

## FIFTH AMENDMENT TO LEASE

This FIFTH AMENDMENT TO LEASE (the "**Fifth Amendment**") is entered into by and between MARKET & NOE CENTER, a California partnership ("**Landlord**"), GARFIELD BEACH CVS, L.L.C., a California limited liability company ("**Tenant**") and BBC 2280 MARKET STREET LLC., a California limited liability company ("**Subtenant**"), effective as of May 30, 2018.

### RECITALS

A. Tenant currently leases a portion of the building consisting of approximately 9,377 square feet located at 2280 Market Street, San Francisco, California 94118 (the "**Premises**") pursuant to that certain Lease Agreement (the "**Original Lease**"), dated January 4, 2012. The Original Lease was amended pursuant to the terms of: (i) that certain First Amendment to Lease ("**First Amendment**") dated as of January 4, 2012; (ii) that certain Second Amendment to Lease ("**Second Amendment**") dated as of June 5, 2013; (iii) that certain Third Amendment to Lease ("**Third Amendment**") dated as of October 1, 2013 and (iv) that certain Fourth Amendment to Lease ("**Fourth Amendment**") dated as of April 24, 2014. The Original Lease, the First Amendment, the Second Amendment, the Third Amendment, and the Fourth Amendment are collectively referred to as the "**Existing Lease**." The Existing Lease and this Fifth Amendment are collectively referred to as the "**Lease**."

B. Tenant and Subtenant have entered into that certain Sublease (the "**Sublease**"), dated as of May 30, 2018, a copy of which is attached hereto as Exhibit A, for the Premises. The Lease does not require Landlord's consent for any sublease. However, in connection with the Sublease, Tenant and Subtenant have requested certain amendments to the Lease, which Landlord has agreed to make pursuant to the terms of this Fifth Amendment.

C. Landlord and Tenant desire to amend the Existing Lease to provide for: (i) the construction by Subtenant of certain improvements to the Premises to accommodate the use of the Premises by Subtenant as an exercise studio, as more fully set forth in the Sublease, (ii) the re-allocation of certain expenses of operating the Building to reflect increased demands of Subtenant for water and gas arising from the use of the Premises as an exercise studio as opposed to a retail store, (iii) to confirm Tenant's obligation to maintain and to pay certain costs for heating and cooling distribution units servicing the Premises and to pay its Pro Rata Share of the HVAC system on the roof of the Building that services the Premises and all other tenant spaces in the Building, and (iv) to modify the means by which Fixed Rent is paid by Tenant to Landlord, each in accordance with the terms and conditions set forth below.

### AGREEMENT

#### 1. Sublease.

1.1 Landlord Agreements. Landlord has agreed to give such consent to this Fifth Amendment upon the terms and conditions contained herein. This consent shall apply only to the Sublease and in the event that the Sublease is terminated or expires prior to the expiration or termination of the Lease, the terms of this Fifth Amendment shall be of no further force or effect, excepting only Sections 5 and 6 below, which shall remain binding on Landlord and Tenant.

**THE SUBLEASE IS SUBJECT AND SUBORDINATE TO THE TERMS OF THE LEASE. IN NO EVENT SHALL THE SUBLEASE OR THIS FIFTH AMENDMENT BE CONSTRUED AS GRANTING OR CONFERRING UPON THE TENANT OR SUBTENANT ANY GREATER RIGHTS THAN THOSE CONTAINED IN THE LEASE NOR SHALL THERE BE ANY DIMINUTION OF THE RIGHTS AND PRIVILEGES OF THE LANDLORD UNDER THE LEASE, NOR SHALL THE LEASE BE DEEMED MODIFIED IN ANY RESPECT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN HEREIN.**

Tenant and Subtenant hereby represent that a true and complete copy of the Sublease is attached hereto and made a part hereof as Exhibit A. In the event of any conflict between the terms and provisions of the Sublease and the terms and provisions of this Fifth Amendment, the terms and provisions of this Fifth Amendment shall govern.

1.2 Acknowledgment and Agreement by Subtenant. Subtenant acknowledges and agrees as follows:

1.2.1 Subtenant hereby agrees that it will be primarily responsible for the obligations under the Lease to the extent of the Sublease. Subtenant acknowledges that Subtenant is liable jointly and severally with Tenant for payment of Rent and for the due performance of, and compliance with all the terms, covenants, conditions and agreements of the Lease, except as otherwise set forth in the Sublease.

1.2.2 From and after the date of this Fifth Amendment, in the event of any act or omission of Tenant, or a default under the Sublease by Tenant, that would give Subtenant the right, either immediately or after the giving of notice and passage of time, to terminate the Sublease or to claim a partial or total eviction, Subtenant will not exercise any such right until:

(a) Subtenant has given written notice of such act, omission or default to Landlord; and

(b) The same period of time as is given to Tenant under the Sublease to cure such act, omission or default, but in all events no less than thirty (30) days, shall have elapsed following the delivery of such notice to Landlord, without the cure of such act, omission or default.

1.2.3 In the event that Landlord notifies Subtenant of an Event of Default under the Lease and demands that Subtenant pay its rent and all other sums due under the Sublease directly to Landlord, Subtenant shall honor such demand and pay its rent and all other sums due under the Sublease directly to Landlord or as otherwise required pursuant to such notice, without the same constituting a default by Subtenant under the Sublease. Notwithstanding the foregoing, nothing in this Section 1.2 shall be construed to obligate Landlord to provide Subtenant with notice of any default under the Lease.

1.2.4 Subtenant will send a copy of any notice of default under the Sublease to Landlord at the same time such notice is sent to Tenant.

1.2.5 The Sublease expires no later than the date than the Lease expires or is terminated.

1.2.6 Subtenant agrees to comply with all the provisions of the Lease to the extent incorporated into the Sublease. To the extent of any inconsistency, the terms of the Sublease will control unless otherwise expressly set forth in this Fifth Amendment.

1.2.7 Subtenant agrees to indemnify Landlord to the full extent of the indemnity required by Tenant, as Tenant, under the Lease.

1.2.8 Notwithstanding any provision of the Sublease to the contrary, any insurance required by Subtenant under the Sublease shall name Landlord as “**Additional-Insured.**”

1.2.9 Subtenant hereby represents and warrants that Subtenant has full power and authority to enter into the Sublease and this Fifth Amendment.

1.2.10 Upon Subtenant’s execution and delivery of this Fifth Amendment, Subtenant shall reimburse Landlord for its reasonable and invoiced attorneys’ fees incurred in connection with the review and documentation of the Sublease transaction and this Fifth Amendment.

1.3 Acknowledgment and Agreement by Tenant. Tenant, as tenant under the Lease and landlord under the Sublease, acknowledges and agrees for itself and its successors and assigns, that:

1.3.1 This consent does not:

- (a) constitute a waiver or amendment by Landlord of any of its rights under the Lease; and/or
- (b) in any way release Tenant from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Lease.

1.3.2 The provisions of the Lease remain in full force and effect.

1.3.3 Tenant hereby represents and warrants that Tenant (i) has full power and authority to sublease the Sublet Premises to Subtenant, (ii) has not transferred or conveyed its interest in the Lease to any person or entity collaterally or otherwise, and (iii) has full power and authority to enter into the Sublease and this Fifth Amendment.

1.3.4 In the event of an Event of Default by Tenant under the Lease, Subtenant may, and shall upon demand of Landlord, pay all rent and all other sums due under the Sublease to Landlord as provided under this Fifth Amendment without the same constituting a default by Subtenant under the Sublease.

1.4 Tenant’s Continuing Liability. Tenant shall continue to be liable to Landlord for any default under the Lease, whether such default is caused by Tenant or Subtenant or anyone claiming by or through either Tenant or Subtenant, but the foregoing shall not be deemed to restrict or diminish any right that Landlord may have against Subtenant pursuant to the Lease, in

law or in equity for violation of the Lease or otherwise, including, without limitation, the right to enjoin or otherwise restrain any violation of the Lease by Subtenant.

1.5 Improvements. Landlord shall have no obligation or incur any liability with respect to the erection or completion of any improvements in the Premises for Subtenant's use; provided, however, that the foregoing shall not affect or derogate from any obligations of Landlord to Tenant under the Lease, or Landlord to Subtenant in the event the Sublease becomes a direct lease between Landlord and Subtenant pursuant to the terms of this Fifth Amendment or otherwise.

