrees that, if **TENANT** pays the Rent as provided herein and observes and performs all terms and conditions on **TENANT**'s part to be observed and performed pursuant to this Lease, **TENANT** shall peaceably and quietly hold and enjoy the Premises for the Rent Term without molestation, hindrance or interruption by **LANDLORD** or any other person or entity, and **LANDLORD** shall defend, indemnify and hold harmless **TENANT** against any claim, expense or any loss arising from **LANDLORD**'s breach of this covenant of quiet enjoyment. In the event of **LANDLORD**'s breach of this covenant of quiet enjoyment, in addition to any other remedy, **TENANT** shall be entitled to an equitable abatement of all Rent with respect to all or any portion of the Premises, **TENANT**'s use of which is hindered by such breach, from the occurrence of the breach until the breach is cured. Throughout the Rent Term, **LANDLORD** shall preserve the Center as a first-class retail and entertainment center and as an ensemble in a business climate compatible with **TENANT**'s use of the Premises as a motion picture theatre business.

### **Section 20.02: TITLE REPORT, SURVEY & FLOOD PLAIN CERTIFICATE**

(a) No later than thirty (30) days after the Title Date, **LANDLORD** shall obtain from a reputable national title insurance company and provide to **TENANT** evidence of the status of title to the Land as of the Title Date or some later date in the form of an ALTA leasehold owner's title insurance commitment or title report, which commitment or report shall set forth the state of title thereto including the recording references to the document(s) by which **LANDLORD** holds title to the Land and to all documents which constitute a Loan Encumbrance (defined in Section 18.01) or exceptions to the title of **LANDLORD**. Copies of the documents by which **LANDLORD**'s title is held and of any document which constitutes a Loan Encumbrance or exception to such title shall be provided by **LANDLORD** to **TENANT** with the commitment or report. Whether or not **TENANT** purchases the title insurance shall be in the discretion of **TENANT**, and if **TENANT** does elect to purchase the title insurance **TENANT** shall pay all costs for such title insurance.

(b) No later than thirty (30) days after the Effective Date, **LANDLORD** shall provide to **TENANT** a copy of the most recent survey on the Land in **LANDLORD**'s possession.

(c) A "Flood Plain Certificate" is a certificate issued by a duly licensed or registered surveyor stating whether or not any portion of the site for the building containing the Premises is located within a flood plain as determined by reference to the maps prepared and maintained by the United States Army Corps of Engineers, the Federal Emergency Management Agency or other source relied upon in California. No later than thirty (30) days after the Effective Date, **LANDLORD** shall provide to **TENANT** a copy of the most recent Flood Plain Certificate in **LANDLORD**'s possession. The Flood Plain Certificate may be provided on the survey obtained pursuant to Section 20.02(b).



## ARTICLE 21: SURRENDER AND HOLDING OVER

### Section 21.01: DELIVERY AFTER TERM

(a) Upon the expiration or earlier termination of the Rent Term, **TENANT** shall deliver and surrender to **LANDLORD** possession of the Theatre (including any Landlord's Equipment then-remaining in the Theatre), broom cleaned, free of debris, in good order, condition and state of repair (excepting any maintenance or repair that is **LANDLORD's** obligation under this Lease and ordinary wear and tear) but otherwise in its then "AS IS" condition, and deliver all keys to the management office of **LANDLORD**.

(b) Upon the expiration or earlier termination of the Rent Term, **TENANT** shall have the right to remove from the Theatre the following items of Tenant's Equipment (the "**Removable Equipment**"): (i) the items described on Exhibit K, (ii) all digital video equipment and digital audio equipment, (iii) all concession equipment, (iv) all items containing logos, slogans, trade names or trade marks of **TENANT** or its affiliates, (v) any Tenant's Property not included in Tenant's Equipment, and (vi) all items that are not owned by **TENANT**, but instead are made available for **TENANT's** use pursuant to a lease, license or similar arrangement. All Tenant's Equipment other than the Removable Equipment (the "**Remaining Equipment**") shall be subject to the following:

(1) In the event the Rent Term is terminated prior to the completion of the fifth (5th) Rent Year, **TENANT** shall retain ownership of the Remaining Equipment and shall have the right to remove such Remaining Equipment from the Theatre.

(2) In the event the Rent Term is terminated after completion of the fifth (5th) Rent Year but before completion of the tenth (10th) Rent Year, **LANDLORD** shall have the option to purchase such Remaining Equipment at the amortized value of such Remaining Equipment shown on **TENANT's** books, such option exercisable by **LANDLORD** only by delivering written notice to **TENANT** within thirty (30) days after notice that the Rent Term is to be terminated. Closing of the purchase of such Remaining Equipment shall occur upon the later of the effective date of the termination or twenty (20) days after **LANDLORD's** written notice to **TENANT** exercising such option. In the event **LANDLORD** does not elect to purchase the Remaining Equipment pursuant to this Section 21.02(b)(2), **TENANT** shall retain ownership of the Remaining Equipment and shall have the right to remove such Remaining Equipment from the Theatre.

(3) In the event the Rent Term is terminated after completion of the tenth (10th) Rent Year, **LANDLORD** shall have the option to purchase such Remaining Equipment at a price of One Dollar (\$1.00), such option exercisable by **LANDLORD** only by delivering written notice to **TENANT** within thirty (30) days after notice that the Rent Term is to be terminated. Closing of the purchase of such Remaining Equipment shall occur upon the later of the effective date of the termination or twenty (20) days after **LANDLORD's** written notice to **TENANT** exercising such option. In the event **LANDLORD** does not elect to purchase the Remaining Equipment pursuant to this Section 21.02(b)(3), **TENANT** shall retain ownership of the Remaining Equipment and shall have the right to remove such Remaining Equipment from the Theatre.

(c) In removing any Tenant's Property or other Tenant's Equipment from the Theatre, **TENANT** shall repair any damage resulting from such removal (except to the extent such damage could not have been reasonably avoided during the removal process). In the event **TENANT** shall not remove any Tenant's Property it is entitled to remove from the Premises by the end of the Rent Term, then such Tenant's Property shall be deemed abandoned by **TENANT** and **LANDLORD** may dispose of the same without liability to **TENANT**.

(d) If not sooner terminated as herein provided, this Lease shall terminate at the end of the Rent Term as provided for in Article 4 without the necessity of notice from either **LANDLORD** or **TENANT** to terminate the same.

### Section 21.02: EFFECT OF HOLDING OVER

If **TENANT** remains in possession of the Premises or any part thereof, after the expiration of the Rent Term of this Lease (including any exercised extension thereof), then

**TENANT** shall be deemed to be a **TENANT** of the Premises at sufferance pursuant to a month-to-month tenancy, terminable by either **TENANT** or **LANDLORD** upon thirty (30) days' written notice to the other, subject to all of the terms and provisions of this Lease applicable to a tenant at sufferance, but with monthly Base Rent at one hundred fifty percent (150%) of the monthly Base Rent which was being paid prior to such expiration or termination of the Rent Term.

## ARTICLE 22: CONDEMNATION

### Section 22.01: ALL OR ANY PART OF PREMISES TAKEN

(a) As used herein, a "Taking" means the taking by right of eminent domain or by agreement or conveyance in lieu thereof by, or pursuant to, governmental authority of certain property either permanently or for a period greater than ninety (90) consecutive days for any public or quasi-public use or purpose.

(b) If the whole or any material part of the Theatre shall be the subject of a Taking, this Lease shall terminate as of the day possession shall be taken by such authority, and Tenant shall pay Rent and perform all of its other obligations under this Lease up to that date with a proportionate refund by LANDLORD of any Rent as shall have been paid in advance for the period subsequent to the date of the taking of possession. However, TENANT shall have the right, in TENANT's sole and absolute discretion, to negate such automatic termination of this Lease with respect to any Taking for a temporary period of less than three hundred sixty-six (366) days or any Taking of some, but not all, of the auditoriums of the Theatre, with such right exercised by TENANT providing to LANDLORD written notice of such election to negate the automatic termination of this Lease within sixty (60) days from and after the day possession of the whole Theatre or any material part of the Theatre is taken. In the event TENANT negates the automatic termination of this Lease with respect to any Taking for a temporary period of less than three hundred sixty-six (366) days, Rent shall abate equitably in proportion to the part of the Theatre so taken throughout such period of temporary Taking. In the event TENANT negates the automatic termination of this Lease with respect to any Taking of some, but not all, of the auditoriums of the Theatre, all Rent shall abate equitably in proportion to the part of the Theatre so taken for the duration of the Rent Term following such Taking.

(c) If a material portion of the Center, which portion does not include the Theatre (the taking of the Theatre being covered by subsection (b) above), is the subject of a Taking and in the reasonable judgment of LANDLORD, the continued operation of the Center as a shopping center is not viable, then LANDLORD shall have the right to terminate the Rent Term upon providing TENANT no less than sixty (60) days notice, in which event TENANT may remove Tenant's Property as provided in Section 14.01 and Section 21.01 and TENANT shall surrender possession of the Theatre to LANDLORD; and LANDLORD shall promptly demolish the Theatre and shall not cause or permit any portion of the Center to be used for a motion picture theatre for a period of ten (10) years from and after such termination of the Rent Term.

### Section 22.02: TAKING OF PARKING SPACES

If any of the automobile parking spaces of the Parking Retention Areas (defined in Section 1.07(a)) shall be the subject of a Taking and LANDLORD does not replace the taken automobile parking spaces with an equivalent number of paved automobile parking spaces (which thereafter shall be deemed to be part of the Parking Retention Areas) located no further than one thousand (1,000) linear feet from the pedestrian entrance to the Theatre, within sixty (60) days following the taking of possession of the automobile parking spaces of the Parking Retention Areas, TENANT shall have the right, in TENANT's sole and absolute discretion, to terminate this Lease upon notice in writing to LANDLORD within one hundred twenty (120) days after possession of the automobile parking spaces is taken. If TENANT does not elect to terminate this Lease, LANDLORD shall use commercially reasonable efforts to provide adequate substitute parking for the taken automobile parking spaces that is reasonably satisfactory to TENANT as soon as practicable. In the case of a Taking of the automobile parking spaces of the Parking Retention Areas, such substitute parking spaces then shall be deemed to be part of the Parking Retention Areas.

### Section 22.03: OWNERSHIP OF AWARD

As between LANDLORD and TENANT, upon the occurrence of a Taking of the Theatre, all of the damages, award or compensation for the Theatre shall belong to LANDLORD. TENANT shall have the right to claim and recover from the Taking authority such compensation as may be awarded or recoverable by TENANT in TENANT's own right for or on account of damages to, or of cost or expense which TENANT would incur in removing any of Tenant's Property, as compensation for any of Tenant's Property which is taken, the cost of relocation of TENANT's business, and for injury or detriment to TENANT's business,

provided that such separate award to **TENANT** does not reduce the award to **LANDLORD**; provided, further, **TENANT** may negate the termination of this Lease until completion of any condemnation proceedings for the purpose of preserving any **TENANT** compensable interest that is appropriate or necessary for **TENANT** to recover in its own right and during such period of negating such termination, neither **LANDLORD** nor **TENANT** shall be liable for any obligations under the Lease.

## **ARTICLE 23: MISCELLANEOUS**

### **Section 23.01: INTERPRETATION**

(a) The captions, table of contents and index of defined terms appearing in this Lease are inserted only as a matter of convenience and in no way amplify, define, limit, construe, or describe the scope or intent of such sections of this Lease nor in any way affect this Lease. Except where otherwise expressly provided, each reference in this Lease to a Section or Article shall mean the referenced Section or Article in this Lease.

(b) If more than one person or business organization or governmental agency or corporation is named as **LANDLORD** or **TENANT** in this Lease and executes the same as such, or becomes **LANDLORD** or **TENANT**, then and in such event, the words "**LANDLORD**" or "**TENANT**" wherever used in this Lease are intended to refer to all such persons or business organization or governmental agency, and the liability of such persons or business organization or governmental agency for compliance with and performance of all the terms, covenants and provisions of this Lease shall be joint and several.

(c) The neuter, feminine or masculine pronoun when used herein shall each include each of the other genders, and the use of the singular shall include the plural unless the context otherwise requires.

(d) The parties hereto agree that all the provisions of this Lease are to be construed as covenants and agreements as though the words covenants and agreements were used in each separate provision hereof.

(e) This Lease shall not be construed for or against **LANDLORD** or **TENANT**, but this Lease shall be interpreted in accordance with the general tenor of the language in an effort to reach the intended result.

(f) Nothing herein contained shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of Percentage Rent or Special Rent, nor any other provision contained herein, nor any acts of the parties herein, shall be deemed to create any relationship between the parties hereto other than the relationship of lessor and lessee nor cause **LANDLORD** to be responsible in any way for the acts, debts or obligations of **TENANT**.

(g) If any provision of this Lease is determined by a court of competent jurisdiction to be contrary to applicable law and consequently unenforceable, all of the remaining enforceable provisions of this Lease shall continue to be in full force and effect, and the Lease shall be interpreted and applied as if the unenforceable provision were never a part of this Lease.

### **Section 23.02: LIABILITY OF LANDLORD**

Except with respect to (a) a breach or default of **LANDLORD**'s covenants, representations and warranties contained in Article 2, (b) a breach or default of quiet enjoyment, (c) any obligation pursuant to this Lease of **LANDLORD** to indemnify or hold harmless **TENANT**, or (d) any obligation pursuant to this Lease of **LANDLORD** to reimburse **TENANT** the costs incurred by **TENANT** for architectural and engineering services on the Plans, in the event of a default by **LANDLORD** of any of its obligations under this Lease, **LANDLORD**'s monetary liability to **TENANT** shall be limited to any right of offset allowed by this Lease, law or equity against any amounts of Rent due hereunder, to the equity of the **LANDLORD** in the property containing the Premises and the Center, and to any proceeds of **LANDLORD** from operation of the Center.

### **Section 23.03: NOTICES**

Any notice, demand, request, approval, consent or other instrument which may be or is required to be given under this Lease shall be in writing and, shall be sent: (1) by United States registered or certified mail, return receipt requested, postage prepaid; or (2) by a nationally recognized courier providing overnight delivery, such as Federal Express, with the delivery charges pre-paid. Notices shall be addressed to **LANDLORD** or **TENANT** at the respective

addresses set forth at the commencement of this Lease and/or such other address or addresses as either party may designate by notice to the other in accordance with this Section. Notices shall be deemed given: (1) when received or refused by the intended party (as evidenced on the envelope, package or return receipt) if sent by certified or registered mail, or (2) if sent by nationally recognized courier service, the day of delivery by the service, whether or not such delivery was accepted or refused.

#### **Section 23.04: SUCCESSORS**

This Lease and the covenants and conditions herein contained shall inure to the benefit of and shall be binding on the parties and their respective successors and assigns.

#### **Section 23.05: BROKERS**

Except as otherwise provided herein, each party represents and warrants to the other that no broker, finder or consultant, to whom any monetary compensation is owed, provided any services in connection with this Lease, and each party agrees to indemnify and hold harmless the other party from and against any claim with respect to its breach of the foregoing representation and warranty.

