

Release and Hold Harmless Agreement

THE UNDERSIGNED HEREBY AGREES THAT:

In consideration for access to the park commonly known as Horton Plaza Park (the “**Premises**”) the undersigned hereby releases, and forever discharges City of San Diego, a California municipal corporation, Horton Plaza Services, Inc., Horton Plaza LLC, Westfield U.S. Holdings, LLC, Westfield Property Management LLC, Westfield America Limited Partnership and Westfield America, Inc., and all of their affiliates, parents, subsidiaries, partners, members, management company, successors, and assigns, elected officials, departments, employees, contractors, agents, officers, and directors. (collectively, the “**Horton Plaza Park Parties**”) from any and all damages, losses, claims, demands, liabilities, obligations, actions and causes whatsoever, whether known or unknown, whether liability be direct or indirect, liquidated or unliquidated, whether absolute or contingent, foreseen or unforeseen, suspected or unsuspected, anticipated or unanticipated, disclosed or undisclosed, and whether or not heretofore asserted, upon or by reason or as a result of the use of or access to the Premises from and after the date hereof so long as such loss or damage is not caused by the gross negligence or willful misconduct of any of the Horton Plaza Parties.

The undersigned shall defend, indemnify and hold the Horton Plaza Parties harmless (with counsel reasonably satisfactory to the Horton Plaza Parties) from and against any and all claims, demands and causes of action of any third parties, and any costs (including reasonable attorneys’ fees) associated therewith that in any way are or are alleged to be caused by, or arise out of use of or access to the Premises from and after the date hereof. The undersigned agrees to reimburse the Horton Plaza Parties for any damage caused by the undersigned’s access to or operations within or around the Premises.

The undersigned agrees to comply with the rules and regulations applicable to the Premises. The undersigned also agrees to comply with all rules, regulations, ordinances, and statutes of any governmental entity or nongovernmental entity having jurisdiction over the Premises, and to obtain all necessary permits, licenses or other approvals that may be required from any entity to conduct all activities.

The undersigned understands that the facts upon which this Release and Hold Harmless Agreement is made may hereafter turn out to be other than or different from the facts now known or believed to be true and the undersigned accepts and assumes the risk of the facts to be different than now known or believed to be true. The undersigned agrees that this Release and Hold Harmless Agreement shall be and remain in all respects effective and not subject to termination or rescission by virtue of any difference of facts.

California Civil Code §1542, which is hereby expressly waived with respect to this release reads as follows: “A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor.” I similarly waive any and all rights or benefits conferred by any statute, regulation, or principle of common law or civil law of the United States or any state, commonwealth, territory, or other jurisdiction thereof or of any foreign country or other foreign jurisdiction which is similar, comparable or equivalent to § 1542 of the California Civil Code.

The undersigned shall, at its sole cost and expense, carry and maintain insurance with a company(s) acceptable to the Horton Plaza Parties and licensed to do business in the states where the Premises are located with an AM Best rating of at least A-VII, with the following coverages: (i) Commercial General Liability on an “occurrence basis” in the amount of: (a) for Events with occupancy of 500 persons or less, General Liability with limits of \$1,000,000 per occurrence, \$2,000,000 in the aggregate; or (b) for Events with occupancy of more than 500 but less than 1,000 persons, General Liability with limits of \$2,000,000 per occurrence, \$3,000,000 in the aggregate; or (c) for Events with occupancy of 1,000 persons or more, General Liability with limits of \$3,000,000 per occurrence, \$5,000,000 in the aggregate, (d) for events, or any activity

within an event, with perceived higher risk as determined by Westfield, Westfield reserves the right to require additional limits of liability insurance as may be deemed necessary. The above required limits may be satisfied with a combination of primary and umbrella and/or excess insurance. Commercial General Liability policy shall include products/completed operations liability coverage with a separate aggregate limit of not less than \$1,000,000 and contractual liability coverage; and (ii) statutory workers' compensation insurance and employers' liability insurance of \$1,000,000; (iii) Commercial Automobile Liability insurance with a combined single limit of not less than \$1,000,000 providing coverage for the use of any owned, non-owned or hired vehicles; and, (iv) if applicable, \$5,000,000 per occurrence for Liquor Liability insurance, (v) if applicable, for any third-party security services \$5,000,000 per occurrence for professional liability, including coverage for firearms liability if security services are carrying firearms.

The required insurance policies must apply on a primary basis, and any other insurance policies of the Horton Plaza Parties or any other additional insured entities are excess and non-contributing. Additionally, the insurance policies must contain a waiver by the insurer of any right to subrogation. With the exception of workers' compensation, the insurance policies must be endorsed to include the following parties as additional insureds: City of San Diego, a California municipal corporation, Horton Plaza Services, Inc., Horton Plaza LLC, Westfield U.S. Holdings, LLC, Westfield Property Management LLC, Westfield America Limited Partnership and Westfield America, Inc., and all of their affiliates, parents, subsidiaries, partners, members, management company, successors, and assigns, elected officials, departments, employees, contractors, agents, officers, and directors. .

The undersigned shall provide a certificate of insurance evidencing the required insurance coverages along with the additional insured endorsement. The Certificate Holder should be:

Horton Plaza Services Inc., as agent for the City of San Diego
324 Horton Plaza
San Diego, CA 92101-5481

COMPANY: _____

NAME: _____

TITLE: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

SIGNATURE: _____

DATE: _____