## 2. **Subordination, Non-Disturbance, and Attornment of the Sublease.**

2.1 Attornment and Recognition by Landlord. Notwithstanding anything to the contrary contained in the Lease or the Sublease, in the event of the expiration, cancellation or termination of the Lease prior to the expiration of the term of the Lease (the "**Lease Term**"), whether by reentry, notice, conditional limitation, surrender, summary proceeding or other action or proceeding, or otherwise (such termination being hereinafter referred to as an "**Early Termination**") and if the Sublease shall, immediately prior to such Early Termination, be in full force and effect and Subtenant is not in default under the Sublease beyond any applicable notice and cure period, Subtenant shall not be made a party in any removal or eviction action or proceeding nor shall Subtenant be evicted or removed of its possession or its right of possession be disturbed or in any way interfered with. Subtenant shall assume the obligations of Tenant from and after such Early Termination and the Lease, as amended by the Sublease, shall continue in full force and effect as a direct lease from Landlord to Subtenant in accordance with the terms thereof; provided, however, Landlord's recognition of the Subtenant and the Sublease shall be subject to the following: (a) Subtenant will attorn to and recognize Landlord as "landlord" under the Sublease for the balance of the term thereof; (b) Landlord shall not be obligated, liable or responsible to Subtenant for any liabilities of Tenant to Subtenant which accrued or arose out of matters arising prior to the Early Termination of the Lease or obligated, liable or responsible for any such matters which accrued or arose prior to the termination of the Lease and continue following Landlord's recognition of the Sublease; (c) Landlord shall not be obligated, liable or responsible for any liabilities or obligations to pay Subtenant any allowances of any sort or to construct any improvements of any sort under the Sublease; (d) Subtenant shall be obligated to pay full rent, additional rents and all other sums coming due and owing under the Sublease and Landlord shall not be subject to any rent abatement, offsets or other credits to Subtenant relating to matters which accrued or arose prior to termination of the Lease; (e) Landlord shall not be obligated, liable or responsible to Subtenant for any security deposit under the Sublease except to extent such security deposit has been received by Landlord from Tenant, and (f) the additional conditions set forth in Section 2.2 below.

2.2 Subordination. If the Lease or Tenant's right to possession thereunder terminates for any reason prior to expiration of the Sublease, Subtenant agrees, at the written election of Landlord, to attorn to Landlord upon the terms and conditions of the Lease for the remainder of the term of the Lease. In the event of any such election by Landlord, Landlord will not be (a) liable for any rent paid by Subtenant to Tenant more than one month in advance, or any security deposit paid by Subtenant to Tenant, unless same has been transferred to Landlord by Tenant; (b) liable for any act or omission of Tenant under the Lease, Sublease or any other

agreement between Tenant and Subtenant or for any default of Tenant under any such documents which occurred prior to the effective date of the attornment; (c) subject to any defenses or offsets that Subtenant may have against Tenant which arose prior to the effective date of the attornment; (d) bound by any changes or modifications made to the Sublease without the written consent of Landlord, (e) obligated in any manner with respect to the transfer, delivery, use or condition of any furniture, equipment or other personal property in the Premises which Tenant agreed would be transferred to Subtenant or which Tenant agreed could be used by the Subtenant during the term of the Sublease, or (f) liable for the payment of any improvement allowance, or any other payment, credit, offset or amount due from Tenant to Subtenant under the Sublease. The terms of this Section 2 supersede any contrary provisions in the Sublease.

2.3 Acceptance. Subject to the terms and conditions contained in this Fifth Amendment, including but not limited to those set forth in Section 2, so long as Tenant shall not have declared a default by Subtenant under the Sublease, which default is continuing beyond the applicable notice and cure period under the Sublease:

2.3.1 Landlord shall not take any action under the Lease or otherwise which would contravene the rights of Subtenant or its successors, permitted assigns and/or sublessees under the Sublease;

2.3.2 If there shall be an Early Termination of the Lease, or Tenant shall default under the terms of the Lease and Landlord shall reenter into possession of the Premises, Landlord's possession of the Premises shall be subject to the Sublease and Landlord shall assume all obligations of Tenant under the Sublease;

2.3.3 The Sublease and Subtenant's rights thereunder shall not be disturbed, but shall continue in full force and effect; and

2.3.4 Subtenant shall be entitled to lawful, quiet and peaceful possession and occupation of the Premises and shall enjoy, subject to the provisions of the Sublease, all of the rights therein granted without any let, hindrance, ejection, molestation or interference by any person.

### 3. **Term.**

3.1 Expiration of the Lease. Landlord, Tenant and Subtenant each acknowledge and agree that the term of the Sublease is set to expire on January 30, 2030 (the "**Sublease Expiration Date**"). Notwithstanding anything to the contrary contained in the Lease and the Sublease, in the event Subtenant shall timely exercise its first Renewal Option (as such term is defined in Section 9 below), the Lease, as modified by the Sublease, the Sublease shall remain in full force and effect as a direct lease between Landlord and Subtenant and Landlord and Tenant shall each be released of all of its obligations under the Lease accruing after the Sublease Expiration Date.

3.2 Options to Renew the Sublease. Notwithstanding anything to the contrary contained in the Sublease, following the expiration of the Lease Term as provided in Section 3.1 above, Subtenant shall have the option (each a "**Renewal Option**") to extend the term of the Sublease for two (2) additional five (5) year periods (each a "**Renewal Period**") upon the same

terms and conditions as contained in the Sublease. The fixed rent for each Renewal Term shall be as set forth in Section 3.3 below. To exercise a Renewal Option, Subtenant shall give Landlord notice ("**Subtenant's Renewal Notice**") at least one hundred eighty (180) days prior to the Sublease Expiration Date or the expiration of the first Renewal Period (as applicable). Subtenant's Renewal Notice shall be effective to extend the term of the Sublease without further documentation. The fixed rent for the Renewal Term of the Sublease will be calculated using the methodology set forth in Section 15 of Part I of the Original Lease.

#### **4. Subtenant's Work.**

Notwithstanding anything to the contrary contained in the Lease or the Sublease, both Landlord and Tenant consent to the work to be performed by Subtenant set forth in the Construction Rider attached hereto as Exhibit B ("**Subtenant's Work**").

#### **5. Restoration of the Premises.**

Notwithstanding anything to the contrary contained in the Lease or the Sublease, upon the expiration or earlier termination of the Sublease, Subtenant shall surrender the Premises to Tenant or Landlord, as the case may be, in broom clean condition, except for ordinary wear and tear and damage caused by fire or other casualty, and free of Subtenant's trade fixtures and personal property; it being specifically acknowledged that in no event shall Subtenant (or Tenant at the expiration or earlier termination of the Lease) be required or obligated to remove any portion of Subtenant's Work at the expiration or earlier termination of the Sublease.

#### **6. Utility Costs.**

6.1 Water. Water expenses for the Building will be reasonably re-allocated among all tenants in the Building and thereupon paid by Tenant as follows:

6.1.1 Basis for Re-Allocation. Landlord and Tenant hereby acknowledge and agree that since Subtenant will operate the Premises as an exercise studio, Subtenant will construct showers and other additional bathroom facilities to serve its members, which will increase the water consumption for the Building substantially. Further, Landlord and Tenant acknowledge and agree that it would be unfair to other tenants of the Building to require those other tenants to pay for that additional water consumption as part of their CAM costs. To enable Landlord and Tenant to measure the increased water consumption caused by Subtenant's use of the Premises as an exercise studio, as part of Subtenant's Work, Subtenant shall install a new exclusive water meter to measure Subtenant's consumption of water in the Premises, at Subtenant's sole cost and expense. The new water meter installed by the Subtenant shall be a Metron-Farnier Spectrum 50DL, the cost of which will be paid for by Landlord, or, if not a Metron-Farnier Spectrum 50 DL, an equivalent model, pending Landlord's reasonable approval, at Subtenant's cost and expense.

6.1.2 Re-Allocation of Water Costs. Effective as of the date that Subtenant commences occupancy of the Premises, water costs for the Building shall be reasonably re-allocated among all tenants in the Building and Tenant shall pay its share as follows: (i) Tenant shall pay for all water charges in connection with the amount of water consumed by Subtenant at the Premises as shown on Subtenant's new exclusive water meter ("**Subtenant Water**").

**Consumption**”), which amounts shall be paid along with Tenant’s CAM costs; and (ii) Tenant shall continue to pay, as CAM costs, its prorata share of all Shared Water Consumption (as defined below). “**Shared Water Consumption**” shall mean the total water consumption for the Building less the Subtenant Water Consumption, as set forth in the monthly or other periodic billing received by Landlord from the local water utility company.

6.1.3 Existing Restrooms in CVS space. It will not be necessary for the water supply for the two employee restrooms currently located in the CVS back office area to be rerouted through the Barry’s Bootcamp sub meter. If used, those two restrooms can continue to use the building water supply charged to CAM.

6.2 Gas. Additional gas expenses for the Building will be allocated exclusively to Tenant as follows:

6.2.1 Basis for Specific Allocation. As part of Subtenant’s Work, Subtenant will have Pacific Gas & Electric Company install a separate exclusive gas meter to feed the gas line supplying the hot water heater for Subtenant’s shower and other restroom facilities serving Subtenant’s members. That separate gas meter will be in a separate account with Pacific Gas & Electric Company entered into by Subtenant exclusively.

6.2.2 Specific Allocation of Gas Costs. All gas costs associated with the gas usage identified on the separate exclusive gas meter to be installed by Subtenant and billed directly to Subtenant shall be paid entirely by Subtenant.