#### **Section 23.06: UNAVOIDABLE DELAYS**

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder (except for the payment when due of any money) by reason of a Force Majeure Event (defined in Section 1.03(d)), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

#### **Section 23.07: SEVERABILITY**

It is the intention of the parties hereto that if any provision of this Lease is capable of two constructions, one of which would render the provision invalid and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid. If any term or provision, or any portion thereof, of this Lease, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to the persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

#### **Section 23.08: TIME OF ESSENCE**

Time is of the essence with respect to the performance of the respective obligations of **LANDLORD** and **TENANT** set forth in this Lease.

#### **Section 23.09: APPLICABLE LAW**

This Lease shall be governed, interpreted and enforced in accordance with the laws of the State of California. If either party institutes legal suit or action for enforcement of any obligation contained herein, it is agreed that venue for such suit or action may be in the county, parish or other like political entity of the state in which the Premises are located.

#### **Section 23.10: WAIVER**

(a) The waiver by **LANDLORD** or by **TENANT** of any term, covenant, agreement or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, agreement or condition herein contained. No covenant, term, agreement or condition of this Lease shall be deemed to have been waived by **LANDLORD** or **TENANT**, unless such waiver is in writing and signed by an authorized signatory of either **LANDLORD** or **TENANT**, as the case may be.

(b) No waiver of any covenant, term, agreement or condition of this Lease or legal right or remedy shall be implied by the failure of **LANDLORD** or **TENANT** to take any action or declare a forfeiture or termination when those rights are given by the terms of this Lease, or

for any other reason. No consent or approval by **LANDLORD** or **TENANT** shall be effective or operate to change any condition, requirement or other provision of this Lease unless made in writing and signed by an authorized signatory of either **LANDLORD** or **TENANT**, as the case may be.

#### **Section 23.11: RECORDING**

(a) This Lease shall not be recorded, unless such recording is required by applicable law. However, each of **LANDLORD** and **TENANT** shall have the right, from time to time, to request execution by the other party, and upon such execution, to record a memorandum of this Lease that is substantially in the form and content of Exhibit H attached hereto (a "**Memorandum of Lease**"), and the other party shall execute and deliver such Memorandum of Lease upon request.

(b) At the same time as **LANDLORD** and **TENANT** execute and deliver this Lease, **LANDLORD** and **TENANT** shall execute and deliver the Memorandum of Lease (no less than two original counterparts of each) substantially in the form of Exhibit H.

(c) Either **TENANT** or **LANDLORD** may record a fully executed Memorandum of Lease in the appropriate public records, and whichever party submits the Memorandum of Lease for recording shall be responsible for payment of the recording fees; provided, however, that should any transfer or recording taxes be payable upon recording of the Memorandum of Lease, such taxes shall be split evenly between **TENANT** and **LANDLORD**.

(d) Upon the expiration or earlier termination of this Lease, upon request of the other party **LANDLORD** and **TENANT** shall execute a memorandum for recording stating that the Lease has expired or been terminated, thereby releasing the Memorandum of Lease of record.

#### **Section 23.12: HAZARDOUS MATERIAL**

(a) Definitions: As used herein, the following terms shall have the following meanings:

(1) "**Hazardous Materials**": (A) Any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.) (RCRA), as amended from time to time, and regulations promulgated thereunder; (B) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) ("CERCLA"); the Superfund Amendments and Re-authorization Act of 1986 ("SARA"), as amended from time to time, and regulations promulgated thereunder; (C) asbestos; (D) polychlorinated biphenyls; (E) underground storage tanks, whether empty, filled or partially filled with any substance, (F) any substance the presence of which on the Premises is prohibited by any Legal Requirement (as defined below); (G) any other substance which by an Legal Requirement requires special handling or notification of any federal, state or local governmental entity in its collection, storage, treatment, or disposal; and (H) any item so designated by or pursuant to the Water Pollution Control Act (33 U.S.C. Section 1251 et seq.); Safe Drinking Water Act (42 U.S.C. Section 3000(f) et seq.); or Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.).

(2) "**Hazardous Materials Contamination**": The contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements of the Premises or the Center by Hazardous Materials.

(3) "**Indemnification Costs**" as used in this Section 23.12 shall mean any and all costs (including, but not limited to, fees and expenses of experts, attorneys' fees and litigation costs) of any investigation, inspection, assessment, legal action, litigation, arbitration, settlement, judgment and/or appeal related to, together with any amount (actual, special, punitive or any other form and any interest or surcharges thereon) which **TENANT** or **LANDLORD** is required to pay or incur pursuant to, any claim of any and every kind whatsoever which may now or in the future (whether before or after the termination or expiration of this Lease) be asserted in any way against **TENANT** or **LANDLORD** by any person, entity or governmental authority of any kind for, with respect to, or as a direct or indirect result of, either the presence on, under or about the Premises and/or the Center, or the escape, seepage, leakage, spillage, discharge, emission or

release from any part of the Premises and/or the Center, of any Hazardous Materials or any Hazardous Materials Contamination or the presence of any environmental condition which either poses a hazard, requires remediation, or is contrary to the requirements or standards of any applicable Legal Requirement (including, without limitation, RECRA, CERCLA, SARA or any federal, state or local so-called "superfund" or "superlien" laws, or any code, rule, regulation, order or decree promulgated thereunder).

(4) "Legal Requirements" as used in this Section 23.12 shall mean any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, directives, pronouncements, certificates or ordinances of any governmental authority in any way applicable to **LANDLORD, TENANT**, the Premises or the Center, including the ownership, use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof.

(b) Warranties and Representations of **LANDLORD**: **LANDLORD** hereby warrants and represents to **TENANT**, to the best of **LANDLORD**'s knowledge, as follows:

(1) No Hazardous Materials contamination is presently existing on or about the site which will be the location of the Premises as of the Effective Date;

(2) **LANDLORD** has no knowledge that any property adjoining to the site which will be the location of the Premises as of the Effective Date is being used, for the disposal, storage, treatment, processing or other handling of Hazardous Materials or is affected by Hazardous Materials Contamination;

(3) **LANDLORD** has no knowledge that any investigation, administrative order, consent order, litigation or settlement with respect to Hazardous Materials or Hazardous Materials Contamination as of the Effective Date is proposed, threatened, anticipated or in existence with respect to the site which will be the location of the Premises. **LANDLORD** has no knowledge that the site which will be the location of the Premises as of the Effective Date is on, or has ever been on, any federal or state "superfund" or "superlien" lists.

(c) Warranties and Representations of **TENANT**: **TENANT** hereby warrants and represents to **LANDLORD**, to the best of **TENANT**'s knowledge, as follows:

(1) Environmental Matters; Hazardous Substances: The business of **TENANT** does not involve activity that would violate any past or present environmental law or regulation of any governmental body or agency, state or federal, having jurisdiction over the Premises. Specifically, but without limitation, no investigation, administrative order, consent order and agreement, litigation or settlement with respect to Hazardous Materials or Hazardous Materials Contamination is proposed, threatened, anticipated or in existence with respect to any of the operations of **TENANT**.

(d) Affirmative Covenants: **LANDLORD** and **TENANT** hereby unconditionally covenant and agree as follows:

(1) Hazardous Materials: **LANDLORD** and **TENANT** agree to (A) give notice immediately upon acquiring knowledge of the presence of any Hazardous Materials on the Premises or of any Hazardous Materials Contamination with a full description thereof; and (B) the party who is responsible for the presence of any Hazardous Materials Contamination shall promptly comply with any Legal Requirements requiring the removal, treatment or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide satisfactory evidence of such compliance.

(2) Indemnification of **TENANT**: If at any time prior to the Delivery Date (defined in Section 3.01(a)) any Hazardous Materials Contamination shall have occurred with respect to any part of the Center, including without limitation the site which will be the location of the Premises, regardless of the proximate cause thereof, or if at any time during the period extending from and after the Delivery Date and throughout the Rent Term, any Hazardous Materials Contamination occurs on or about any portion of the Center as a proximate result of any act or omission of **LANDLORD** or of any person, party, or entity other than **TENANT** (or **TENANT**'s employees, contractors or agents), **LANDLORD** shall fully defend, indemnify and hold harmless the Tenant Parties (defined below in this subsection) from any and all



Indemnification Costs (defined in Section 23.12(a)(3)), regardless of whether or not such costs are caused by or within the control of **LANDLORD**, and **LANDLORD** shall pay all costs for and shall be solely responsible for performance of any and all necessary or appropriate removal, control or re-mediation work related thereto (including, but not limited to, installation and operation of any monitoring wells, vapor barriers and devices). If the closure of all or any part of the Theatre during the initial ten (10) Rent Years results from any Hazardous Materials Contamination on or about the Center as a proximate result of any act or omission of **LANDLORD** or of any person, party, or entity other than **TENANT** (or **TENANT**'s employees, contractors or agents), **TENANT**'s obligation to pay any Rent pursuant to this Lease shall equitably abate for the duration of such closure. The representations, covenants, warranties and indemnification contained in this Section 23.12 shall survive the expiration or termination of this Lease. For the purposes of this Section 23.12, the term "**Tenant Parties**" includes, in addition to **TENANT**, all present and subsequent owners, partners, joint venturers, managers, directors, officers, shareholders, employees and agents of **TENANT** and each and every affiliate of **TENANT**, and all of the directors, officers, shareholders, managers, employees and agents of each and every affiliate of **TENANT**.

(3) **Indemnification of LANDLORD:** If any Hazardous Materials Contamination shall occur as the proximate result of an act or omission of **TENANT** or of any contractor, agent or employee of **TENANT** during the period commencing on the Delivery Date and extending until the expiration of or earlier termination of the Rent Term, **TENANT** shall fully defend, indemnify and hold harmless the Landlord Parties (defined below in this subsection) from any and all Indemnification Costs, regardless of whether or not such costs are caused by or within the control of **TENANT**, and **TENANT** shall pay all costs for and shall be solely responsible for performance of any and all necessary or appropriate removal, control or re-mediation work related thereto (including, but not limited to, installation and operation of any monitoring wells, vapor barriers and devices). The representations, covenants, warranties and indemnification contained in this Section 23.12 shall survive the expiration or termination of this Lease. For the purposes of this Section 23.12, the term "**Landlord Parties**" shall include all present and subsequent owners, partners, joint venturers, managers, directors, officers, shareholders, employees and agents of **LANDLORD** and each and every affiliate of Landlord, and the directors, officers, shareholders, managers, employees and agents of each and every affiliate of Landlord.

#### **Section 23.13: ENTIRE AGREEMENT**

(a) There are no oral agreements between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, letters of intent, letters of understanding, lease proposals, brochures, agreements, representations, promises, warranties and understandings between the parties hereto.

(b) This Lease, including the exhibits hereto, sets forth the entire agreement between the parties with regard to the subject matter hereof, and includes all the covenants, promises, agreements, conditions and understandings between **LANDLORD** and **TENANT** concerning the Premises. No alteration, amendment, change or addition to this Lease shall be binding upon **LANDLORD** or **TENANT** unless reduced to writing, signed by them and mutually delivered between them.

#### **Section 23.14: EXCLUSIVE RIGHT**

(a) Center Exclusive Right. Throughout the Rent Term, **TENANT** shall have the exclusive right within the Center to operate a motion picture theatre or otherwise display a motion picture image on any media, regardless of the technology involved, including without limitation multiple dimension, motion simulation and virtual reality processes, a part of which processes includes depicting images on a screen of some type, and **LANDLORD** shall take all action necessary to prevent the operation of any other motion picture theatre business and any exhibition of motion pictures within the Center (the "**Center Exclusive Right**"). This Center Exclusive Right does not preclude the operation within the Center by others of a video arcade with game machines and does not preclude restaurants or retailers on an incidental basis from permitting the restaurant or store customers to view televisions and other like media without charge.

(b) Adjacent Mall Restriction. **LANDLORD** is the fee simple owner of that certain shopping center located across 4th Street from the Center known as Central City Mall (the "**Adjacent Mall**"). Throughout the Rent Term, neither **LANDLORD**, nor its successors, assigns, affiliates, licensees, tenants, undertenants, nor any other person or entity having a right to use or occupy all or any portion of the Adjacent Mall, shall be permitted to lease, license, operate or otherwise permit all or any portion of the Adjacent Mall for the operation of a motion picture theatre or the display of a motion picture image on any media, regardless of the technology involved, including without limitation multiple dimension, motion simulation and virtual reality processes, a part of which processes includes depicting images on a screen of some type, and **LANDLORD** shall take all action necessary to prevent the operation of any other motion picture theatre business and any exhibition of motion pictures within the Adjacent Mall (the "**Adjacent Mall Restriction**"). This Adjacent Mall Restriction does not preclude the operation within the Adjacent Mall by others of a video arcade with game machines and does not preclude restaurants or retailers on an incidental basis from permitting the restaurant or store customers to view televisions and other like media without charge.

(c) City Restriction. **LANDLORD** has determined that, in the interest of protecting and enhancing the general welfare of the people of the City of San Bernardino, the creation of a theater district in the downtown area will further such interest. **LANDLORD** has determined that the creation of a special theater district will alleviate blight and urban decay in the downtown area, and will assist **LANDLORD** in revitalizing the downtown area by attracting customers to the theaters and, concomitantly, to the restaurants and other retail businesses contemplated for such a theater district. Therefore, pursuant to the Development Agreement and the ordinances referenced in the Development Agreement, the City has covenanted to **TENANT** that from the Effective Date until the expiration or termination of the Rent Term, the City shall neither entitle nor approve any other cinema project or cinema theater within the municipal boundaries of the City that has a seating capacity in any single motion picture theatre (regardless of the number of auditoriums) equal to more than two hundred (200) seats nor having any auditorium for the presentation of recorded movie productions of a square footage greater than three thousand (3,000) square feet, without the prior written consent of **TENANT** to be granted or withheld in **TENANT**'s sole discretion (the "**City Restriction**"). Any circumstance which violates the City Restriction (as above-described) shall be deemed a breach by **LANDLORD** under this Lease, entitling **TENANT** to all rights and remedies for breach in addition to all other rights and remedies provided by this Lease (including without limitation that provided in Section 23.14(d)).

(d) Exclusive Right Inconsistency. If any event, circumstance or condition occurs which is not consistent with either the Center Exclusive Right, the Adjacent Mall Restriction or the City Restriction (any such being referred to as an "**Exclusive Right Inconsistency**"), in addition to all other rights and remedies the **TENANT** may have, then: (1) for the period commencing on the first day of the calendar month during with the Exclusive Right Inconsistency starts and extending to the last day of the calendar month during which the Exclusive Right Inconsistency ends, **TENANT** shall be relieved of any obligation to pay Base Rent and Percentage Rent, and instead **TENANT** shall be obligated to pay to **LANDLORD** Special Rent for such period of Exclusive Right Inconsistency, with such Special Rent payable as provided in Section 5.03(c); and (2) at any time during the period of the existence of the Exclusive Right Inconsistency, **TENANT** shall have the right to terminate this Lease without further obligation under this Lease effective as set forth in written notice from **TENANT** to **LANDLORD**.

#### **Section 23.15: ATTORNEYS' FEES**

In the event of litigation between the parties in which it is alleged that one or the other has defaulted under the provisions of this Lease, the ultimate non-prevailing party shall pay the reasonable attorneys' fees and court costs of the ultimate prevailing party.

#### **Section 23.16: LANDLORD MEANS OWNER**

As used herein, "**Superior Title**" means title which is either fee title or which is superior to the title of **TENANT** in the Premises. The term "**LANDLORD**" as used in this Lease, so far as covenants or obligations on the part of **LANDLORD** are concerned, shall mean the party identified as **LANDLORD** on page 1.1 as of the date of this Lease and thereafter shall mean and

include the owner or owners at the time in question of Superior Title to the Land, and in the event of any transfer or transfers of such Superior Title to the Land, the transferor shall be automatically freed and relieved, from and after the date of such transfer or conveyance, of all liability as respects the performance of any covenants or obligations on the part of **LANDLORD** contained in this Lease thereafter to be performed; provided that any funds in the hands of such transferor, in which **TENANT** has an interest, shall be turned over to the transferee, and any amount then due and payable to **TENANT** by the transferor under any provisions of this Lease shall be paid to **TENANT**; provided that the transferee assumes the obligations of **LANDLORD** under this Lease, if such assumption is necessary under applicable law, before such transferee shall be deemed to be obligated to **TENANT** as the **LANDLORD** of this Lease; and provided that the transferee receives the necessary legal rights to fulfill all of the obligations of the **LANDLORD** described in this Lease with respect to all of the Common Areas. The owner of Superior Title to the Land shall be bound by all of the obligations of **LANDLORD** under this Lease. The owner of Superior Title to any portion of the Center shall be bound by the exclusiveness granted to **TENANT** in Section 23.14 hereof.

#### **Section 23.17: COVENANTS, CONDITIONS AND RESTRICTIONS**

The Center may be subject to one or more title declarations, covenants or restrictions. **LANDLORD** represents, warrants and covenants that such title declarations, covenants or restrictions, and any declaration of, imposition of, or agreements about any covenants, conditions, restrictions and reciprocal easements applicable to the Center, shall not in any way materially eliminate, interfere with or diminish any rights or privileges of **TENANT** provided by this Lease or cause **TENANT** to be obligated to make any material expenditure or pay any charge or fee.

#### **Section 23.18: ACCEPTANCE OF LESS THAN FULL PAYMENT**

Each of **LANDLORD** and **TENANT** shall be entitled to accept any check or other form of payment of any obligation of the other party, regardless of whether such check or other form of payment constitutes the full amount pursuant to such obligation, without prejudice to the right of the recipient of such check or other form of payment to recover the balance due on such obligation.

#### **Section 23.19: MUTUAL EXECUTION**

Neither **LANDLORD** nor **TENANT** shall have any obligation or liability to the other whatsoever under this Lease until such time as **LANDLORD** and **TENANT** shall have each executed this Lease and delivered a copy of such executed Lease to the other party.

#### **Section 23.20: COUNTERPARTS**

This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, **LANDLORD** and **TENANT** have executed this Lease as of the date first written above.

**LANDLORD:**

**San Bernardino Economic Development Corporation**  
a nonprofit public benefit corporation



By: [Signature]  
Name: Emil A. Marzullo  
Its: Chief Executive Officer

State of California )  
 ) ss:  
County of San Bernardino

On 1/17, 2011, before me, Sheree Marlene Cabello-Meier, personally appeared Emil A. Marzullo, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

My commission expires: 5/14/2014 Sheree Marlene Cabello-Meier  
Notary Public

**TENANT:**

**Regal Cinemas, Inc.**  
a Tennessee corporation

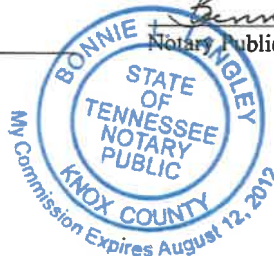
By: [Signature]  
Name: Robert G. Crane  
Its: Senior Vice President

State of TENNESSEE )  
 ) ss:  
County of KNOX

Before me, a Notary Public of the County and State aforesaid, personally appeared ROBERT G. CRANE, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be the SENIOR VICE PRESIDENT of Regal Cinemas, Inc., a Tennessee corporation, the within named bargainer, that he/she as such officer executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as such officer, and that he/she was duly authorized thereunto by the board of directors of such corporation.

Witness my hand and official seal at office in Knox County, Tennessee, this 4<sup>TH</sup> day of January, 2012.

My commission expires: 8-12-12 Bonnie L. Langley  
Notary Public



**Exhibit A**

**Legal Description of the Land**

(Lease Section 1.03)

(1 page)

**EXHIBIT A**

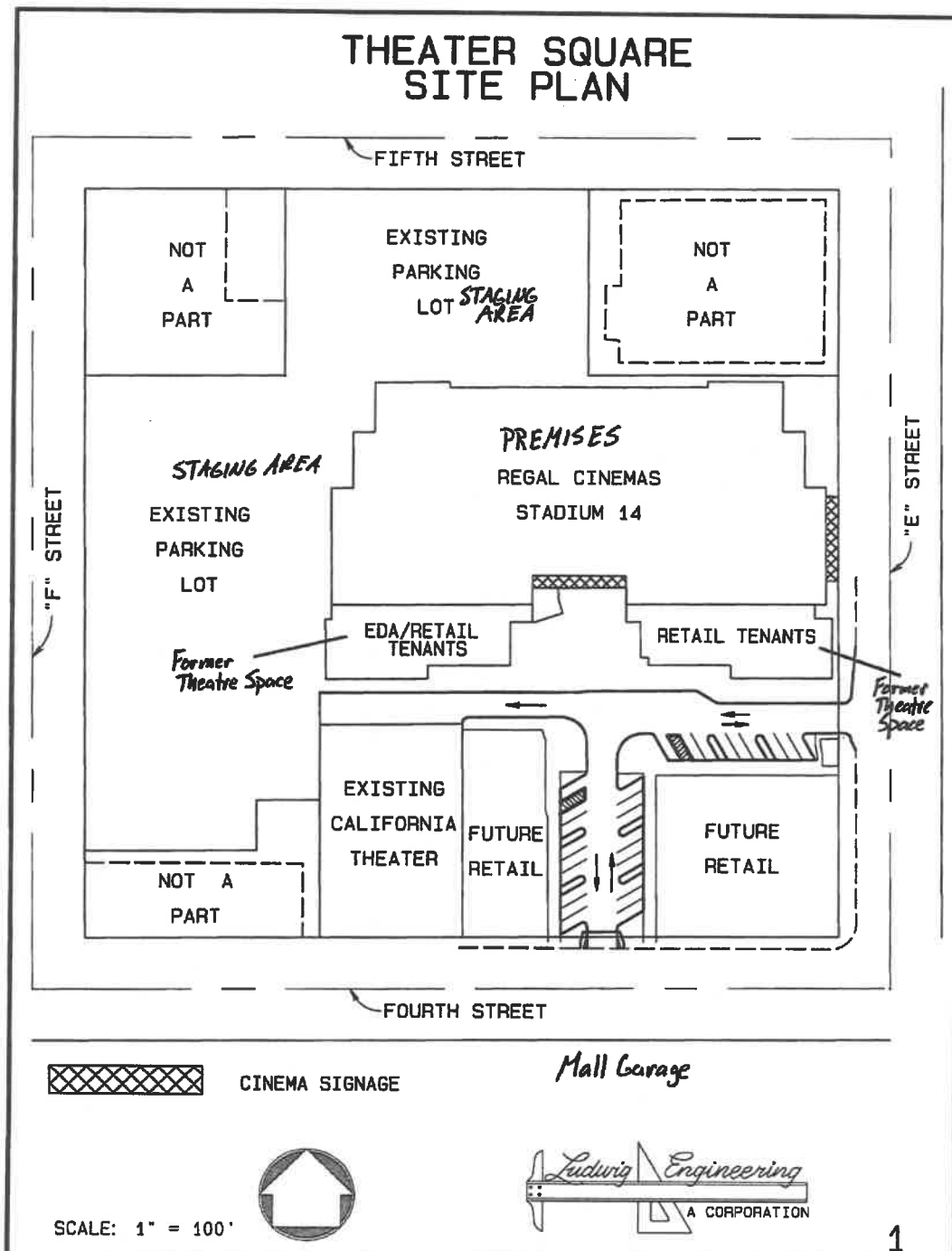
Parcels 1 through 7, inclusive, of Parcel Map No. 15038, in the City of San Bernardino, County of San Bernardino, State of California, as per plat recorded in Book 186 of Parcel Maps, Pages 14 and 15, records of said County.

**Exhibit B**

**Site Plan**

(Lease Section 1.03)

(3 pages)



- See following Pages for additional detail.
- Parking Retention Areas consist of each Existing Parking Lot, Mall Garage and Cal Tran Garage. Locations of Mall Garage and Cal Tran Garage more specifically shown on following pages.



SEP 15, 08 21, 2010

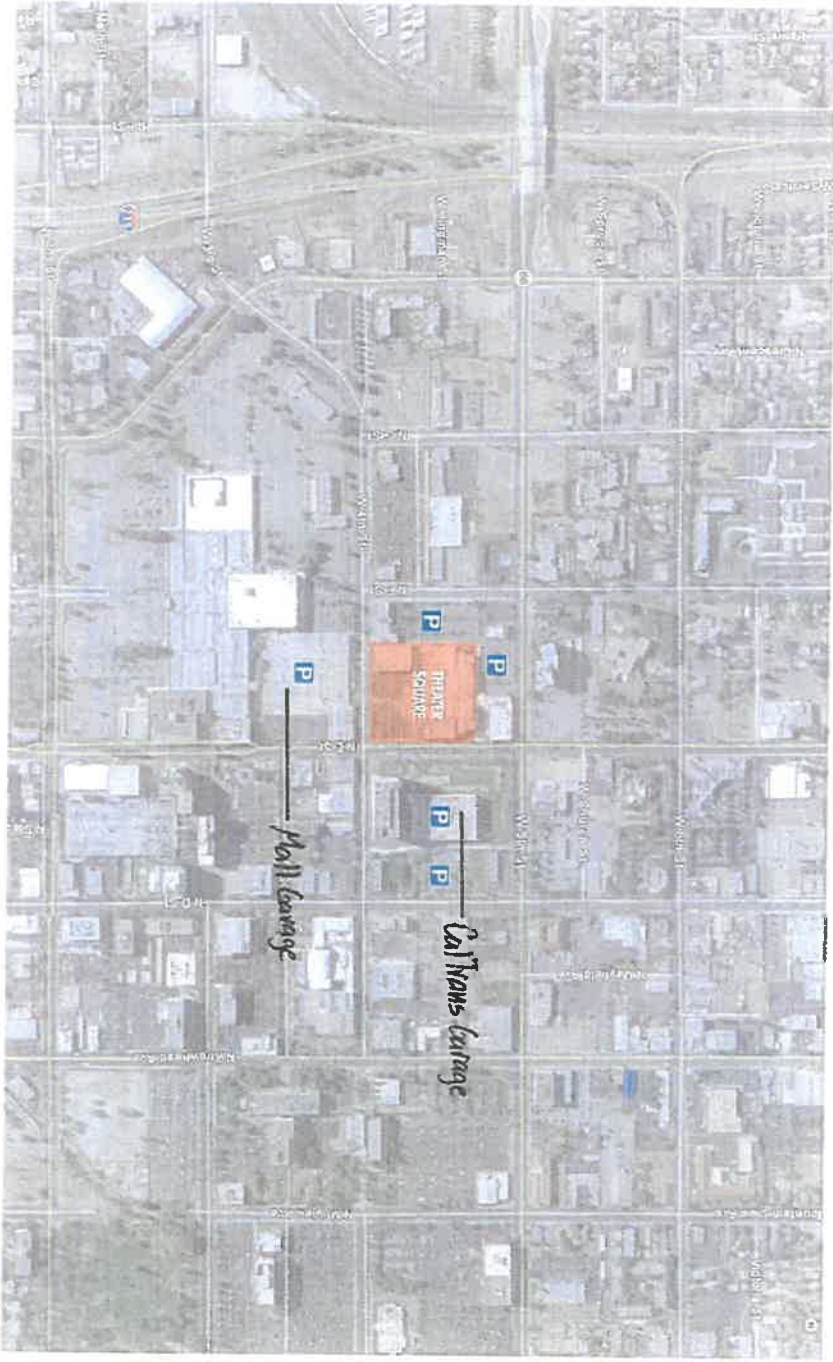


# THEATER SQUARE

SAN BERNARDINO, CA

3rd FLOOR





# THEATER SQUARE SAN BERNARDINO CO



SPE CO-TEAM

**Exhibit C**

**Layout Plan of the Premises**

(Lease Section 1.03)

(2 pages)







**Exhibit D**

**Designation of Landlord's Work  
and Tenant's Work**

(Lease Section 3.01)

(14 pages total,  
consisting of 6 pages of text  
and 8 pages of drawings)

## EXHIBIT D

### SCOPE OF WORK

#### THEATRE SQUARE REGAL CINEMAS STADIUM 14 REMODEL

The following designates the responsibility and scope of work to either Regal Cinemas, Inc. (REG) or Redevelopment Agency of the City of San Bernardino (LL).

#### 1.0 EXISTING BUILDING ARCHITECTURAL EXTERIOR REMODEL AND RENOVATION ITEMS:

##### 1.1 LANDLORD - REQUIRED EXTERIOR BUILDING SCOPE OF WORK ITEMS:

1. LL Repair exterior entry plaza grade slopes around existing Box Office to be demolished.
2. LL Remove existing Box Office and Box Office radius metal canopy and support columns.
3. LL Relocate existing bike racks (or provide new bike racks) to a new location.
4. LL Renovate existing and/or provide new landscape planting and irrigation. Power for irrigation control and site lighting to be provided by new electrical service point to be provided by the LL.
5. LL Repair and/or replace and maintain existing HVAC system as needed.

##### 1.2 REGAL - REQUIRED EXTERIOR BUILDING SCOPE OF WORK ITEMS

1. REG Remove existing starburst poles on Lobby roof over entry soffit area.
2. REG Remove starburst poles on top of tower. Remove existing star signage at existing tower to remain.
3. REG Remove existing marquee on the building corner right of the existing Box Office and repair exterior wall as required on back of existing Aud. 17 east wall.
4. REG Existing poster cases outside on existing Auditorium 19 south wall to be removed and relocated adjacent to the Lobby entrance.
5. REG Existing PVC roof drain overflow spouts to be remodeled or remain if possible. The existing roof overflow down spouts through the wall next to each of the side exits from Aud. 1 and 20 need to be relocated to provide proper exit door jamb clearance at plaza.
6. REG Remove and/or restore neon lighting at exterior building soffits.
7. REG Add new box office in existing Lobby plaza area under existing lobby stair landing. Extend new Box Office beyond exterior building line of stair landing to allow for roof mounted HVAC system on new Box Office addition roof. Provide 11' 0" new ceiling height at ticket sales room per REG standards for showtime reader board. Remove portion of existing storefront system to accommodate new Box Office.
8. REG Repair, clean, and paint existing plaster soffit face and underside over entry. Add new signage.
9. REG Provide new exterior architectural cladding attached to the existing Tower structure to remain. Clean and paint existing tower plaster

detail to remain. Add new Regal logo or letter signage on multiple sides of Tower.