6.2.3 Shared Gas Consumption. In addition to the foregoing, Tenant (together with all other tenants of the Building) shall pay each month as a portion of its CAM costs, its Pro Rata Share of the amount charged for the Building’s shared gas consumption.

6.3 Heating and Cooling Operation, Maintenance and Costs. Tenant will remain responsible for the operation and maintenance of the water source heat pumps (heating/cooling distribution units) in the Premises. Landlord shall continue to maintain the main HVAC system on the roof of the Building that supplies all water source heat pumps in the Building for all tenants’ premises including, without limitation, the Premises. Tenant (along with all other tenants in the Building) shall continue to pay as a portion of its CAM costs its Pro Rata Share of Landlord’s cost to maintain the HVAC units on the roof of the Building. This Fifth Amendment shall be deemed to confirm an informal agreement made by Tenant in a letter dated November 12, 2015, to pay as a portion of its CAM costs its Pro Rata Share of the maintenance costs of the central HVAC unit on the roof of the Building.

## **7. Fixed Rent.**

Section 5(a) of the Original Lease is hereby amended to provide that all payments of Fixed Rent shall be paid by Tenant to Landlord by electronic payment (ACH) in accordance with payment instructions to be provided to Tenant by Landlord, in advance, on the first business day of each calendar month during the Term.

## **8. Miscellaneous.**

8.1 All notices required or permitted under this Fifth Amendment to be given to Subtenant and Tenant will be given as provided in the Sublease. All notices required or permitted under this Fifth Amendment to be given to Landlord will be given as provided in the Lease to Landlord.

8.2 All exhibits and recitals attached to this Fifth Amendment are hereby incorporated as though fully set forth herein. Any capitalized term that is not defined herein shall have the meaning attributed to it in the Lease or the Sublease, as applicable.

8.3 During the term of the Sublease, Landlord has no obligations nor any liability to Subtenant with respect to any warranties of any nature whatsoever, whether pursuant to the Lease, the Sublease, or otherwise; provided, however, that nothing contained herein shall affect or derogate from any obligations of Landlord to Tenant under the Lease, or Landlord to Subtenant in the event the Sublease becomes a direct lease between Landlord and Subtenant pursuant to the terms of this Fifth Amendment or otherwise.

8.4 This Fifth Amendment shall inure to the benefit of the parties hereto, their respective successors and permitted assigns; provided, however, that in the event of the assignment or transfer of the interest of Landlord, all obligations and liabilities of Landlord under this Fifth Amendment and the Lease accruing after such assignment or transfer will terminate and shall become the responsibility of Landlord's successor-in-interest.

8.5 This Fifth Amendment shall be governed by and construed in accordance with the laws of the State of California.

8.6 This Fifth Amendment may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one (1) and the same instrument. PDF or electronic signatures shall be deemed original signatures.

8.7 If any conflict exists between the Lease and Sublease, the terms of the Sublease shall control as between Tenant and Subtenant.

8.8 If any action or proceeding is brought by any party against the other pertaining to or arising out of this Fifth Amendment, the prevailing party (i.e., the party that recovers the greater relief as a result of the action or proceeding) shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred on account of such action or proceeding. In addition to the foregoing award of attorneys' fees to the successful party, the successful party in any action or proceeding shall be entitled to its reasonable attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment.

8.9 The Existing Lease remains in full force and effect as modified by this Fifth Amendment and, as so modified, contains the entire agreement between the parties with respect to the matters set forth herein. Except to the extent expressly stated herein, the terms of the Existing Lease are unmodified and in full force and effect. In the event of any inconsistencies, the terms in this Fifth Amendment will govern.



This Fifth Amendment to Lease is effective as of the date first written above.

**LANDLORD:**

MARKET & NOE CENTER,  
a California partnership

By: *Kent Jeffrey*  
Name: KENT JEFFREY  
Title: GENERAL PARTNER

**TENANT:**

GARFIELD BEACH CVS, L.L.C.,  
a California limited liability company

By: *Cheryl A. Green*  
Name: Cheryl A. Green  
Title: Assistant Secretary

LLC APPROVAL: *Cheryl A. Green*

**SUBTENANT:**

BBC 2280 MARKET STREET LLC,  
a California limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

This Fifth Amendment to Lease is effective as of the date first written above.

**LANDLORD:**

MARKET & NOE CENTER,  
a California partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_


**TENANT:**

GARFIELD BEACH CVS, L.L.C.,  
a California limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SUBTENANT:**

BBC 2280 MARKET STREET LLC,  
a California limited liability company

By:  \_\_\_\_\_  
Name: Adam Shane  
Title: CEO

**EXHIBIT A**

**SUBLEASE**

(to be attached)

## SUBLEASE

**THIS AGREEMENT OF SUBLEASE** (this "Sublease") is made this 30<sup>th</sup> day of May, 2018 (the "Effective Date"), by and between GARFIELD BEACH CVS, L.L.C., a California limited liability company, having its principal office at One CVS Drive, Woonsocket, Rhode Island 02895 (hereinafter referred to as "Sublandlord") (CVS Store No. 10036), and BBC 2280 MARKET STREET LLC, a California limited liability company, having its principal office at c/o Barry's Bootcamp, 2246 Lombard Street, San Francisco, California 94123 (hereinafter referred to as "Subtenant").

### WITNESSETH:

**WHEREAS**, Sublandlord is the tenant under that certain Lease, dated January 4, 2012, by and between Market & Noe Center, a California limited partnership ("Master Landlord"), as landlord, and Sublandlord, as tenant, as amended by that certain First Amendment to Lease (the "First Amendment"), dated January 4, 2012, that certain Second Amendment to Lease (the "Second Amendment"), dated June 5, 2013, that certain Third Amendment to Lease (the "Third Amendment"), dated October 1, 2013, that certain Fourth Amendment to Lease (the "Fourth Amendment"), dated April 24, 2014, and that certain Fifth Amendment to Lease (the "Fifth Amendment"), dated May 30, 2018 (the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and the Fifth Amendment are hereinafter collectively referred to as the "Master Lease"), demising approximately 9,377 square feet of space (the "Premises") within a portion of a building located at 2280 Market Street, San Francisco, CA, as more fully described in the Master Lease; and

**WHEREAS**, Sublandlord is desirous of subleasing the Premises to Subtenant, and Subtenant is desirous of subleasing said space from Sublandlord;

**NOW, THEREFORE**, in consideration of the Premises and the mutual promises and covenants contained in this agreement, Sublandlord and Subtenant mutually agree as follows:

#### 1. SUBLEASE

(a) It is understood and agreed that this Sublease will be a sublease. The Master Lease is incorporated as a part hereof except as specifically set forth below. Sublandlord represents that a true and complete (redacted) copy of the Master Lease has been delivered to Subtenant, and Subtenant hereby acknowledges receipt of a copy of the Master Lease.

Sublandlord represents that the Master Lease has not been amended or modified and is in full force and effect. Except with respect to and/or in connection with the natural expiration of the term of the Master Lease, Sublandlord hereby covenants that if it shall not surrender the Master Lease, voluntarily terminate the Master Lease, or amend or modify same in any manner which would adversely affect Subtenant's rights hereunder or Subtenant's use of the Premises or increase the obligations of Subtenant hereunder, or take or suffer any action (unless due to a default by Subtenant in its obligations hereunder, including the provisions of the Master Lease

specifically incorporated herein by reference) which could result in a termination of the Master Lease. Notwithstanding anything to the contrary contained in this Sublease, all of the terms and conditions contained in the Master Lease are hereby incorporated into this Sublease by reference and made a part of this Sublease as though set forth in full herein, except for Part I - Sections 11, 12, 13, 14, 15, 16, 17, 18, 20, 22, 23 and 24, Part II - Sections 2, 3, 4(a), 5, 7, 9(f), 19 (to the extent otherwise agreed upon by Subtenant and Master Landlord within a written separate agreement regarding the surrender of the Premises at the expiration of the term of the Master Lease), 24(b), 27, 31, 40, 46, 47, references to "Exhibit D" in 49, 51 and 52, Exhibit B, Exhibit C and Exhibit D, all of which provisions and exhibits are hereby expressly excluded from the incorporation by reference effected pursuant to this paragraph.

For purposes of this Sublease, with respect to those sections of the Master Lease incorporated into this Sublease, all references to "Landlord" and "Tenant" shall be deemed to be references to "Sublandlord" and "Subtenant", respectively.

With respect to any work, services, maintenance, repairs, replacements, restoration, insurance or any other obligation or covenant on the part of the "Landlord" to be performed or observed under the Master Lease, Sublandlord agrees to use diligent good faith efforts to enforce its rights pursuant to the Master Lease for the benefit of Subtenant, including, upon Subtenant's written request, (i) promptly notifying Master Landlord of its non-performance under the Master Lease, and requesting that Master Landlord perform its obligations under the Master Lease, and (ii) if Master Landlord's non-performance continues beyond any applicable notice and cure periods provided in the Master Lease, at Subtenant's cost and expense, commencing a lawsuit or other action against Master Landlord to obtain the performance required from Master Landlord under the Master Lease.