10. REG On the existing building E Street side of the building provide new exterior building architectural cladding and REG signage. E Street Add REG signage on easterly E Street and on west side of building facing onsite parking area outside Auditorium 2.
11. REG Add 16 exterior poster cases per REG standard, if possible. Note exterior wall space is limited.
12. REG Add exit lighting as required at perimeter of cinema exits as required to meet code to supplement existing lighting to remain.
13. REG Review condition of existing down lights in soffit and add lighting as required to meet REG standards.
14. REG Repair, prepare and paint all exterior hollow metal doors with appropriate color scheme.
15. REG Provide new neon or LED and other architectural lighting at Plaza and Lobby exterior elevations to highlight new architectural metal siding features.

## 2.0 EXISTING BUILDING ARCHITECTURAL INTERIOR REMODEL AND RENOVATION ITEMS.

### 2.1 LANDLORD – INTERIOR BUILDING SCOPE OF WORK ITEMS REGAL IS TO PROVIDE THE FOLLOWING DEMISING WORK AT LANDLORD'S SOLE COST:

1. REG/LL Remodel existing theatre space to separate the existing REG theatre lease space to remain from the LL lease space shop/restaurant for a new exit corridor from auditoriums and theatre lobby corridors adjacent to Aud. 1, 2, 13 and 14.
2. REG/LL Provide new exit corridor lighting and air conditioning or exhaust fan systems as required at new exits.
3. REG/LL Provide fire rated wall as required to separate theatre A-1 occupancy from retail/shops/restaurant A-3 or M occupancies.
4. REG/LL The MEP system for the existing 20plex is to be remodeled to eliminate the extension of the existing theatre lease space MEP system to remain into the new LL shop/restaurant lease space portion of the existing building area to be remodeled for the LL's use.
5. REG/LL Architectural, Structural and MEP design work to be shown on Regal consultant design drawings indicating that the construction and the costs associated with the construction of this portion of work provided by Regal contractor is a separate itemized contract sum the Landlord is to reimburse to Regal for this scope of work.

### 2.2 REGAL - REQUIRED INTERIOR BUILDING SCOPE OF WORK ITEMS:

1. REG Repair adjacent ceiling, wall, and floor finishes as required on theatre side of new wall separating theatre lease space from LL restaurant/shop space.
2. REG Repair all existing plastic laminate Auditorium entry doors with new "Belbien" surface laminated onto existing doors. Existing



- door hardware to remain with exception of new door hardware added per Regal standards i.e., keypads, kick plates, etc. or new door hardware where existing door hardware has been damaged or is missing. No magnetic door holders are to be provided. Provide alternate cost to replace existing doors with new white maple sliced doors per Regal standards for REG consideration.
3. REG Remove existing Guest Service area in existing lobby and provide new Guest Service area per Regal standards adjacent to new Box Office.
  4. REG Existing main double pass thru concession stand and workroom to remain. Resurface existing counter cabinet's plastic laminate with new plastic laminate. Existing solid plastic countertop to remain and is to be rehabilitated.
  5. REG Remove existing and install new Regal menu boards and structural support/backing on existing soffit to remain.
  6. REG Remove existing interior signs, way finding signs, now showing signs and mini marquee signs and install new interior signs, way finding signs, now showing signs and mini marquees per Regal standards.
  7. REG Prepare existing subfloor and provide new ceramic tile and carpet flooring in lobby.
  8. REG Remove two existing satellite concession stands.
  9. REG Add two new Men restrooms to replace existing Men restrooms in Lobby 2 & 6 adjacent to Auditoriums 2 and 13. Salvage existing Men restroom fixtures located in LL shop/restaurant lease space and accessories and partitions for reuse at new or existing Men restrooms.
  10. REG Family Toilet facility to be provided and incorporated into new Men restrooms on each side of building.
  11. REG Repair, clean, and buff existing toilet partitions, urinal toilets, and lavatory vanity countertop as required.
  12. REG Refurbish or replace damaged existing restroom plumbing fixtures, accessories and finishes as required.
  13. REG Repair, clean, and buff existing ceramic tile on walls and floors as needed.
  14. REG Repair existing lavatory counter tops to provide disabled access.
  15. REG Provide new electric hand dryers per Regal Standards in existing and new restrooms.
  16. REG Prepare and repaint or provide new vinyl wall coverage at existing painted and vinyl wall covered lobby walls, stairs and soffits,
  17. REG Prepare and install new wall vinyl and/or repaint existing walls at all patron areas to approximately 8'0" AFF typical at all lobby corridor patron areas.
  18. REG Prepare and install new wall vinyl and/or repaint existing walls at employee rooms and spaces.
  19. REG Tile existing lobby column bases and refinish existing columns with wall vinyl or other durable epoxy paint materials.
  20. REG At existing Lobby ceiling remove existing neon lighting, existing ceiling tile and repair, prep and paint existing ceiling grid to remain black. Install new dyed black ceiling tile. Remove and replace or re-lamp and paint black exposed trims at existing lobby light fixtures.
  21. REG Refurbish/rep and paint existing architectural finishes at mezzanine party room, restrooms, office, janitor, locker,

mechanical, and conference rooms and provide new finishes, paint and carpet as required.

22. REG Refurbish existing lobby stair, paint and restore other finishes as required including new alternating pattern carpet stair treads and risers.
23. REG Add new ceramic floor tile at Auditorium entry door areas and trash enclosure areas.
24. REG Add new ceramic tile wall base and border tile throughout existing auditorium Lobby corridors.
25. REG Existing interior poster case locations to remain. Clean and refurbish.
26. REG Remodel existing Entrances to Auditorium 6, 7, 8 and 9 off Lobby.
27. REG Clean ceilings, clean walls and clean and polish sealed concrete floors at existing projector room.

### 2.3 REGAL - AUDITORIUM INTERIOR BUILDING SCOPE OF WORK ITEMS:

1. REG Repair existing auditorium interiors acoustical wall panels and wall carpet to remain. Repair, prep and paint existing auditorium seating concrete floors as required. Provide an alternate cost to install classic black vinyl tile flooring at all auditoriums seating areas for REG consideration.
2. REG Install new floor carpet and aisle lighting.
3. REG Existing screens and speakers are to remain – new to be provided as needed per REG direction.
4. REG Existing sconce lighting are to remain – new to be provided as needed per REG direction.
5. REG Provide new wall carpet at exposed painted entry foyer walls, and seats. Repair existing ceiling as required. Remodel cross aisle seating layout and concrete floor.
6. REG Prep and paint existing auditorium handrails to remain. Provide alternate construction cost estimate to relocate railings in Auditoriums from side of aisle to center of aisles where seating occurs on both sides of aisle stairs. Railing to be mounted 34" above nosing- as low as code allows.
7. REG Remodel exit doors at Auditoriums 5 and 10 next to screens and provide new exit doors at crossaisle directly to exterior.
8. REG Repair and rehabilitate existing trash enclosures to remain at auditorium entry foyers.
9. REG Remodel and repair existing projector room port windows as needed per REG direction.

### 3.0 EXISTING DISABLED ACCESS SUMMARY:

#### 3.1 EXISTING SITE CONDITIONS NEEDED TO BE BROUGHT INTO COMPLIANCE:

1. LL Site Accessible Route of Travel- exterior paving. Repair the existing and proposed new access path of travel surface finish grades to meet code to Lobby Entrance and Box Office.
2. LL Rehabilitate parking.
3. LL Rehabilitate/provide passenger Drop-Off and Loading Zone.
4. LL Provide detectable warnings on curb ramps.

5. LL Remodel ramp and walkway exits from Auditoriums 10, 11, 12, and 13 to be minimum 48" wide.
6. LL Remodel ramp and walkway exit hand railing clearances from Auditoriums 10, 11, 12, and 13 to be minimum 1-1/2" from wall surfaces and smooth existing split faced wall surfaces adjacent to existing handrails.
7. LL Provide disabled access site directional signage.

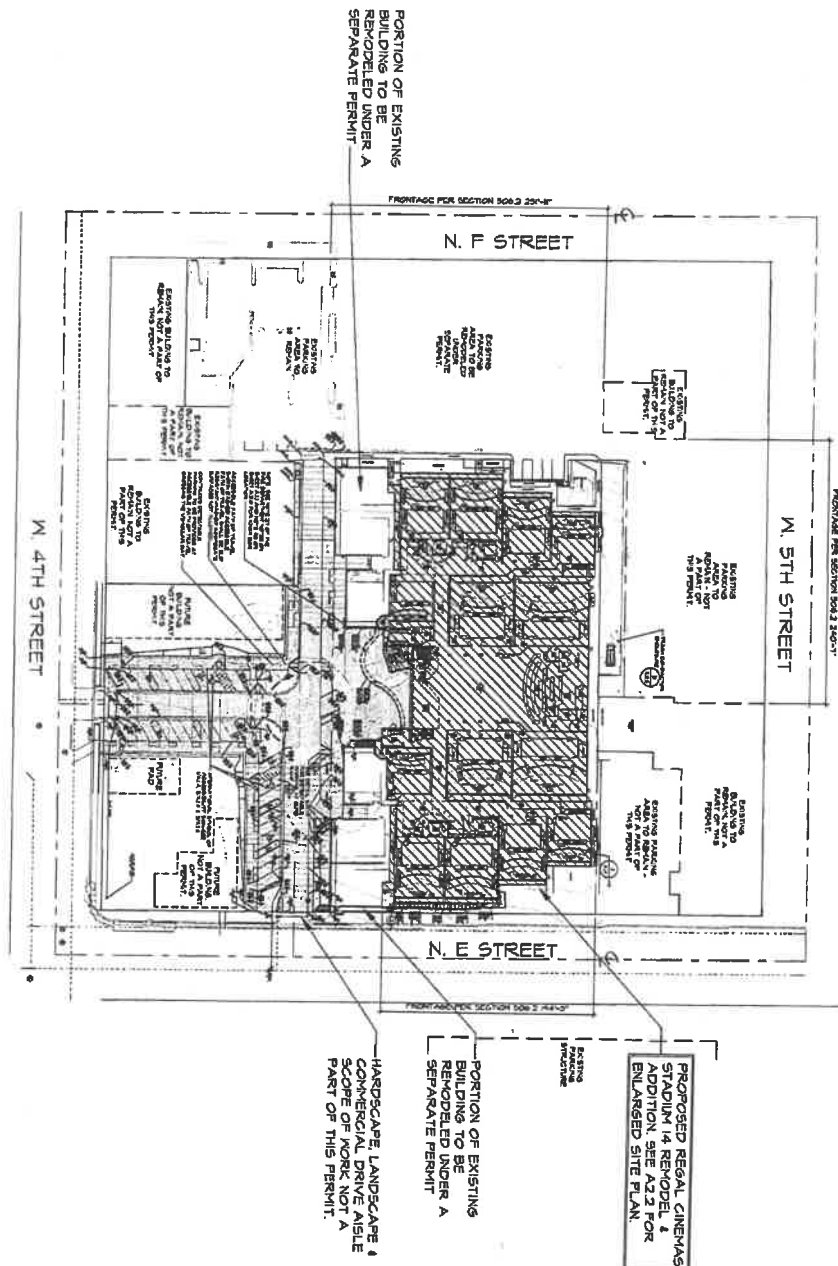
3.2 LOBBY AND EMPLOYEE AREA REQUIREMENTS NEEDED TO BRING EXISTING CONDITIONS INTO DISABLED ACCESS COMPLIANCE:

1. REG Lobby doors – service/repair as required.
2. REG Provide one automatic door at Lobby entrance.
3. REG Remodel Lobby entrance to provide one single leaf entry door.
4. REG Concession area - Add ADA signage and maintain counter heights per code.
5. REG Remodel existing Concession Support room doors to provide code required clearances.
6. REG Remodel existing door at offices to right of Concession to provide code required clearances.
7. REG Elevator provided operational. Service and rehabilitate as required – add floor level signage.
8. REG All restrooms required repair accessible toilet room partitions, equipment and accessories. Janitor room inside restroom.
9. REG Mezzanine men restroom - Door to HC stall needs to swing in, or partitions remodeled as required to provide door clearances.
10. REG Existing Party Room (Mezzanine) to remain. Prep and paint existing walls to remain.
11. REG Mezzanine Projector Room (right side) Storage, Mechanical Room, Office – clean and buff walls, floors and ceilings.
12. REG Mezzanine Projector Room Entry from Mezzanine Lobby (right side) – door clearance remodel required.
13. REG Mezzanine Projector Room (left side) Janitor, Office, Office – clean and buff walls, floors, and ceilings.
14. REG Mezzanine Projector Room Entry from Mezzanine Lobby (left side) – remodel existing door to provide code required clearance.
15. REG Existing drinking fountain in lobby to be removed. Accessible drinking fountains to be provided next to proposed new Men restrooms – 10 drinking fountains to be provided as required per code.

3.3 AUDITORIUM REQUIREMENTS NEEDED TO BRING EXISTING CONDITIONS INTO COMPLIANCE:

1. REG Auditoriums 1, 5, 10, 14- 107 Seats (exist 126 Seats) - Repair handrail extensions at entry and exit ramps, provide 4 WC Seats and 4 Companion seats, existing Second Exit access and ramp at screen access to be remodeled to provide proper landing and door clearances. Remove existing companion seats in existing cross aisles, level sloping floor and add railings. Repair aisle stairs as required to provide uniform tread length and riser heights.
2. REG New Auditoriums 2 and 13 - 196 Seats (exist 221 seats) - Repair handrail extensions at entry and exit ramps, provide 4 WC Seats and 4 Companion seats, Second exit-existing door clearance needs to be confirmed to be compliant at site. Remove existing raised 6

- inch platform, ramps and railings in crossaisle, repair crossaisle to be flat and add railings. Repair aisle stairs as required to provide uniform tread length and riser heights.
3. REG New Auditoriums 3 and 12 - 221 Seats (exist 245 Seats) - Repair handrail extensions at entry and exit ramps, provide 5 WC Seats and 5 Companion seats, Second exit-existing door clearance needs to be confirmed to be compliant at site. Remove existing raised 6 inch platform, ramps and railings in crossaisle, repair crossaisle to be flat and add railings. Repair aisle stairs as required to provide uniform tread length and riser heights.
  4. REG New Auditoriums 4 and 11 160 Seats (exist 204 Seats) - Repair handrail extensions at entry and exit ramps; provide 5 WC and 5 Companion seats, Second exit-existing door clearance needs to be confirmed to be compliant at site. Remove existing raised 6 inch platform, ramps and railings in crossaisle, repair crossaisle to be flat and add railings. Repair aisle stairs as required to provide uniform tread length and riser heights.
  5. REG New Auditoriums 6 and 9 – 362 Seats (exist 369 Seats) - Repair handrail extensions at entry and exit ramps, provide 6 WC Seats and 6 Companion seats, Second exit-existing door clearance needs to be confirmed to be compliant at site. Second Exit to Corridor-door clearance not provided at screen, third exit to corridor - door clearance and corridor width appear not provided. Remove existing raised 6 inch platform, ramps and railings in crossaisle, repair crossaisle to be flat and add railings. Repair aisle stairs as required to provide uniform tread length and riser heights.
  6. REG New Auditoriums 7 and 8 - 469 Seats (exist 468 Seats) - Remove one Entry Door to provide clearance for entry ramp landing, Repair handrail extensions at entry and exit ramps, provide 6 WC Seats and 6 Companion seats, Second Exit to Exterior- door clearance not provided at screen. Exit at Mezzanine door clearance remodel required. Remove existing raised 6 inch platform, ramps and railings in crossaisle, repair crossaisle to be flat and add railings. Repair aisle stairs as required to provide uniform tread length and riser heights.



SITE PLAN



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A.2.1

SITE PLAN



**REGAL CINEMAS 14**  
THEATRE SQUARE  
SAN BERNARDINO, CALIFORNIA

**BB**  
ARCHITECTS  
INCORPORATED

BB ARCHITECTS, INC.  
1580 SOUTH COAST HWY, SUITE 1B  
LAGUNA BEACH, CA 92651  
PHONE 949 494 8069  
FAX 949 494 2772  
WWW.BBARCHITECTS.COM

1. No Design Phase  
2. Schematic Design  
3. Preliminary Design  
4. Final Design  
5. Construction Documents  
6. Construction Administration  
7. Post-Construction



**Wouldn't that be fine?**

**Good** **Bad**

BB ARCHITECTS INC

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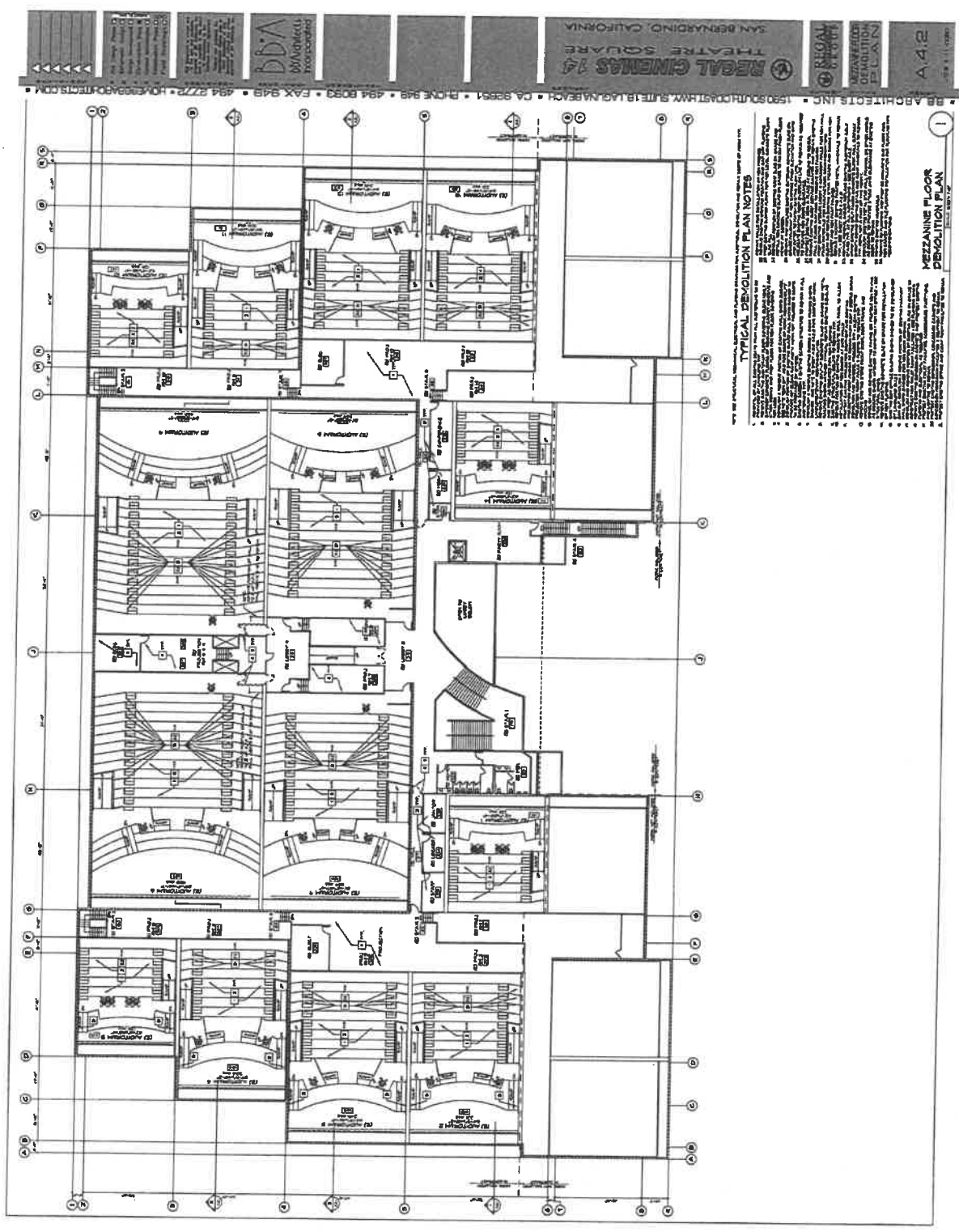
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**QUESTIONS TO ASK**





**TYPICAL DEVOLUTION PLAN NOTES**

1. SEE GENERAL NOTES FOR ALL NOTES.
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**MEZZANINE FLOOR  
DEVOLUTION PLAN**

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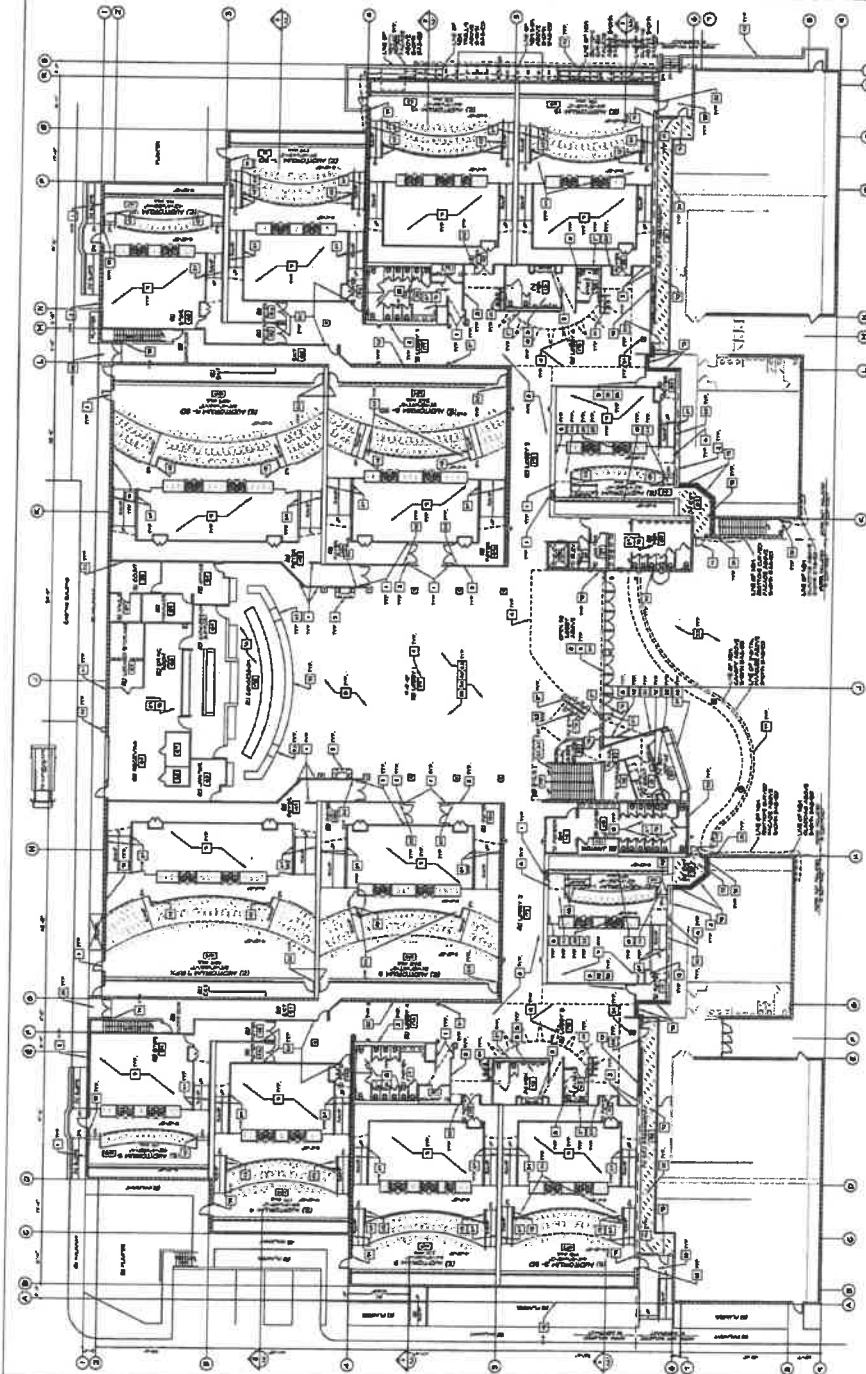
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MEZZANINE FLOOR  
DEVOLUTION PLAN

REGAL CINEMAS 14  
THEATRE SQUARE  
SAN BERNARDINO, CALIFORNIA

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**FIRE DEPARTMENT NOTES**

1. All exits must be clearly marked and unobstructed at all times.
2. All exits must be kept clear of any obstruction.
3. All exits must be kept clear of any obstruction.
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10. All exits must be kept clear of any obstruction.

NOTE: SEE SHEET A.5.1 FOR  
 KITCHEN & DOOR DETAILS  
 FIRST FLOOR  
 REFERENCE PLAN  
 JUNE 1, 1999

**TYPICAL REFERENCE PLAN NOTES**

1. All exits must be clearly marked and unobstructed at all times.
2. All exits must be kept clear of any obstruction.
3. All exits must be kept clear of any obstruction.
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10. All exits must be kept clear of any obstruction.

NOTE: SEE SHEET A-6.1 FOR  
WINDOW & DOOR NUMBERS,  
AND WALL TYPES  
MEZZANINE FLOOR  
REFERENCE PLAN



**Exhibit E**

**Completion Certificate**

(Lease Section 1.05)

(2 pages)

COMPLETION CERTIFICATE

Dated: \_\_\_\_\_

PART I

LEASE (the "Lease") dated as of \_\_\_\_\_, 2011

Parties:

San Bernardino Economic Development Corporation ("Landlord")  
Regal Cinemas, Inc. ("Tenant")

Rent Commencement Date: \_\_\_\_\_

10-Rent Year Initial Rent Term Expiration Date: \_\_\_\_\_

Optional Extension Terms: Four for five Rent Years each, followed  
by one for four Rent Years.

Actual GLA of the Premises: \_\_\_\_\_

PART II

Base Rent:

From the Rent Commencement Date through \_\_\_\_\_:  
\$850,000.00 annually, \$70,833.33 monthly

If Tenant exercises its options for Extension Periods:

From \_\_\_\_\_ through \_\_\_\_\_:  
\$920,250.00 annually, \$76,687.50 monthly  
From \_\_\_\_\_ through \_\_\_\_\_:  
\$990,500.00 annually, \$82,541.67 monthly  
From \_\_\_\_\_ through \_\_\_\_\_:  
\$1,060,750.00 annually, \$88,395.83 monthly  
From \_\_\_\_\_ through \_\_\_\_\_:  
\$1,131,000.00 annually, \$94,250.00 monthly  
From \_\_\_\_\_ through \_\_\_\_\_:  
\$1,201,250.00 annually, \$100,104.17 monthly.

PART III

Tenant and Landlord, intending legally to be bound, hereby certify and agree as follows:

A. The dates and other information set forth in this Completion Certificate are true and correct; and,

B. The Rent Term commences on the Rent Commencement Date set forth in PART I hereof and ends absolutely and without notice at 11:59 P.M. (local time for the location of the Theatre) on the Expiration Date, unless sooner terminated pursuant to provisions of the Lease or unless extended by exercise of options as provided in the Lease; and,

All terms defined in the Lease are used herein as defined therein.



**Exhibit F**  
**Non-Disturbance Agreement**

(Section 18.01)

(5 pages)



**Non-disturbance, Attornment  
and Subordination Agreement**

This **Non-disturbance, Attornment and Subordination Agreement** (the "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, by and between (i) \_\_\_\_\_, a \_\_\_\_\_, with an address of \_\_\_\_\_ (the "Mortgagee"); (ii) San Bernardino Economic Development Corporation, a nonprofit public benefit corporation, with an address of 201 North E Street, Suite 301, San Bernardino, California 92401 ("Landlord"), and (iii) Regal Cinemas, Inc., a Tennessee corporation, with an address of 7132 Regal Lane, Knoxville, Tennessee 37918 (the "Tenant").

**Preliminary Statement:**

A. Pursuant to that certain Lease (the "Lease") dated \_\_\_\_\_, 2011, by and between Landlord and Tenant, Landlord has leased to Tenant a certain multiple-auditorium motion picture theatre building (the "Premises"), to be remodeled as provided in this Lease so as to contain approximately 70,200 gross square feet and approximately 65,791 leaseable square feet of main floor area, with between approximately 3,000 and 3,400 auditorium seats within approximately fourteen (14) auditoriums, located as part of the Theatre Square in downtown San Bernardino, California (the "Center").

B. A legal description of the portion of the Center owned by Landlord is set forth on Exhibit A which is attached hereto and incorporated herein (the "Center Land").

C. Landlord owns fee simple absolute title to the Center Land pursuant to that certain deed recorded as Instrument No. \_\_\_\_\_ in the official records of San Bernardino County, California.

D. Pursuant to that certain Memorandum of Lease (the "Memorandum") recorded as Instrument No. \_\_\_\_\_ in the official records of San Bernardino County, California, Landlord and Tenant memorialized the Lease of the Premises for the purpose of placing the matter of record.

E. Mortgagee is the holder and beneficiary of that certain mortgage, deed of trust or similar encumbrance between Landlord and Mortgagee (the "Mortgage"), recorded as Instrument No. \_\_\_\_\_ in the official records of in the official records of San Bernardino County, California, which encumbers the Center Land.

F. Mortgagee, Landlord and Tenant desire to evidence their understanding with respect to the Mortgage and the Lease as hereinafter provided.

Now, therefore, in consideration of the mutual agreements hereinafter set forth, the parties hereby agree as follows:

**1. Meaning of Mortgagee.**

As used hereinafter, the term Mortgagee shall include the above identified Mortgagee and any assignees or successors of such Mortgagee with respect to the Mortgage.