## **SUBORDINATION**

(b) All rights of Subtenant hereunder are subject to the terms and provisions of the Master Lease and to any termination thereof. In the event of any inconsistency between the provisions of this Sublease and the Master Lease, this Sublease shall govern unless compliance by Subtenant with such provision of this Sublease would constitute a default under or breach of the Master Lease, in which case the Master Lease shall govern. Except as otherwise provided in that certain Sublease Recognition Agreement between Sublandlord, Subtenant and Master Landlord set forth on **Exhibit D** annexed hereto and made a part hereof, in the event that the Master Lease shall expire or terminate for any reason whatsoever, then, notwithstanding anything to the contrary herein set forth, this Sublease will simultaneously and automatically terminate. Further, Subtenant agrees to indemnify Sublandlord and save it harmless from and against any and all claims, actions, damages, liability, and reasonable expenses incurred in connection with or arising out of Subtenant's holdover after the date of termination as defined in this Sublease. In addition, Subtenant agrees that Sublandlord shall not be liable to Subtenant in damages or otherwise for any breach of the Master Lease under the Master Lease. Notwithstanding the foregoing, under no circumstances shall Sublandlord be liable for Sublandlord's withholding of any consent or approval requested under this Sublease solely because Master Landlord has withheld its consent (if required) under the Master Lease.

## **OBLIGATIONS OF SUBTENANT UNDER MASTER LEASE**

(c) Subtenant agrees to perform, fulfill and observe all covenants and agreements of Sublandlord, as set forth in the Master Lease, to the extent the same are specifically incorporated by reference into this Sublease, except for the covenants and agreements of Sublandlord set forth therein with respect to the payment of rent, additional rent and other charges payable by Sublandlord to the Master Landlord, and except as specifically set forth herein. Except as set forth in this Sublease, Subtenant will have no rights with respect to the Master Lease. Subtenant acknowledges that nothing contained in this Sublease shall be deemed to create any contract or obligation between Master Landlord and Subtenant hereunder.

## **SUBTENANT AUTHORITY**

(d) Subtenant represents and warrants that Subtenant is a limited liability company duly organized and in good standing under the laws of the State of California.

## **OBLIGATIONS OF SUBLANDLORD UNDER MASTER LEASE**

(e) Sublandlord agrees to perform all of its obligations under the Master Lease which are not the obligations of Subtenant hereunder, including the obligation to pay rent, additional rent and other charges to Master Landlord as provided in the Master Lease.

## **SUBLANDLORD'S REPRESENTATIONS REGARDING THE MASTER LEASE**

(f) Sublandlord represents and warrants to Subtenant that, as of the Effective Date, (i) the Master Lease is the entire agreement between Sublandlord and Master Landlord relating to the Premises and is in full force and effect in accordance with, and subject to, all of the terms, covenants, conditions and agreements contained therein, and has not been modified, amended or supplemented except as expressly provided above; (ii) Sublandlord has not received any notice of any default by Sublandlord under the Master Lease, which default remains uncured after the expiration of the applicable cure period; (iii) Sublandlord has not delivered to Master Landlord any notice of any default by Master Landlord under the Master Lease, which default remains uncured after the expiration of the applicable cure period; (iv) Sublandlord holds the entire tenant's interest in the Premises under the Master Lease, free and clear of any liens, claims, mortgages, charges or encumbrances, subleases and occupancies, other than this Sublease, the Master Lease and any matters of record and/or to which the tenancy of the Sublandlord, as tenant under the Master Lease, is or may be subordinate; (v) The person signing this Sublease on behalf of Sublandlord is vested with authority to act on behalf of Sublandlord with respect to this Sublease, and the execution of this Sublease by Sublandlord has been duly authorized by all appropriate limited liability company action; and (vi) To Sublandlord's knowledge, there is no litigation or governmental or administrative proceeding or investigation, or disciplinary proceeding pending or, to Sublandlord's knowledge, threatened against the Sublandlord as it relates to the Premises or to the Sublandlord's ability to perform under this Sublease or the Master Lease (for purposes of this Sublease, "Sublandlord's knowledge" shall mean the actual knowledge after due inquiry of those employees of Sublandlord generally responsible for the Premises).

## **CONDITION PRECEDENT – PERMITS AND APPROVALS**

(g) Within One Hundred Twenty (120) days after the Effective Date, Subtenant shall submit to Sublandlord for Sublandlord's approval complete plans and specifications with respect to Subtenant's initial construction and signage pursuant to this Sublease. Following Sublandlord's approval of Subtenant's plans and specifications, Subtenant shall promptly apply for, and thereafter use continuous, diligent, good faith and commercially reasonable efforts (including hiring a local permit expeditor) to obtain its building permit and any other governmental approvals (collectively, "Permits") necessary to enable Subtenant to perform its initial construction pursuant to this Sublease and/or to operate within the Premises for the use permitted under Section 5(a) hereof. Upon obtaining all such Permits, Subtenant shall promptly send written notice of same to Sublandlord ("Subtenant's Permit Notice"). Sublandlord shall, at Subtenant's cost, provide Subtenant with such reasonable assistance and cooperation as Subtenant may reasonably require in connection with applications for the Permits, including executing and delivering to Subtenant all applications and other documents for which Sublandlord's signature (or Master Landlord's signature) shall be required in connection with Subtenant's obtainment of the Permits (which applications and documents shall be returned to Subtenant executed by Sublandlord within ten (10) business days after delivery to Sublandlord, but such deadline shall not apply to applications or documents requiring Master Landlord's execution (which Sublandlord shall use commercially reasonable efforts to obtain)). If Subtenant does not obtain its Permits on or before the date occurring One Hundred Eighty (180) days after the Effective Date (the "Outside Permits Date"), subject to delays caused by an Event of Force Majeure (hereinafter defined but which shall expressly not include delays in the issuance of any governmental permits or approvals sought in connection with this Sublease and which shall not in any event be deemed to exceed one hundred eighty (180) days) or delays caused by Sublandlord, then, within ten (10) days after the expiration of such 180-day period (but prior to the acquisition by Subtenant of said Permits), Subtenant may terminate this Sublease by written notice to Sublandlord (and if such termination notice is not received by Sublandlord within said 10-day period, Subtenant shall be deemed to have (I) waived such right to terminate this Sublease pursuant to this subsection (g), and (II) obtained all of Subtenant's Permits). Subtenant may exercise the right of termination described in this paragraph only if Subtenant has promptly applied for said Permits, has diligently pursued, in good faith, the acquisition of said Permits, and has failed to acquire same. After a termination by Subtenant hereunder, neither party shall have any rights or liabilities under this Sublease, and Sublandlord shall return any deposits and prepaid amounts to Subtenant.

## **2. PREMISES**

Sublandlord does hereby let to Subtenant and Subtenant does hereby hire from the Sublandlord, for the Term and on the conditions hereinafter provided, the Premises.

## **3. TERM**

The term of this Sublease shall commence on the Delivery Date defined in Section 7 hereof, and said term shall expire on January 30, 2030, subject to the conditions hereinafter set forth, and subject to the provisions of the Master Lease.

#### 4. OPTION

Subtenant shall have no right to renew this Sublease.

#### 5. USE

(a) Subject to applicable law and the Master Lease, Subtenant shall use the Premises as a retail store for the operation of an exercise studio offering group fitness classes and ancillary uses including, without limitation, retail clothing and fitness goods sales, a fuel bar with protein shakes, fruit smoothies, grab and go food (no on-site cooking permitted), and men's and women's shower facilities and locker rooms, and laundry facilities associated with the foregoing (collectively, the "Permitted Use"), and for no other use or purpose without first receiving Sublandlord's consent. Notwithstanding the foregoing, in no event shall Subtenant use the Premises for the sale of health and beauty aids, as a drugstore, or for the sale of prescription drugs, vitamins or greeting cards, or for film processing and developing services or as a so-called "dollar store" or any other variety store, general merchandise store, off-brand general merchandise store, discount variety store, "close-out" store, or any similar operation, such as, by way of example only, "Family Dollar", "Dollar General", "Dollar Zone", "Maxway", "Allied Stores", or "Bills Dollar".

(b) Notwithstanding anything contained in this Sublease or the Master Lease to the contrary and notwithstanding the use of the Premises for the Permitted Use, Sublandlord makes no representation or warranty as to whether the Permitted Use and the operation of said use in and from the Premises by Subtenant complies with Laws (as hereinafter defined), is permitted under the Master Lease, or that the Premises is otherwise fit for the use permitted herein. Subtenant shall be solely responsible for obtaining the applicable licenses and other approvals (including, but not limited to, a Certificate of Occupancy, if required), for the Permitted Use and ensuring throughout the Term hereof that said use complies with all Laws.