**2. Non-Disturbance.**

So long as Tenant is not in default (beyond any period given Tenant under the Lease to cure such default) in the payment of rent or other sums payable by Tenant under the Lease or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed:

(a) Neither Tenant's right of possession of the Premises nor any other rights or privileges of Tenant under the Lease (including the Lease as extended or renewed in accordance with any option afforded Tenant in the Lease) shall be terminated, diminished or disturbed by Mortgagee for any reason whatsoever, including, without limitation, by virtue of any actions taken by Mortgagee in the exercise of any of its rights or remedies under the Mortgage or the indebtedness secured thereby;

(b) The Lease shall not be terminated or affected by the exercise of any right or remedy provided for in the Mortgage, and Mortgagee hereby covenants and agrees that any sale of the Landlord's title to the property containing the Premises by Mortgagee pursuant to the exercise of any rights or remedies under the Mortgage or otherwise shall be made subject to the Lease and the rights and privileges of Tenant thereunder; and

(c) In the event of foreclosure of the Mortgage, deed in lieu of foreclosure or other transfer of Landlord's right, title and interest in the property containing the Premises, such purchaser shall recognize and accept the Lease and Tenant's leasehold right, title and interest in the Premises.

### **3. Attornment**

(a) If the interest of Landlord shall be transferred to and owned by Mortgagee by reason of foreclosure, conveyance in lieu of foreclosure or other proceeding, or by any other manner, and Mortgagee succeeds to the interest of Landlord under the Lease, Tenant shall be bound to Mortgagee under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extension thereof which may be effected in accordance with any option therefore afforded to Tenant in the Lease, with the same force and effect as if Mortgagee were Landlord under the Lease, and Tenant does hereby attorn to Mortgagee as its Landlord, said attornment to be effective and self-operative without the execution of any further instruments on the part of either party hereto immediately upon Mortgagee succeeding to the interest of Landlord under the Lease. The respective rights and obligations of Tenant and Mortgagee upon such attornment, to the extent of the then remaining balance of the term of the Lease and any extensions and renewals thereof, shall be and are the same as set forth in the Lease, it being the intention of the parties hereto for this purpose to incorporate the Lease into this Agreement by reference with the same force and effect as if set forth at length herein.

(b) If Mortgagee shall succeed to the interest of Landlord under the Lease, Mortgagee shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, from and after Mortgagee's succession to the interest of Landlord under the Lease, have the same remedies against Mortgagee for the breach of any agreement contained in the Lease that Tenant would have had under the Lease against Landlord if Mortgagee had not succeeded to the interest of Landlord; provided, however, that Mortgagee shall not (a) have any monetary liability by offset against rent or otherwise for any act, omission, misrepresentation or default of any prior Landlord arising out of facts and circumstances existing before Mortgagee's succession to the interest of Landlord under the Lease, if such act, omission, misrepresentation or default of the prior Landlord then does not continue in effect, subject to the provision that Mortgagee shall not be relieved in any way from any performance obligation of the Landlord under the Lease for the period from and after Mortgagee's succession to the interest of Landlord; or (b) be bound by any rent which Tenant paid to the prior Landlord for more than one (1) month in advance, unless Mortgagee has received such rent from the prior Landlord; or (c) liable for the return of any security deposit to the extent it has not been received by Mortgagee from Landlord, all subject to the provision that Tenant shall have the right (but not the obligation) to cure any default by Landlord which Landlord or Mortgagee does not cure within the applicable cure period and recover its reasonable costs therefor together with interest at the Default Rate (defined in the Lease) by off set against Rent as it comes due for payment.

### **4. Subordination of Lease.**

Tenant covenants, stipulates and agrees that the Lease is hereby subordinate in priority to the lien of the Mortgage (including any and all renewals, increases, modifications, extensions, substitutions, replacements and/or consolidations of the Mortgage).

### **5. Authorization by Landlord.**

Landlord authorizes and directs Tenant to honor any written demand or notice from Mortgagee instructing Tenant to pay rent or other sums to Mortgagee rather than Landlord (a "Payment Demand"), regardless of any other or contrary notice or instruction which Tenant may receive from Landlord before or after Tenant's receipt of such Payment Demand. Tenant may rely upon any notice, instruction, payment demand, certificate, consent or other document from

Mortgagee believed by Tenant to be genuine and signed by Mortgagee and shall have no duty to Landlord to investigate the same or the circumstances under which the same was given. Any payment made by Tenant to Mortgagee in response to a Payment Demand shall be deemed proper payment by Tenant of such sum pursuant to the Lease.

**6. Miscellaneous.**

(a) No purported waiver by any party of any default by any other party of any term or provision contained herein shall be deemed to be a waiver of such term or provision unless the waiver is in writing and signed by the waiving party. No such waiver shall in any event be deemed a waiver of any subsequent default under the same or any other term or provision contained herein.

(b) This Agreement sets forth the entire understanding between the parties concerning the subject matter of this Agreement and incorporates all prior negotiations and understandings. There are no covenants, promises, agreements, conditions or understandings, either oral or written, between the parties relating to the subject matter of this Agreement other than those set forth herein. No representation or warranty has been made by or on behalf of any party to this Agreement (or any officer, director, employee or agent thereof) to induce any other party to enter into this Agreement or to abide by or consummate any transactions contemplated by any terms of this Agreement, except representations and warranties, if any, expressly set forth herein. No alteration, amendment, change or addition to this Agreement shall be binding upon any party unless in writing and signed by the party to be charged.

(c) Each and all of the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. It is expressly understood and agreed that Tenant's successors and assigns may include such lender as may become the holder of a first lien on Tenant's right, title and interest under the Lease pursuant to a Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Financing Statement granted by Tenant in favor of such lender in the event such lender succeeds to the interest of Tenant under the Lease in accordance with the terms of the Lease and said Leasehold Mortgage.

(d) Any consent, waiver, notice, demand, request or other instrument required or permitted to be given under this Agreement shall be in writing and be sent by certified or registered United States mail, return receipt requested, postage prepaid, or by overnight express delivery service, such as Federal Express, with the charges pre-paid, addressed:

If to Tenant:	Regal Cinemas, Inc. 7132 Regal Lane Knoxville, Tennessee 37918 Attention: Real Estate Department
With a copy to:	Herbert S. Sanger, Jr. Wagner, Myers & Sanger, P.C. 1801 First Tennessee Plaza Knoxville, Tennessee 37929
If to Mortgagee:	_____ _____ Attn: _____
With a copy to:	_____ _____ Attn: _____
If to Landlord:	_____ _____ Attn: _____
With a copy to:	_____ _____ Attn: _____

Any such consent, wavier, notice, demand, request or other instrument shall be deemed given upon receipt or upon the refusal of the addressee to receive the same as indicated on the return receipt. Any party may change its address for notices in the manner set forth above.

(e) The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience, and do not define, limit, construe or describe the scope or intent of the provisions of this Agreement.

(f) If any term or provision of this Agreement or the application thereof to any person, firm or corporation, or circumstance, shall be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons, firms or corporations, or circumstances other than those as to which it is held invalid, shall both be unaffected thereby, and each term or provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(g) This Agreement shall be governed by and construed in accordance with the laws of the state in which the Premises is located.

(h) This Agreement may be executed in counterparts, each of which when executed by the parties hereto shall be deemed an original and all of which together shall be deemed an original and all of which together shall be deemed the same Agreement. However, in no event shall Tenant be bound by this document until a fully executed, as-recorded, counterpart original is returned to Tenant's counsel at the address provided in Paragraph 6.4.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

Mortgagee: \_\_\_\_\_  
a \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Landlord: San Bernardino Economic Development Corporation  
a nonprofit public benefit corporation  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Tenant: Regal Cinemas, Inc.  
a Tennessee corporation  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

State of \_\_\_\_\_ )  
 ) ss:  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 2011 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_  
Notary Public

State of \_\_\_\_\_ )  
 ) ss:  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 2011 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_  
Notary Public

State of TENNESSEE )  
 ) ss:  
County of KNOX )

Before me, a Notary Public of the County and State aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be the \_\_\_\_\_ of Regal Cinemas, Inc., a Tennessee corporation, the within named bargainer, that he/she as such officer executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as such officer, and that he/she was duly authorized thereunto by the board of directors of such corporation.

Witness my hand and official seal at office in Knox County, Tennessee, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**Exhibit G**

**Landlord Estoppel Certificate**

(Lease Section 19.01)

(4 pages)

### Landlord Estoppel Certificate

This Landlord Estoppel Certificate ("Certificate") is executed as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ by San Bernardino Economic Development Corporation, a nonprofit public benefit corporation (the "Landlord"), for the benefit of Regal Cinemas, Inc., a Tennessee corporation (the "Tenant") and Tenant's lender, \_\_\_\_\_, a (along with any person or party who holds an interest in the Leasehold Mortgage defined below, the "Lender"), as administrative agent, and the assignees and successors of Tenant and Lender (including any holder of an interest in the Leasehold Mortgage defined below).

#### **Preliminary Statement:**

A. Pursuant to that certain Lease (the "Lease") dated \_\_\_\_\_, 2011, by and between Landlord and Tenant, Landlord has leased to Tenant a certain multiple-auditorium motion picture theatre building (the "Premises"), to be remodeled as provided in this Lease so as to contain approximately 70,200 gross square feet and approximately 65,791 leaseable square feet of main floor area, with between approximately 3,000 and 3,400 auditorium seats within approximately fourteen (14) auditoriums, located as part of the Theatre Square in downtown San Bernardino, California (the "Center")

B. A legal description of the portion of the Center owned by Landlord is set forth on Exhibit A which is attached hereto and incorporated herein (the "Center Land").

C. Landlord owns fee simple absolute title to the Center Land pursuant to that certain deed recorded as Instrument No. \_\_\_\_\_ in the official records of San Bernardino County, California.

D. Pursuant to that certain Memorandum of Lease (the "Memorandum") recorded as Instrument No. \_\_\_\_\_ in the official records of San Bernardino County, California, Landlord and Tenant memorialized the Lease of the Premises for the purpose of placing the matter of record.

E. Tenant intends to enter into a leasehold mortgage (or the applicable equivalent), assignment of leases and rents, security agreement and fixture filing (as amended, restated, renewed, modified or supplemented, the "Leasehold Mortgage") in favor of Lender, encumbering Tenant's leasehold interest in the Premises (the "Leasehold Interest") and Tenant's title to its furniture, fixtures, equipment and personal property within or about the Premises (the "Collateral").

F. The Leasehold Mortgage will secure Tenant's obligations under a certain credit agreement (as it may be amended, restated, renewed, modified or supplemented from time to time, the "Loan Agreement") by and between Tenant and Lender, including Tenant's obligation to repay that certain loan made by Lender to Tenant pursuant to the Loan Agreement (the "Loan"), and Lender also may require from Tenant the grant of a pledge of Tenant's stock.

Now, Therefore, Landlord, knowing that Lender will rely on this Certificate in accepting the Mortgage and in making the Loan, and for good and valuable consideration, hereby states, certifies, confirms, acknowledges, represents, warrants and agrees as follows:

1. Landlord owns fee simple title to the parcel of land which contains the Premises and has the right to lease the Premises to Tenant in the manner provided in the Lease. Pursuant to the Lease, Landlord has leased the Premises to Tenant. As of the date of this Certificate, Tenant constitutes the sole "Tenant" under the Lease.

2. A copy of the Lease and all amendments and supplements thereto are attached hereto and made a part hereof as Exhibit B, which exhibit constitutes a true and correct copy of the Lease and all amendments and supplements thereto and also constitutes the entire agreement of Landlord and Tenant with respect to the subject matter thereof.

3. The initial Rent Term of the Lease commenced on the Rent Commencement Date (as defined in the Lease) which was \_\_\_\_\_. The first Rent Year (as defined in

the Lease) began on the Rent Commencement Date. The term of the Lease shall end on the last day of the Tenth (10th) Rent Year, unless extended. Tenant has four (4) options to extend the term for periods of five (5) years each, followed by one (1) option to extend for four (4) years.

4. The Lease has not been supplemented, modified or amended (orally or in writing) except pursuant to the documents identified above and attached hereto as part of Exhibit B. The Lease is valid and in full force and effect, in accordance with its terms, on the date hereof. The Lease has not been surrendered, canceled, terminated or abandoned, whether in writing or pursuant to a purported oral surrender, cancellation, termination or abandonment. Landlord has not commenced any pending action or sent any presently effective notice to Tenant (or received any presently effective notice from Tenant) for the purpose of cancelling or terminating the Lease. Landlord presently has no basis for cancellation or termination of the Lease. All rent due as of the date hereof under the Lease has been paid through the date hereof. To the best of Landlord's knowledge, Tenant is not currently in default under the Lease, and, to the best of Landlord's knowledge, no condition exists that, with the giving of notice or the passage of time, or both, would give rise to a default under the Lease.

5. Landlord agrees that Tenant may grant the Leasehold Mortgage to Lender and/or pledge its capital stock in favor of Lender, without being in default under the Lease.

6. No action or agreement hereafter taken or entered into by Tenant to cancel, surrender, amend or modify the Lease shall bind Lender or affect the lien of Lender, without the prior written consent of Lender, except for any lease modification or amendment that does not: (A) increase any amount of rent or other charge payable pursuant to the Lease; (B) decrease the size of the Premises; (C) alter any of the rights or privileges of Lender or obligations by Landlord or Tenant to the Lender as now provided in the Lease, the Mortgage, this Certificate or by applicable law; (D) impose upon Tenant a greater burden than imposed by the Lease as it now exists with respect to maintenance, repair or re-construction of the Premises; (E) change, either by increase or decrease, the length of the term of the Lease (including the term as extended by any options provided in the Lease); or (F) enable a lien against the Leasehold Interest or the Collateral with superiority over the Leasehold Mortgage or the lien of Leasehold Mortgage.

7. If Landlord gives any notice, demand, election or other communication (collectively, "notices") to Tenant under the Lease, Landlord shall simultaneously give a copy of each such notice to Lender at the address designated by Lender. All copies of notices shall be given and deemed received in the manner contemplated by the Lease. No notice by Landlord to Tenant shall bind or affect Lender unless Landlord also gives a copy of the notice to Lender pursuant to this section. Lender's address for the purpose of notices is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In the case of an assignment of the Leasehold Mortgage or change in address of Lender, the assignee or Lender, by written notice to Landlord, may change the address to which copies of notices are to be sent.

8. Prior to Landlord's exercise of any of its remedies under the Lease for default under the Lease by Tenant, including, if applicable, terminating the Lease or Tenant's right of possession of the Premises, Lender shall have the right to remedy the default of Tenant under the Lease, or to cause the subject default under the Lease to be remedied, within the time period, if any, offered under the Lease for Tenant to do so, plus an additional ten (10) days, in the case of a monetary default or an additional thirty (30) days, in the case of a non-monetary default. Landlord shall not serve a notice of election to terminate the Lease, or otherwise terminate the Leasehold Interest of Tenant in the case of a non-monetary default that Lender cannot practicably cure without taking possession of the Premises, as long as Lender proceeds diligently to obtain possession of the Premises as mortgagee (including possession by a receiver), and, upon obtaining such possession, proceeds diligently to cure such default.