(c) Following the Date of Rent Commencement (as hereinafter defined), if Subtenant thereafter ceases to operate a business within all of the Premises for more than 180 consecutive days (excluding, so long as Subtenant is using commercially reasonable efforts (to the extent practical) to re-open for business, any period the Premises are not being operated due to (i) casualty, (ii) alterations, renovation or repairs, (iii) condemnation, (iv) governmental regulations or delay, (v) reasons due to a breach by Sublandlord of its obligations under this Sublease, (vi) reasons due to a breach by Master Landlord of its obligations under the Master Lease, or (vii) other cause beyond the reasonable control of Subtenant (each a "Permitted Closure")), Sublandlord shall have the right to terminate this Sublease and recapture the Premises. Except in connection with a Permitted Closure, at any time after the expiration of such 180-day period but prior to Subtenant re-opening for business as aforesaid, Sublandlord may exercise its right of termination by giving Subtenant notice thereof, which termination shall be effective on the date set forth in Sublandlord's termination notice but in no event less than 30 days prior to the date Subtenant receives such termination notice. Upon such termination, all further obligations of the parties shall cease, except for those accrued as of the termination date. Without limiting Sublandlord's rights with respect to Subtenant's breach or default of any other provision of this



Sublease, the foregoing recapture right shall be Sublandlord's sole remedy solely with respect to Subtenant election not to operate in the Premises other than for a Permitted Closure.

**6. FIXED RENT**

Section 6.1. From the Date of Rent Commencement, as hereinafter defined, Subtenant shall pay Sublandlord, addressed to: CVS Pharmacy, Inc., Store Number 10036, Post Office Box 1525, Woonsocket, Rhode Island 02895, without any prior demand therefor and without any deduction or set-off whatsoever (except to the extent otherwise expressly provided in this Sublease), the annual fixed rent set forth below:

PERIOD	ANNUAL FIXED RENT	MONTHLY INSTALLMENTS
From Date of Rent Commencement until 12/31/18	\$487,604.0	\$40,633.67
1/1/19 – 12/31/23	\$536,364.40	\$44,697.03
1/1/24 – 12/31/28	\$590,000.84	\$49,166.74
1/1/29 though end of the Term	\$649,000.92	\$54,083.41

Fixed rent shall be payable to Sublandlord on the first day of each month in advance. In the event that Subtenant shall be late in its payment of fixed rent or any other charges due hereunder by more than five (5) days from said due date, Subtenant shall pay Sublandlord a late fee in the amount of five percent (5%) of the outstanding amount. Notwithstanding the foregoing, with respect to the first time in any twelve (12) consecutive month period that Subtenant has failed timely to pay any such fixed rent or any monthly recurring charge(s), such late fee shall not apply unless Subtenant has failed to make such payments within five (5) business days after Subtenant's receipt of Sublandlord's written notice of such delinquency.

**DATE OF RENT COMMENCEMENT**

Section 6.2. (a) It is understood and agreed that Subtenant's obligation to pay fixed rent and all other charges due under this Sublease shall commence on the date that is the earlier of (i) One Hundred Eighty (180) days after the earlier of (A) the Outside Permits Date (as the same may be extended pursuant to the express provisions of Section 1(g) hereof), or (B) the date Sublandlord received Subtenant's Permit Notice, or (ii) when Subtenant opens for business within the Premises (hereinafter referred to as the "Date of Rent Commencement"). Subtenant's insurance obligations set forth in Section 23 hereof shall commence on the Delivery Date (hereinafter defined).

(b) If the Date of Rent Commencement shall be on any day other than the first day of a calendar month, fixed rent and any other charges payable hereunder for such month shall be apportioned on a per diem basis.

(c) Upon determination of the Date of Rent Commencement, Sublandlord shall forward to Subtenant a Rent Commencement Lease Term Letter substantially in the form of **Exhibit B**. Subtenant shall execute and return the Rent Commencement Lease Term Letter to Sublandlord within ten (10) business days of receipt thereof.

(d) In addition to the foregoing fixed rent, all other payments to be made by Subtenant pursuant to this Sublease shall be deemed to be and shall become additional rent hereunder whether or not the same shall be designated as such and Sublandlord shall have the same remedies for failure to pay the same as for a non-payment of fixed rent.

(e) Notwithstanding anything to the contrary contained in this Sublease, Subtenant shall be entitled to an abatement of fifty percent (50%) of the fixed rent and additional rent due hereunder during the first four (4) full calendar months following the Date of Rent Commencement.

## 7. DELIVERY OF THE PREMISES

Sublandlord hereby covenants and agrees to deliver possession of the Premises to Subtenant in an "as-is" condition except that the Premises shall be delivered to Subtenant vacant, in broom clean condition, with the electrical, plumbing, and heating, ventilating and air-conditioning systems in good working order, and free of all signage, fixtures, inventory, equipment and personal property of Sublandlord and/or any prior tenant or occupant (the "Delivery Condition"). The Premises shall be considered delivered on the date that is the latest to occur of the following: (i) the Sublease has been executed between Sublandlord and Subtenant; (ii) the keys to the Premises are delivered to Subtenant; and (iii) the Delivery Condition has been satisfied (hereinafter the "Delivery Date"). If, for any reason except to the extent due to an Event of Force Majeure or due to a delay caused by Subtenant, the Delivery Date shall not have occurred within thirty (30) days after Sublandlord's receipt of Subtenant's Permit Notice (the "Outside Date"), then Subtenant, in the form of liquidated damages, shall be entitled to one (1) day of free fixed annual rent for each day of delay accruing from the Outside Date to the actual Delivery Date. Subtenant may terminate this Sublease on thirty (30) days' notice to Sublandlord if, for any reason except to the extent due to an Event of Force Majeure or due to a delay caused by Subtenant, the Delivery Date has not occurred on or before the date that is sixty (60) days after the Outside Date, in which event this Sublease shall terminate unless Sublandlord causes the Delivery Date to occur within such thirty (30) day period. Promptly following the Delivery Date, Subtenant and Sublandlord shall execute a Possession and Acceptance Letter provided by Sublandlord's agent, substantially in the form attached hereto as **Exhibit C**. Subtenant agrees that Sublandlord shall have no obligation to perform any work, structural or non-structural, related to the build-out of the Premises in order to render the Premises fit for use or occupation, or for Subtenant's particular purposes or to make them acceptable to Subtenant. In no event shall Subtenant commence its work in the Premises to initially prepare the Premises for its occupancy, or conduct any modifications thereto, without first submitting to Sublandlord for Sublandlord's review and approval a detailed set of plans and

drawings for Subtenant's proposed work and/or modifications (Sublandlord hereby agreeing, for itself, not to unreasonably withhold, delay or condition such approval). Subtenant's work shall be performed in a good and workmanlike manner, in compliance with all applicable Laws. Subtenant shall keep the Premises free of liens in accordance with Section 16 of the Master Lease.

## **8. REPAIRS AND MAINTENANCE**

(a) Subtenant, at its sole cost, shall maintain the Premises in accordance with Section 9 of the Master Lease and perform all maintenance and repair obligations of Sublandlord required under the Master Lease. Subtenant hereby acknowledges that Sublandlord shall have no obligation to perform any of Sublandlord's maintenance obligations under the Master Lease except if such obligation arises from the negligence or willful misconduct of Sublandlord, its agents, contractors or employees.

(b) If Subtenant fails to make any of the repairs required to be made by Subtenant under this Sublease within twenty (20) days after written notice from Sublandlord of the necessity therefor, Sublandlord, in addition to any other rights it may have hereunder, shall have the right, but not the obligation, to make said repairs on behalf of Subtenant and to bill Subtenant for the reasonable cost thereof incurred by Sublandlord. If, in an emergency in Sublandlord's reasonable opinion, any such repairs are immediately necessary, no prior twenty (20) days' notice shall be required, but Sublandlord shall give Subtenant whatever notice is reasonable in the circumstances and may forthwith make said repairs on behalf of Subtenant and bill Subtenant for the reasonable cost thereof incurred by Sublandlord. Subtenant will pay any such reasonable amount incurred by Sublandlord so billed to it under this paragraph within twenty (20) days after receiving any such bill (together with reasonably sufficient evidence of the amounts expended).

(c) At the end, expiration, or other termination of the Term hereby granted, Subtenant shall deliver up the Premises in the condition required under the Master Lease and broom-clean, free of debris, and with all of Subtenant's moveable trade fixtures and equipment removed therefrom; provided, however, this subsection (c) shall not be applicable if Subtenant enters into a fully executed lease or other written agreement with the Master Landlord to remain in the Premises for a term to commence upon the expiration of the Term of this Sublease. Subtenant shall defend, indemnify and hold harmless Sublandlord from any and all claims, liability, cost, and expense (including reasonable attorney's fees) on account of any claim by Master Landlord concerning the condition of the Premises as surrendered by Subtenant.

(d) All of the foregoing notwithstanding, neither party shall be obligated to perform any maintenance, repair or replacement, the necessity of which shall have arisen solely due to the negligence or willful misconduct of the other, or of the other's employees, agents or contractors; and in such case, the party which shall have caused the need for such maintenance, repair or replacement shall be responsible for same, at its sole cost. This subsection (d) shall apply only in any instance to which Section 17 shall not apply.

## **9. ACCESS TO PREMISES**

Sublandlord, its duly authorized agents, contractors and representatives, and Master Landlord (to the extent permitted under the Master Lease), shall have the right, during Subtenant's business hours of operation and following reasonable notice to Subtenant (except in the case of an emergency, when no notice or restriction on hours of entry shall be necessary), to enter into and upon the Premises, or any part thereof, for the purpose of examining the same or, upon forty-eight (48) hours prior written notice to Subtenant (except in the event of emergency), making such repairs therein as may be reasonably necessary for the safety and preservation thereof. Although Sublandlord shall use commercially reasonable efforts to ensure that such access does not interfere with the operation of Subtenant's business, Sublandlord shall not be liable to Subtenant by reason of any inconvenience, noise or loss of business and in connection with Sublandlord's valid entry onto the Premises, except for instances of negligence or the willful misconduct of Sublandlord, its duly authorized agents, contractors and/or representatives.

## **10. FIRE**

If the Building or other improvements on the Premises is damaged or destroyed by fire, flood, tornado, or by the elements, or by act of God, or the public enemy, or otherwise (collectively, a "Casualty"), then, Sublandlord shall use commercially reasonable efforts to enforce the provisions of Section 13 of the Master Lease. The provisions of Section 13 of the Master Lease are hereby incorporated into this Sublease with Subtenant having all of the rights and obligations of Sublandlord thereunder (including, without limitation, Sublandlord's rights to terminate the Master Lease); provided, however, Subtenant agrees that Sublandlord shall have no obligations (other than to use commercially reasonable efforts to enforce the provisions of Section 13 of the Master Lease as aforesaid) pursuant to this Section 10 to repair or restore the Premises in the event that the Premises shall be damaged in whole or in part by Casualty.

## **11. CONDEMNATION**

(a) If the entire Premises, or the use or possession thereof, is taken in condemnation proceedings, or by any right of eminent domain, or for any public or quasi-public use, or if Master Landlord shall terminate the Master Lease pursuant to the terms of the Master Lease, or if Master Landlord shall deliver to a government authority a deed in lieu of condemnation or eminent domain (individually or collectively, a "taking", or "taken"), then, this Sublease shall terminate on the date when possession shall be taken by the condemnor and rent and all other charges payable hereunder shall be apportioned and paid in full up to that date, and all prepaid unearned rent, and all other charges payable hereunder shall promptly be repaid by Sublandlord to Subtenant.

If only a part of the Premises shall be so taken, Sublandlord shall use commercially reasonable efforts to enforce the provisions of Section 14 of the Master Lease (including, without limitation, Sublandlord's rights to terminate the Master Lease). Except with respect to any award issued in connection with a taking (which is addressed in subsection (b) below), the provisions of Section 14 of the Master Lease are hereby incorporated into this Sublease with Subtenant having all of the rights and obligations of Sublandlord thereunder; provided, however, Subtenant agrees that Sublandlord shall have no obligations (other than to use commercially reasonable efforts to enforce the provisions of Section 14 of the Master Lease as aforesaid) pursuant to this Section 11 to repair

or restore the Premises in the event that the Premises shall be taken in whole or in part by condemnation.

(b) With respect to any award issued to Sublandlord pursuant to Section 14 of the Master Lease, Subtenant shall be entitled to that percentage of such award resulting from a taking applicable to the Premises equal to a fraction, the numerator of which is the unamortized cost of Subtenant's leasehold improvements installed by Subtenant, and relocation expenses, and the denominator of which is the total award reasonably claimed by Sublandlord and Subtenant to the condemning authority.

## 12. ASSIGNMENT AND SUBLETTING

Subtenant shall not assign this Sublease or sublet the whole or any part of the Premises, without Sublandlord's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned. Subtenant shall provide to Sublandlord the name, notice address, telephone number and a contact person for the proposed subtenant as well as any reasonable financial information as may be reasonably required by Sublandlord. Notwithstanding anything herein to the contrary, in the event that Sublandlord consents to a sublease or assignment by Subtenant, Subtenant (and Guarantor) shall at all times remain liable under this Sublease following any such subleasing or assignment. Notwithstanding anything to the contrary contained in this Sublease, Subtenant may, upon ten (10) days written notice to Sublandlord but without Sublandlord's prior written consent, assign or transfer its entire interest in this Sublease and the sub-leasehold estate hereby created, or sub-sublease the Premises, to a successor entity of Subtenant, which for the purposes of this Sublease shall mean either (a) any corporation or other business entity which controls, is controlled by, or under common control with, Subtenant (a "related entity"), or (b) a business entity into which or with which Subtenant, its successors or assigns, is merged or consolidated, in accordance with applicable statutory provisions for the merger or consolidation of entities, provided that by operation of law or by effective provisions contained in the instruments of merger or consolidation the liabilities of the business entities participating in such merger or consolidation are assumed by the business entity surviving such merger or consolidation, or (c) a business entity acquiring substantially all of Subtenant's assets, or (d) Subtenant's franchisor or, (e) any successor to a successor corporation becoming such by any of the methods described in subdivisions (a), (b), (c) and (d) above; provided, however, that Subtenant shall have no such right to assign or transfer to a successor entity unless Subtenant shall not be in default in the performance of any of its obligations under this Sublease beyond the applicable notice and cure period and as of the date of such transfer, the transferee has the reasonable financial ability to perform its obligations with respect to this Sublease and/or the Premises. For the purposes hereof "control" shall be deemed to mean ownership of not less than fifty percent (50%) of all of the legal and equitable interest in such business entity, or the possession of the power, directly or indirectly, to direct or cause the direction of management and policy of a business entity, whether through the ownership of voting securities, common members, directors or officers, the contractual right to manage the business affairs of such business entity, or otherwise. In the event of any permitted assignment or sublet hereunder by Subtenant which is made at a profit, said profit shall be paid to Sublandlord in accordance with the procedure set forth in Section 6 hereof.

The provisions of this Section 12 shall at all times be subject to the terms of the Master Lease (including, without limitation, Master Landlord's right to recapture the Premises set forth in Section 15(b) of the Master Lease) and in no event, notwithstanding the provisions of this Section 12, shall Subtenant be permitted to assign this Sublease or sublease all or any portion of the Premises in violation of the Master Lease.

### **13. ALTERATIONS**

After the completion of Subtenant's initial improvements and alterations to the Premises in accordance with the terms of this Sublease, except as otherwise expressly set forth herein, Subtenant shall not make any subsequent alterations to the Premises or storefront without the prior written consent of Master Landlord and Sublandlord, which consent Sublandlord, for itself covenants not to unreasonably withhold, condition or delay after receiving plans for all proposed alterations (if applicable). All alterations shall be constructed diligently at Subtenant's expense in a good and workmanlike manner, and in compliance with all applicable Laws and any requirements under the Master Lease. Notwithstanding the foregoing (but subject to the terms of the Master Lease), Sublandlord's consent shall not be required with respect to improvements or alterations that do not require any permits, approvals or authorizations from any governmental agency, and are interior non-structural improvements or alterations including, without limitation, changing color schemes, installing new countertops, flooring, wall covering and modifying the layout of Subtenant's fixtures and/or equipment, as Subtenant deems necessary or desirable ("Cosmetic Alterations").

### **14. SIGNS**

Subtenant will not place any signs on the exterior of the Premises, without Master Landlord's (except to the extent otherwise expressly agreed to in any written agreement between Master Landlord and Subtenant) and Sublandlord's prior written consent, which consent Sublandlord covenants for itself not to unreasonably withhold, condition or delay after receiving plans (if reasonably required by Sublandlord), subject to the approval of the appropriate governing authorities and the provisions of the Master Lease. At Subtenant's sole cost and expense, Sublandlord agrees to reasonably cooperate with Subtenant (including the signing and using commercially reasonable efforts to obtain the signature of Master Landlord (if required) of applications) in obtaining any necessary permits or approvals required for Subtenant's signs.

### **15. REMOVAL OF FIXTURES & SIGNS**

All alterations, additions, and improvements in or upon the Premises or the building, made by either party (except Subtenant's furniture, trade fixtures, and other equipment and shelving), shall become the property of Sublandlord and shall remain upon and be surrendered with the Premises as a part thereof at the termination or other expiration of the term hereby granted. To the extent required under the Master Lease, at the termination or other expiration of the term hereby granted, Subtenant shall remove the items enumerated in the parenthetical above, as well as its signs and identification marks, from the Premises. Subtenant agrees to repair any and all damage caused by such removal.

**16.    SUBLANDLORD NOT LIABLE**

Sublandlord or Sublandlord's agents shall not be liable for any injury or damage to persons or property resulting from steam, gas, electricity, water, rain or snow or leaks from any part of the building, or from the pipes, appliances or plumbing works or from the roof, street or sub-surface or from any other place or by dampness or by any other cause of whatsoever nature, unless caused by or due to the negligence or willful misconduct of Sublandlord, its agents, servants, contractors or employees; nor shall Sublandlord or its agents, servants, contractors or employees be liable for any such damage caused by Master Landlord or other persons in the building, or caused by operations in construction of any private, public or quasi-public work.