9. Landlord agrees to accept any required Tenant performance from Lender as if Tenant had tendered such performance, provided, however, that unless Lender otherwise agrees in writing, any performance or partial performance by Lender under the Lease shall not constitute an assumption by Lender of Tenant's obligations thereunder.



10. The exercise and non-exercise of remedies under the Leasehold Mortgage is solely at the election of Lender. If Lender elects to exercise any of such remedies by reason of Tenant's default under the Lease or the Leasehold Mortgage, Lender is not obligated to pursue such remedies.

11. In the event of termination of the Lease for any reason other than expiration of the lease term, including any termination on account of a rejection under the Federal Bankruptcy Code, Landlord shall notify Lender that the Lease has been terminated, and shall deliver a statement of all amounts that would at that time be due under the Lease from Tenant but for such termination, and of all other defaults of Tenant, if any, under the Lease then known to Landlord. Lender shall thereupon have the option to obtain a new lease for the Premises from Landlord in accordance with and upon the following terms and conditions:

(A) Upon the written request of Lender, given to Landlord within 30 days after Landlord's notice to Lender that the Lease has been terminated, Landlord shall enter into a new lease of the Premises (the "New Lease") with Lender or a Designated Assignee. "Designated Assignee" means any individual or entity which as of the effective date of the New Lease either: (1) operates movie theatres with a combined total number of auditoriums of no less than two hundred (200), with at least one hundred (100) of such auditoriums located in the State of California, or (2) in connection with the assignment of the Lease, is acquiring a majority of Tenant's movie theatres in the state in which the Premises is located.

(B) The reasonable costs for the process of preparing and entering into the New Lease shall be that of the tenant named therein (the "Subsequent Tenant"), which Subsequent Tenant shall be either Lender or the Designated Assignee. The New Lease shall be effective as of the date of termination of the Lease, and shall be upon identical terms as the terms of the Lease. The New Lease shall require the Subsequent Tenant to perform as due for performance any unfulfilled obligation of Tenant under the Lease that is reasonably susceptible of being performed by the Subsequent Tenant. Upon the execution of the New Lease, the Subsequent Tenant shall pay to Landlord: (i) all sums that would at the time of the execution thereof be due under the Lease but for such termination; and (ii) all reasonable expenses, including reasonable counsel fees and court costs incurred by Landlord in connection with terminating the Lease and entering into the New Lease, provided that such expenses shall not exceed, in the aggregate, the sum of One Thousand Dollars (\$1,000.00).

12. Lender may, without Landlord's consent, foreclose the Leasehold Mortgage, accept an assignment of Tenant's interest in the Lease in lieu of foreclosure of the Leasehold Mortgage or cause the assignment of Tenant's interest in the Lease to a Designated Assignee in lieu of foreclosure of the Leasehold Mortgage, pursuant to the Loan Agreement or any applicable law.

13. Upon the exercise of any of the remedies contained in the Leasehold Mortgage, such that Lender forecloses upon, sells, transfers or otherwise terminates Tenant's Leasehold Interest, Landlord agrees that any transfer of Tenant's interest in the Lease shall not terminate the Lease, but the Lease shall be fully assignable to Lender or a Designated Assignee. Lender may also take ownership of, or retransfer, the capital stock of Tenant.

14. Except for the period of time during which Lender is actually the owner of Tenant's interest in the Lease, Lender shall not be liable to perform any of Tenant's obligations under the Lease. If Lender at any time holds Tenant's interest under the Lease or is the tenant under any New Lease entered into in replacement of the Lease, then, upon any sale, transfer or assignment thereof by Lender to a Designated Assignee, such transfer shall automatically release Lender from any liability under the Lease or, as the case may be, the New Lease, occurring after the date of such sale, transfer or assignment.

15. Landlord hereby consents to Tenant's grant to Lender of a security interest in the Collateral and recognizes that every right that Landlord now has or hereafter may have, either to levy upon the Collateral or to claim or assert title to the Collateral, whether under the Lease or the laws of the state in which the Premises is located, or under any applicable federal, state, municipal or local law, ordinance or otherwise, or under any mortgage now in effect or hereafter executed, whether by reason of a default under the Lease or otherwise, shall be subject and

S:\WPFILES\2707D\443\Lease-6 (wms 11-16-11).doc

**Exhibit H**

**Memorandum of Lease**

(Lease Section 23.11)

(3 pages)

### Memorandum of Lease

This Memorandum of Lease is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2011, by and between San Bernardino Economic Development Corporation, a nonprofit public benefit corporation, with an address of 201 North E Street, Suite 301, San Bernardino, California 92401 ("Landlord"), and Regal Cinemas, Inc., a Tennessee corporation (the "Tenant") with an address of 7132 Regal Lane, Knoxville, Tennessee 37918.

#### Preliminary Statement:

A. Pursuant to that certain Lease (the "Lease") dated \_\_\_\_\_, 2011, by and between Landlord and Tenant, Landlord has leased to Tenant a certain multiple-auditorium motion picture theatre building (the "Premises"), to be remodeled as provided in this Lease so as to contain approximately 70,200 gross square feet and approximately 65,791 leaseable square feet of main floor area, with between approximately 3,000 and 3,400 auditorium seats within approximately fourteen (14) auditoriums, located as part of the Theatre Square in downtown San Bernardino, California (the "Center")

B. A legal description of the portion of the Center owned by Landlord is set forth on Exhibit A which is attached hereto and incorporated herein (the "Center Land").

C. Landlord owns fee simple absolute title to the Center Land pursuant to that certain deed recorded as Instrument No. \_\_\_\_\_ in the official records of San Bernardino County, California.

D. Landlord and Tenant, pursuant to Section 23.11 of the Lease, hereby execute this Memorandum of Lease for the purpose of memorializing the lease of the Premises from Landlord to Tenant pursuant to the terms of the Lease, and desire to have this Memorandum of Lease recorded in order to give constructive notice of Tenant's leasehold interest in the Premises pursuant to the Lease.

Now, Therefore, in consideration of the foregoing premises and mutual covenants set forth in the Lease, and for other good and valuable consideration, the mutuality, receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Lease of Premises. Landlord leases to Tenant, and Tenant leases from Landlord, the Premises for the term set forth in Section 2 hereof at the rental and upon the covenants and conditions as set forth in the Lease, which Lease is by this reference incorporated herein and made a part hereof as fully as if set forth herein at length.

2. Term. The Rent Term of the Lease will commence on the Rent Commencement Date (as defined in the Lease) and shall end on the completion of the tenth (10th) Rent Year after the Rent Commencement Date, but the term shall be subject to extension by Tenant. Tenant has four (4) options to extend the term for periods of five (5) years each, followed by one (1) option to extend the term for a period of four (4) years, resulting in a total potential term of approximately thirty-four (34) years.

3. Lease Provisions. The lease of the Premises from Landlord to Tenant is subject to all the terms, covenants and conditions set forth in the Lease.

4. Common Areas and Parking Retention Areas. The Lease grants to Tenant and its employees, customers, patrons and invitees a non-exclusive right of use of all of the automobile parking areas, drive lanes, entrance and exit ways and other Common Areas of the Center. The Common Areas are more specifically defined in the Lease, but (without limitation) include the following areas located outside the Center: (a) all parking spaces located within the Central City Mall parking garage (the "Mall Garage"), as shown on the Site Plan; and (b) all parking spaces within the CalTrans parking garage (the "CalTrans Garage"), as shown on the Site Plan.

5. Exclusive. Section 23.14 of the Lease provides as follows:

(a) Center Exclusive Right. Throughout the Rent Term, **TENANT** shall have the exclusive right within the Center to operate a motion picture theatre or otherwise display a motion picture image on any media, regardless of the technology involved, including without limitation multiple dimension, motion simulation and virtual reality processes, a part of which processes includes depicting images on a screen of some type, and **LANDLORD** shall take all action necessary to prevent the operation of any other motion picture theatre business and any exhibition of motion pictures within the Center (the "**Center Exclusive Right**"). This Center Exclusive Right does not preclude the operation within the Center by others of a video arcade with game machines and does not preclude restaurants or retailers on an incidental basis from permitting the restaurant or store customers to view televisions and other like media without charge.

(b) Adjacent Mall Restriction. **LANDLORD** is the fee simple owner of that certain shopping center located across 4th Street from the Center known as Central City Mall (the "**Adjacent Mall**"). Throughout the Rent Term, neither **LANDLORD**, nor its successors, assigns, affiliates, licensees, tenants, undertenants, nor any other person or entity having a right to use or occupy all or any portion of the Adjacent Mall, shall be permitted to lease, license, operate or otherwise permit all or any portion of the Adjacent Mall for the operation of a motion picture theatre or the display of a motion picture image on any media, regardless of the technology involved, including without limitation multiple dimension, motion simulation and virtual reality processes, a part of which processes includes depicting images on a screen of some type, and **LANDLORD** shall take all action necessary to prevent the operation of any other motion picture theatre business and any exhibition of motion pictures within the Adjacent Mall (the "**Adjacent Mall Restriction**"). This Adjacent Mall Restriction does not preclude the operation within the Adjacent Mall by others of a video arcade with game machines and does not preclude restaurants or retailers on an incidental basis from permitting the restaurant or store customers to view televisions and other like media without charge.

(c) City Restriction. **LANDLORD** has determined that, in the interest of protecting and enhancing the general welfare of the people of the City of San Bernardino, the creation of a theater district in the downtown area will further such interest. **LANDLORD** has determined that the creation of a special theater district will alleviate blight and urban decay in the downtown area, and will assist **LANDLORD** in revitalizing the downtown area by attracting customers to the theaters and, concomitantly, to the restaurants and other retail businesses contemplated for such a theater district. Therefore, pursuant to the Development Agreement and the ordinances referenced in the Development Agreement, the City has covenanted to **TENANT** that from the Effective Date until the expiration or termination of the Rent Term, the City shall neither entitle nor approve any other cinema project or cinema theater within the municipal boundaries of the City that has a seating capacity in any single motion picture theatre (regardless of the number of auditoriums) equal to more than two hundred (200) seats nor having any auditorium for the presentation of recorded movie productions of a square footage greater than three thousand (3,000) square feet, without the prior written consent of **TENANT** to be granted or withheld in **TENANT**'s sole discretion (the "**City Restriction**"). Any circumstance which violates the City Restriction (as above-described) shall be deemed a breach by **LANDLORD** under this Lease, entitling **TENANT** to all rights and remedies for breach in addition to all other rights and remedies provided by this Lease (including without limitation that provided in Section 23.14(d)).

(d) Exclusive Right Inconsistency. If any event, circumstance or condition occurs which is not consistent with either the Center Exclusive Right, the Adjacent Mall Restriction or the City Restriction (any such being referred to as an "**Exclusive Right Inconsistency**"), in addition to all other rights and remedies the **TENANT** may have, then: (1) for the period commencing on the first day of the calendar month during which the Exclusive Right Inconsistency starts and extending to the last day of the calendar month during which the

Exclusive Right Inconsistency ends, TENANT shall be relieved of any obligation to pay Base Rent and Percentage Rent, and instead TENANT shall be obligated to pay to LANDLORD Special Rent for such period of Exclusive Right Inconsistency, with such Special Rent payable as provided in Section 5.03(c); and (2) at any time during the period of the existence of the Exclusive Right Inconsistency, TENANT shall have the right to terminate this Lease without further obligation under this Lease effective as set forth in written notice from TENANT to LANDLORD.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Lease as of the date first above written.

**LANDLORD:**

**San Bernardino Economic Development Corporation**  
a nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 2011 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_  
Notary Public

**TENANT:**

**Regal Cinemas, Inc.**  
a Tennessee corporation

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Its: \_\_\_\_\_

State of TENNESSEE )  
County of KNOX )

Before me, a Notary Public of the County and State aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be the \_\_\_\_\_ of Regal Cinemas, Inc., a Tennessee corporation, the within named bargainer, that he/she as such officer executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as such officer, and that he/she was duly authorized thereunto by the board of directors of such corporation.

Witness my hand and official seal at office in Knox County, Tennessee, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

My commission expires: \_\_\_\_\_  
Notary Public

**Exhibit I**

**Common Areas Work Schedule**

(Lease Section 3.01)

(3 pages)







Job #	Description	Day	Hour	Start	End	Time	Notes
4023	Signal Cable Installation	10/11/12	07:00	07:30	07:30	07:30	
4024	Signal Cable Installation	10/11/12	07:30	08:00	08:00	08:00	
4025	Signal Cable Installation	10/11/12	08:00	08:30	08:30	08:30	
4026	Signal Cable Installation	10/11/12	08:30	09:00	09:00	09:00	
4027	Signal Cable Installation	10/11/12	09:00	09:30	09:30	09:30	
4028	Signal Cable Installation	10/11/12	09:30	10:00	10:00	10:00	
4029	Signal Cable Installation	10/11/12	10:00	10:30	10:30	10:30	
4030	Signal Cable Installation	10/11/12	10:30	11:00	11:00	11:00	
4031	Signal Cable Installation	10/11/12	11:00	11:30	11:30	11:30	
4032	Signal Cable Installation	10/11/12	11:30	12:00	12:00	12:00	
4033	Signal Cable Installation	10/11/12	12:00	12:30	12:30	12:30	
4034	Signal Cable Installation	10/11/12	12:30	13:00	13:00	13:00	
4035	Signal Cable Installation	10/11/12	13:00	13:30	13:30	13:30	
4036	Signal Cable Installation	10/11/12	13:30	14:00	14:00	14:00	
4037	Signal Cable Installation	10/11/12	14:00	14:30	14:30	14:30	
4038	Signal Cable Installation	10/11/12	14:30	15:00	15:00	15:00	
4039	Signal Cable Installation	10/11/12	15:00	15:30	15:30	15:30	
4040	Signal Cable Installation	10/11/12	15:30	16:00	16:00	16:00	
4041	Signal Cable Installation	10/11/12	16:00	16:30	16:30	16:30	
4042	Signal Cable Installation	10/11/12	16:30	17:00	17:00	17:00	
4043	Signal Cable Installation	10/11/12	17:00	17:30	17:30	17:30	
4044	Signal Cable Installation	10/11/12	17:30	18:00	18:00	18:00	
4045	Signal Cable Installation	10/11/12	18:00	18:30	18:30	18:30	
4046	Signal Cable Installation	10/11/12	18:30	19:00	19:00	19:00	
4047	Signal Cable Installation	10/11/12	19:00	19:30	19:30	19:30	
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4050	Signal Cable Installation	10/11/12	20:30	21:00	21:00	21:00	
4051	Signal Cable Installation	10/11/12	21:00	21:30	21:30	21:30	
4052	Signal Cable Installation	10/11/12	21:30	22:00	22:00	22:00	
4053	Signal Cable Installation	10/11/12	22:00	22:30	22:30	22:30	
4054	Signal Cable Installation	10/11/12	22:30	23:00	23:00	23:00	
4055	Signal Cable Installation	10/11/12	23:00	23:30	23:30	23:30	
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4063	Signal Cable Installation	10/11/12	27:00	27:30	27:30	27:30	
4064	Signal Cable Installation	10/11/12	27:30	28:00	28:00	28:00	
4065	Signal Cable Installation	10/11/12	28:00	28:30	28:30	28:30	
4066	Signal Cable Installation	10/11/12	28:30	29:00	29:00	29:00	
4067	Signal Cable Installation	10/11/12	29:00	29:30	29:30	29:30	
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4069	Signal Cable Installation	10/11/12	30:00	30:30	30:30	30:30	
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4074	Signal Cable Installation	10/11/12	32:30	33:00	33:00	33:00	
4075	Signal Cable Installation	10/11/12	33:00	33:30	33:30	33:30	
4076	Signal Cable Installation	10/11/12	33:30	34:00	34:00	34:00	
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4081	Signal Cable Installation	10/11/12	36:00	36:30	36:30	36:30	
4082	Signal Cable Installation	10/11/12	36:30	37:00	37:00	37:00	
4083	Signal Cable Installation	10/11/12	37:00	37:30	37:30	37:30	
4084	Signal Cable Installation	10/11/12	37:30	38:00	38:00	38:00	
4085	Signal Cable Installation	10/11/12	38:00	38:30	38:30	38:30	
4086	Signal Cable Installation	10/11/12	38:30	39:00	39:00	39:00	
4087	Signal Cable Installation	10/11/12	39:00	39:30	39:30	39:30	
4088	Signal Cable Installation	10/11/12	39:30	40:00	40:00	40:00	
4089	Signal Cable Installation	10/11/12	40:00	40:30	40:30	40:30	
4090	Signal Cable Installation	10/11/12	40:30	41:00	41:00	41:00	
4091	Signal Cable Installation	10/11/12	41:00	41:30	41:30	41:30	
4092	Signal Cable Installation	10/11/12	41:30	42:00	42:00	42:00	
4093	Signal Cable Installation	10/11/12	42:00	42:30	42:30	42:30	
4094	Signal Cable Installation	10/11/12	42:30	43:00	43:00	43:00	
4095	Signal Cable Installation	10/11/12	43:00	43:30	43:30	43:30	
4096	Signal Cable Installation	10/11/12	43:30	44:00	44:00	44:00	
4097	Signal Cable Installation	10/11/12	44:00	44:30	44:30	44:30	
4098	Signal Cable Installation	10/11/12	44:30	45:00	45:00	45:00	
4099	Signal Cable Installation	10/11/12	45:00	45:30	45:30	45:30	
4100	Signal Cable Installation	10/11/12	45:30	46:00	46:00	46:00	