**17.    SUBROGATION**

Each of the parties hereto hereby waives any and all rights of action for negligence against the other party hereto, which may hereafter arise for damage to the Premises or to the property therein resulting from any fire or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or may hereafter be carried by the parties hereto, or either of them.

**18.    UTILITIES**

Commencing on the Delivery Date, Subtenant agrees to pay for all water consumed by it and to pay for any public sewer charges applicable to the Premises. Subtenant also agrees to pay for all other utilities, including gas and electricity, consumed by it in the Premises and covenants and agrees that it will keep sufficient heat in the Premises, at all times, to prevent pipes from freezing. If the Delivery Date shall be any day other than the first day of a calendar month such charges shall be prorated on a per diem basis.

**19.    DEFAULTS**

(a)    In the event that Subtenant (i) fails to pay all or any portion of any of the rent reserved herein or other sum due from Subtenant hereunder for a period of five (5) days after written notice from Sublandlord (unless two (2) notices of default have been previously given within the prior twelve (12) month period in which case written notice of default shall not be required); (ii) fails to perform or observe any other covenant or condition of this Sublease for a period of twenty (20) days following Sublandlord's written notice thereof to Subtenant (unless such failure cannot reasonably be cured within twenty (20) days and Subtenant shall have commenced to cure said failure within said twenty (20) days and continues diligently to pursue the curing of the same); or (iii) becomes bankrupt, insolvent or files any debtor proceeding; or files or has filed against Subtenant any petition in bankruptcy; or takes action or has action taken against Subtenant for the appointment of a receiver for all or a portion of Subtenant's assets; or files a petition for a corporate reorganization; or makes an assignment for the benefit of creditors, and none of the foregoing is dismissed within seventy-five (75) days of filing (to the extent any such cure period is granted to Sublandlord under the express terms of the Master Lease); or if in any other manner Subtenant's interest hereunder shall pass to another by operation of law; then, in any such event, Subtenant shall be in default hereunder.

(b) In the event of a default by Subtenant that is not cured within the applicable notice period(s) specified above, Sublandlord shall have the following remedies, which remedies are not exclusive, but rather, are cumulative and in addition to any remedies now or later permitted by Law:

(i) Sublandlord may employ the remedy described in California Civil Code Section 1951.4 (Sublandlord may continue this Sublease in effect after Subtenant's continuing default and recover Rent as it becomes due). In such event, this Sublease shall continue in effect for so long as Sublandlord does not terminate Subtenant's right to possession, and Sublandlord may enforce all of Sublandlord's rights and remedies under this Sublease, including the right to recover the rent as it becomes due under this Sublease;

(ii) Sublandlord may elect to terminate this Sublease and Subtenant's right to possession of the Premises. If Sublandlord elects to do so, Sublandlord shall have all of the rights and remedies of a Sublandlord provided by California Civil Code Section 1951.2, or successor code section (but in no event shall the Sublease terminate based solely on Subtenant's abandonment or vacation of the Premises). Upon such termination, in addition to any other rights and remedies to which Sublandlord may be entitled under applicable law, Sublandlord may recover from Subtenant as damages all of the following:

(A) the worth, at the time of the award, of the unpaid fixed annual rent and additional charges that had been earned at the time of termination of this Sublease;

(B) the worth, at the time of the award, of the amount by which the unpaid fixed annual rent and additional charges that would have been earned after the date of termination of this Sublease until the time of award exceeds the amount of the loss of rent that Subtenant proves could have been reasonably avoided;

(C) the worth of the award of the amount by which the unpaid fixed annual rent and additional charges for the balance of the Term after the time of the award exceeds the amount of the loss of such rent and other charges that Subtenant proves could have been reasonably avoided; and

(D) any other amount necessary to compensate Sublandlord for all the detriment proximately caused by Subtenant's failure to perform its obligations under this Sublease or which in the ordinary course of things would be likely to result therefrom.

"The worth, at the time of the award," as used in clauses (A) and (B) of this subsection, is to be computed by allowing interest at the "prime rate" as published in the "Money Rates" section of "The Wall Street Journal", plus four percent (4%). "The worth, at the time of the award," as referred to in clause (C) of this subsection, is to be computed by discounting the amount at the published federal funds rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%). If Sublandlord terminates this Sublease, then Sublandlord shall use commercially reasonable efforts to mitigate its damages and relet the Premises, which shall not exceed such efforts as Sublandlord generally uses to sublease the Premises. Sublandlord



shall not be deemed to have failed to so mitigate if Sublandlord subleases less than all of the Premises.

(c) Subtenant waives any and all rights of redemption granted under any present and future Laws in the event Sublandlord obtains the right to possession of the Premises by reason of the violation by Subtenant of any of the covenants and conditions of this Sublease or otherwise.

(d) If Sublandlord terminates this Sublease on account of any default by Subtenant as set forth in this Article beyond applicable notice and cure periods, Sublandlord shall have the right, but not the obligation, to succeed to Subtenant's interest in such subleases, licenses, concessions or arrangements as Subtenant may have entered into. In the event of Sublandlord's election following termination of this Sublease to succeed to Subtenant's interest in any such subleases, licenses, concessions or arrangements, Subtenant shall, as of the date of notice by Sublandlord of such election, have no further right to or interest in the rent or other consideration receivable thereunder and, from and after Sublandlord's election, Subtenant shall have no further liability therefrom arising under such sublease, license, concession or arrangement, but Subtenant shall be given credit against any rent or other sums it owes under the Sublease for any rent or other sums collected by Sublandlord with respect to any such sublease, license, concession or other arrangement.

(e) Subtenant shall be deemed to, and hereby, absolutely and unconditionally assigns to Sublandlord any and all rents and other payments owed under assignment, sublease, and/or license agreement for all or any portion of the Premises and grants to Sublandlord the right to collect the same from any and all applicable assignees, Subtenants and licensees, provided, however, that such assignment shall terminate automatically upon Subtenant's cure of all outstanding defaults.

(f) The various rights and remedies herein granted to Sublandlord shall be cumulative and in addition to any other rights and remedies Sublandlord may be entitled to by law or in equity, and the exercise of one or more rights or remedies shall not impair Sublandlord's right to exercise any other right or remedy. In all events, Sublandlord shall have the right upon written notice to Subtenant to cure any breach by Subtenant at Subtenant's sole cost and expense, and Subtenant shall reimburse Sublandlord for such expense upon written demand.

(g) If Sublandlord shall not be permitted to terminate this Sublease as hereinabove provided because of the provisions of Title 11 of the United States Code relating to bankruptcy, as amended ("Bankruptcy Code"), then Subtenant as a debtor in possession or any trustee for Subtenant agrees promptly, within no more than twenty (20) days upon request by Sublandlord to the Bankruptcy Court, to assume or reject this Sublease and Subtenant on behalf of itself, the debtor-in-possession, and any trustee agrees not to seek or request any extension or adjournment of any application to assume or reject this Sublease by Sublandlord with such Court. In such event, Subtenant or any trustee for Subtenant may only assume this Sublease if (i) it cures or provides adequate assurance that it will promptly cure any default hereunder, (ii) compensates or provides adequate assurance that Subtenant will promptly compensate Sublandlord for any actual pecuniary loss to Sublandlord resulting from Subtenant's defaults, and (iii) provides adequate

assurance of performance during the fully stated Term hereof of all of the terms, covenants, and provisions of this Sublease to be performed by Subtenant. Adequate assurance of performance of this Sublease as set forth hereinabove shall include, without limitation, adequate assurance (A) of the source of rent reserved hereunder, and (B) the assumption of this Sublease will not breach any provision hereunder.

## **20. NOTICES**

It is mutually agreed that all notices, demands or requests that shall be given or served upon either party to this Sublease shall be in writing and shall be given or served as follows: If given or served by Subtenant, by mailing the same to Sublandlord by registered or certified mail, return receipt requested, or by nationally recognized overnight courier service which provides a receipt, addressed to Sublandlord (No. 10036), One CVS Drive, c/o Property Administration Department, Woonsocket, Rhode Island 02895, or at such other address as Sublandlord may from time to time reasonably designate by notice given to Subtenant; and if given or served by Sublandlord, by mailing the same to Subtenant by registered or certified mail, return receipt requested, or by nationally recognized overnight courier service which provides a receipt, addressed to Subtenant at the address listed on Page 1 of this Sublease, or at such other address as Subtenant may from time to time reasonably designate by notice given to Sublandlord. The date of receipt of the notice or demand or refusal thereof shall be deemed the date of the service thereof. A simultaneous copy of any such notice sent to Subtenant shall also be sent to Westerman Ball Ederer Miller Zucker & Sharfstein, LLP, 1201 RXR Plaza, Uniondale, New York 11556, Attn: Stuart S. Ball, Esq.