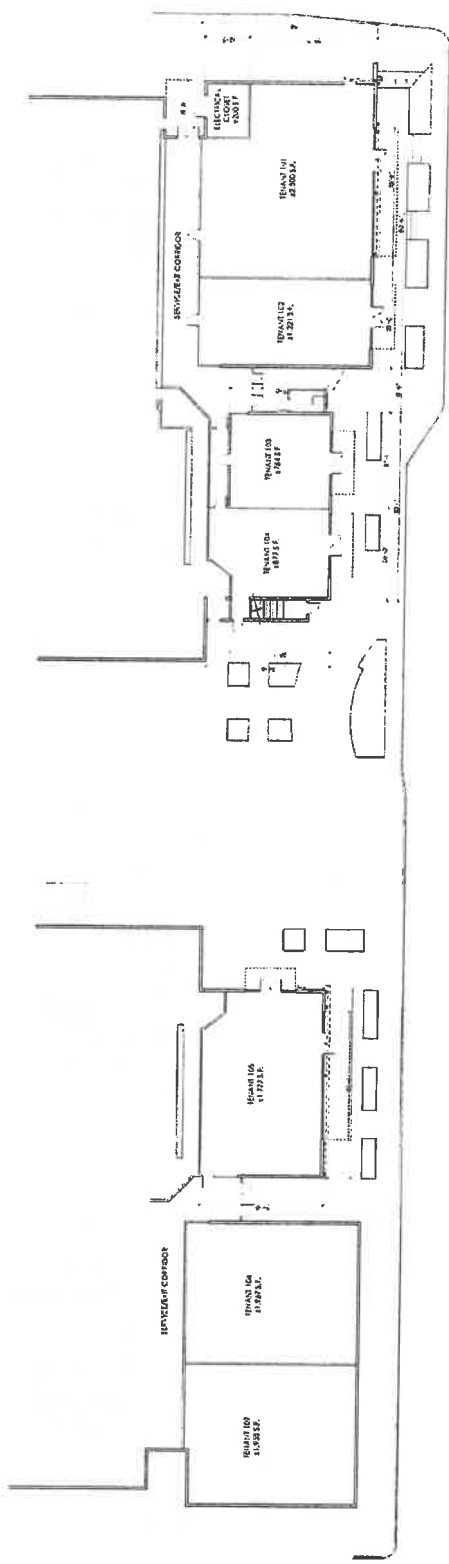
County of San Bernardino  
Theater Square

**Exhibit J**

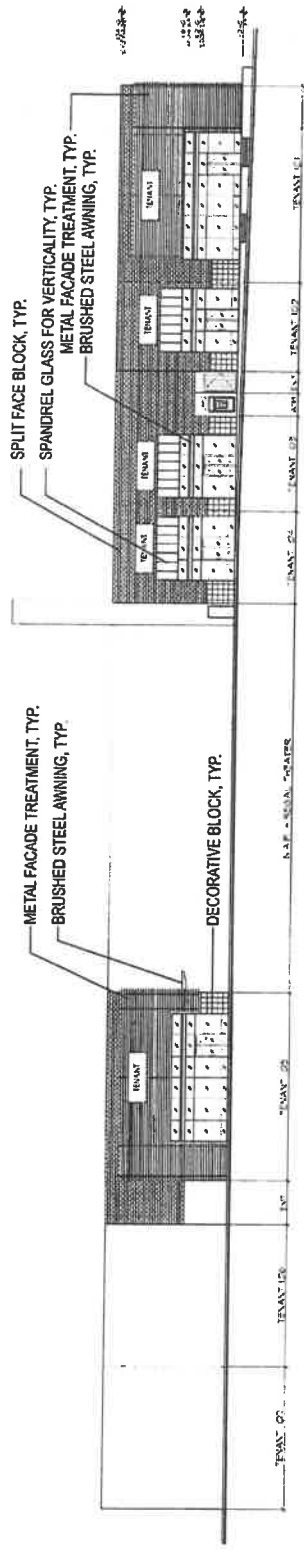
**Former Theatre Space Work Schedule**

(Lease Section 3.01)

(2 pages)



RETAIL PLAN - PROPOSED



SOUTH RETAIL ELEVATION - PROPOSED



SCALE 1/8" = 1'-0"

EXHIBIT J

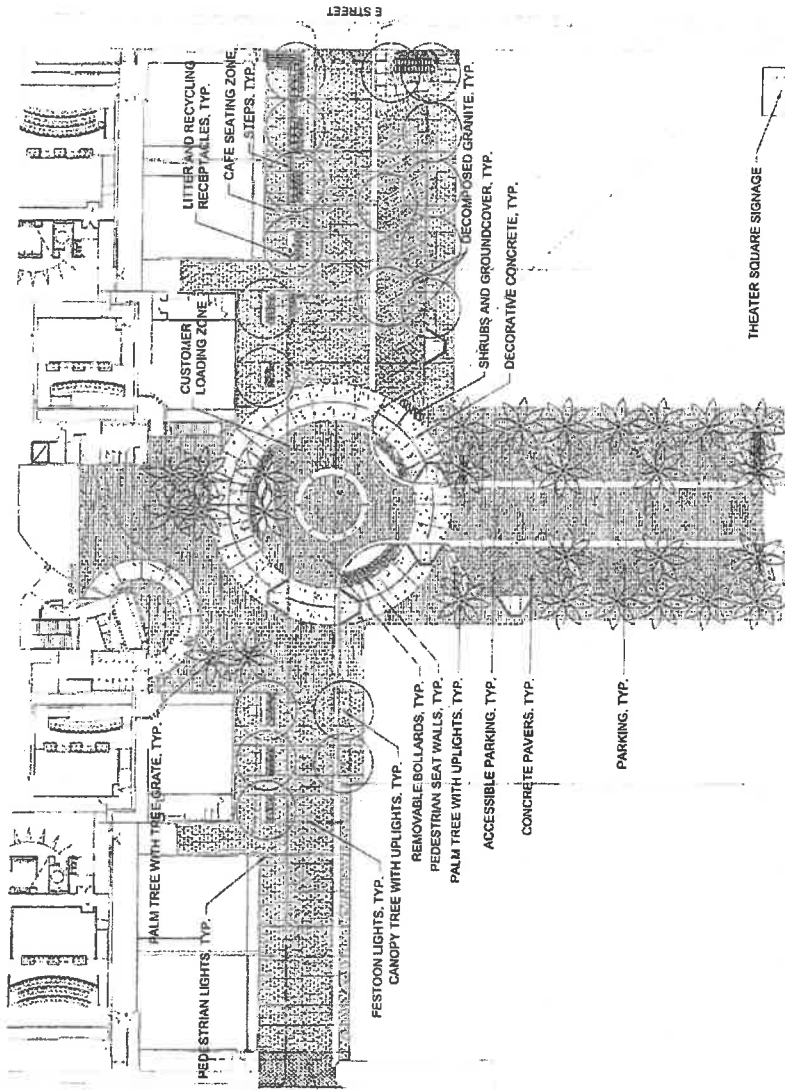
**DIR Group**  
**WWCOT**  
 8 Mile Place, 3F  
 Pasadena, CA 91101  
 T: 626.796.8230  
 F: 626.796.8735

**XAVIER'S COMPANIES**  
 2017-2018  
 2017-2018  
 2017-2018

**THEATER SQUARE - RETAIL**  
 NWC 4th STREET & E STREET, SAN BERNARDINO, CA

75-00000-00  
 DECEMBER 18, 2011

CONTRACT NO. 22  
 75-00000-00  
 75-00000-00  
 75-00000-00



4TH STREET

**Exhibit K**

**DCIP Equipment**

(Lease Section 21.01)

(2 pages)

Qty	Real D	Projector	Real D Lens	Eprad Pedestal	Audio	Sound	Services
1	Screen & Part Number						
2	Real D Auditoriums						
3	XL Unit						
4	SRX-R320						
5	Sony 4K Projector						
6	Sony LMT300/1						
7	Civolution NEXGUARDDC						
8	Barco DP2K-32B						
9	Barco DP2K-20C						
10	DCP4-DCI-1TB						
11	Doremi Server						
12	Civolution NEXGUARD						
13	A002						
14	3D Lens						
15	A003						
16	3D Lens						
17	LKRX2020//A						
18	2K Ushio Lamps						
19	LKRX2030//A						
20	3K Ushio Lamps						
21	LKRX2042//A						
22	4.2K Ushio Lamps						
23	M9000-Regal						
24	M9000L-Regal						
25	Automation eCNA-10						
26	Eprad 10R-CR0010-0						
27	Automation eCNA-10 with Dimmer						
28	Eprad 10R-CR0010-4						
29	60000933 7ft Cat5e						
30	(UPS & Automation to Switch 7ft)						
31	40819 10ft Cat5e						
32	(Projector to Switch 10ft)						
33	VT-1						
34	1 RU Vented Panel						
35	VT-3						
36	3 RU Vented Panel						
37	VT-2						
38	2 RU Vented Panel						
39	BR-1						
40	Wire Management						
41	4XAESD25MM-35						
42	35' 110 Ohm AES Cable;						
43	5372 35 ft 8 Conductor Grey Jacket						
44	(Automation to Dimmer)						
45	3748 35 ft 8 Conductor White						
46	(Automation to Dimmer)						
47	7366380 50ft Cat5e						
48	(ECI-60D to Switch 50ft)						
49	5888150 M/F 25pin D Sub Cable						
50	(Audio & Control; D2A to Processor)						
51	Insight 02643 F/F 25pin D Sub Cable						
52	(LS200 Control; D2A to Processor)						
53	D to A Converter						
54	ECI-60D						
55	D to A Converter Down mixing						
56	DAX-602						
57	DOLBY Cat. 685						
58	CP500 6 Channel Input Card						
59	DOLBY Cat. 790						
60	CP650 AES Input Card						
61	Strong REG-Aud labor						
62	Ballantyne REG-Aud Integ						
63	Ford AUD-FRGT-REG						
64	CLS AUD-FRGT-SNY						
65	Eprad REG-FRT-PED						

CODE	ITEM NO.	3D RATIO	SCOPE THRO W	SCOPE THROW	PLAT IMAGE SIZE M X W	FLAT IMAGE SIZE WHICH FEET	SCOPE IMAGE WIDTH INCHES	SCOPE IMAGE WIDTH FEET	3S AUTO COND LOCATI ON	0 THX	AMPLIF IER LOCATI ON PROCESSOR	SOUND SYSTEM CHANN EL CAPAB LITY (L 2, 4, 6)	SPLIT SURR VIN	TECH HEIGHT ABOVE FLOOR	3S PORT GROSS HEIGHT FLOOR
0	0.0	1	0.000	0.000	44.8	324	34.6'	34.6'	414	0.00'	THX	BACK	CP-500	6	14.7'
0	0.0	2	0.000	0.000	44.8	324	34.6'	34.6'	414	0.00'	THX	BACK	CP-500	6	14.7'
0	0.0	3	0.000	0.000	44.8	324	34.6'	34.6'	414	0.00'	THX	BACK	CP-500	6	14.7'
0	0.0	4	0.000	0.000	44.8	324	34.6'	34.6'	414	0.00'	THX	BACK	CP-500	6	14.7'
0	0.0	5	0.000	0.000	44.8	324	34.6'	34.6'	414	0.00'	THX	BACK	CP-500	6	14.7'
0	0.0	6	0.000	0.000	44.8	324	34.6'	34.6'	414	0.00'	THX	BACK	CP-500	6	14.7'
0	0.0	7	0.000	0.000	44.8	324	34.6'	34.6'	414	0.00'	THX	BACK	CP-500	6	14.7'
0	0.0	8	0.000	0.000	44.8	324	34.6'	34.6'	414	0.00'	THX	BACK	CP-500	6	14.7'
0	0.0	9	0.000	0.000	44.8	324	34.6'	34.6'	414	0.00'	THX	BACK	CP-500	6	14.7'
0	0.0	10	0.000	0.000	44.8	324	34.6'	34.6'	414	0.00'	THX	BACK	CP-500	6	14.7'
0	0.0	11	0.000	0.000	44.8	324	34.6'	34.6'	414	0.00'	THX	BACK	CP-500	6	14.7'
0	0.0	12	0.000	0.000	44.8	324	34.6'	34.6'	414	0.00'	THX	BACK	CP-500	6	14.7'
0	0.0	13	0.000	0.000	44.8	324	34.6'	34.6'	414	0.00'	THX	BACK	CP-500	6	14.7'
0	0.0	14	0.000	0.000	44.8	324	34.6'	34.6'	414	0.00'	THX	BACK	CP-500	6	14.7'