## **21. COMMON AREA MAINTENANCE COSTS**

Commencing on the Date of Rent Commencement and continuing throughout the Term of this Sublease, Subtenant agrees to pay to Sublandlord the common area maintenance costs required to be paid by Sublandlord under Section 33 of the Master Lease. Any sum payable to Sublandlord under this Section 21 shall be paid by Subtenant on a monthly basis. For the first twelve (12) months, following the Date of Rent Commencement that said costs are payable hereunder, Subtenant shall pay the sum of \$5,946.59 per month to Sublandlord as Subtenant's share of common area maintenance, which payment includes the sums required to be paid by Subtenant pursuant to Section 23 hereof. Thereafter, Subtenant shall pay as its share of common area maintenance (inclusive of the cost of insurance required to be paid by Subtenant pursuant to Section 23 hereof) that Sublandlord is invoiced by Master Landlord for Sublandlord's share of common area maintenance (and insurance costs if expressly included under the Master Lease) pursuant to the terms of the Master Lease.

## **22. TAXES**

Subtenant agrees to pay to the local tax authorities and other governmental agencies throughout the Term of this Sublease and any renewal thereof, all personal property taxes which may be levied against Subtenant's merchandise, trade fixtures and other personal property in and about the Premises.

Commencing on the Date of Rent Commencement and continuing throughout the Term of this Sublease, Subtenant further agrees to pay Sublandlord, (i) the amount of Fifty-Three Thousand Seven Hundred Thirty and 21/100 Dollars (\$53,730.21) per annum, plus (ii) the increase in any real estate taxes and assessments owed by Sublandlord under the Master Lease for each tax fiscal year, or portion thereof, of the Term of this Sublease, over Eighty Thousand Dollars (\$80,000.00). Said taxes and assessments shall be paid by Subtenant within thirty (30) days after receipt of an invoice therefor, together with sufficient evidence showing the increase in same.

Subtenant also agrees to pay Sublandlord, on a monthly basis, together with monthly payment of Fixed Rent, as described under Section 6, any and all sales taxes which may be levied against Sublandlord's receipt of rental income, common area maintenance costs, real estate taxes and insurance costs (but only to the extent such sales taxes are levied in lieu of, or in lieu of any increase in, regular ad valorem real estate taxes), paid by Subtenant to Sublandlord in connection with the Premises for each tax fiscal year, or portion thereof, during the Term of this Sublease.

### **23. INSURANCE**

Commencing on the Date of Rent Commencement and continuing throughout the Term of this Sublease, Subtenant agrees to pay to Sublandlord the insurance costs required to be paid by Sublandlord under Section 35 of the Master Lease. Any sum payable to Sublandlord under this Section 23 shall be paid by Subtenant on a monthly basis. Said costs shall be included in the estimated payments made by Subtenant pursuant to Section 21 hereof.

Commencing on the Delivery Date, Subtenant agrees to keep the Premises insured under a commercial general liability policy with combined policy limits of at least \$2,000,000.00 for personal injuries and property damage, and shall cover (i) Subtenant's liability with respect to any construction that Subtenant may perform in connection with the Premises; (ii) Subtenant's liability for occupation and use of the Premises; and (iii) Subtenant's contractual liability under Section 28 of this Sublease. Subtenant shall deliver to Sublandlord a certificate of such insurance naming Sublandlord and Master Landlord as "additional insured". Such insurance shall be increased from time to time (but not more than once every five (5) years unless increased pursuant to the Master Lease) as commercially reasonable for the size of the Premises and type of business operated by Subtenant, or as reasonably required by Sublandlord. Subtenant also shall comply with the Master Lease with respect to any other insurance policies and/or certificates required by the Master Landlord of Sublandlord as tenant therein.

Commencing on the Delivery Date, Subtenant shall maintain all-risk property insurance with extended coverage on Subtenant's improvements, fixtures, equipment and personal property located on or around the Premises in an amount equivalent to the full replacement value of such improvements, fixtures, equipment and personal property.

Subtenant shall maintain the aforesaid insurance policies (a) on an occurrence basis, (b) providing primary coverage and not calling upon any other insurance procured by other parties for defense, payment or contribution, (c) using commercially reasonable efforts to contain endorsements requiring thirty (30) days' advance written notice to named insureds of any cancellation or reduction in coverage, and (d) written by insurance companies licensed to do business in the state in which the Premises are located and having a rating by A.M. Best of no less than A/VIII. All of Subtenant's policies shall name Subtenant as the named insured, and Sublandlord, Master Landlord, any mortgagee of which Subtenant has notice of, and any other party reasonably identified by Sublandlord, as additional insureds. Notwithstanding the foregoing, Subtenant's insurance policies shall be maintained at least in compliance with the requirements of the Master Lease.

#### **24. INCREASE IN INSURANCE**

Subtenant shall not use or occupy the Premises or any part thereof or suffer or permit the same to be used or occupied for any business or purpose deemed extra hazardous on account of fire or otherwise, and solely to the extent the rate of fire insurance on the building in which the Premises are located shall be increased by reason of the use and occupancy of the Premises by Subtenant hereunder, Subtenant will, within thirty (30) days after Subtenant's receipt of an invoice therefor, pay to Sublandlord the amount of such increase; but such increase in the rate of insurance shall not be deemed a breach of this covenant by Subtenant.

#### **25. BROKER**

Sublandlord and Subtenant each represent and warrant that it has had no dealings or conversations with any real estate broker in connection with the negotiation and execution of this Sublease other than Cushman and Wakefield of California, Inc. and CBRE (collectively, the "Brokers"). Sublandlord and Subtenant each agree to indemnify the other against all liabilities arising from any claim of any other real estate broker(s) other than the Brokers, including reasonable cost of counsel fees, resulting from their respective acts. Sublandlord warrants and agrees that it shall be solely responsible for any and all brokerage commissions owing to said Brokers, which commission shall be paid under separate written agreements with the Brokers.

#### **26. NO WAIVER**

A waiver by either party of any breach or breaches by the other of any one or more of the covenants, agreements or conditions of this Sublease shall not bar the enforcement of any other rights or remedies for any subsequent breach of any of the same or other covenants, agreements or conditions.

**27. SECURITY/DAMAGE DEPOSIT**

Concurrent with Subtenant's execution of this Sublease, Subtenant shall deposit with Sublandlord a Security/Damage Deposit in the amount of Sixty Thousand Dollars (\$60,000.00), it being understood that Sublandlord will not execute this Sublease until it has received Subtenant's Security/Damage Deposit.

Sublandlord shall hold the Security Deposit as security for Subtenant's faithful performance of each and every term and condition of this Sublease, including but not limited to the payment of all rent and other sums which become due hereunder. Sublandlord shall not be deemed a trustee thereof and is not required to pay any interest thereon. At any time before or after the expiration or earlier termination of this Sublease, Sublandlord, in its sole and absolute discretion, may, but is not obligated to, apply any or all of the Security/Damage Deposit to remedy any uncured breaches of this Sublease. If Sublandlord uses any portion of the Security/Damage Deposit to remedy any uncured breaches of this Sublease, Sublandlord shall notify Subtenant in writing and Subtenant shall have twenty (20) days after receipt of such notice to replenish any and all monies that were used from the Security/Damage Deposit. In the event that Subtenant fails to replenish the funds within said twenty (20) days, said failure will be deemed a default under this Sublease.

At the expiration or other termination of this Sublease, Sublandlord will return any unused portion of the Security/Damage Deposit within thirty (30) days following such expiration or other termination of this Sublease, provided that the Premises are surrendered to Sublandlord in the condition specified in this Sublease, and provided that Subtenant is not then in default hereunder (after notice and the expiration of the applicable cure period).

**28. SUBTENANT'S INDEMNITY**

Except to the extent that such liability is caused by the negligence or willful misconduct of Sublandlord, its agents, contractors or employees, and subject to Section 17 herein, Subtenant shall defend, indemnify and save harmless Sublandlord and its agents and employees against and from all costs, expenses, claims, demands or liabilities arising from the following:

(i) any willful, negligent or tortious act or omission on the part of Subtenant or any of its agents, contractors, subcontractors, servants, employees, licensees or, while inside the Premises, invitees; or

(ii) any failure by Subtenant to comply with any applicable Law governing its use of the Premises; or

(iii) any failure on the part of Subtenant to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Sublease or the Master Lease on its part to be performed or complied with.

In case any action or proceeding is brought against Sublandlord by reason of any such claim, Subtenant, upon written notice from Sublandlord, shall, at Subtenant's expense, resist or defend such action or proceeding.

## **29. SUBLANDLORD'S INDEMNITY**

Except to the extent that such liability is caused by the negligence or willful misconduct of Subtenant, its agents, contractors or employees, and subject to Section 17 herein, Sublandlord shall defend, indemnify and save harmless Subtenant and its agents and employees against and from all costs, expenses, claims, demands or liabilities arising from the following:

(i) any willful, negligent or tortious act or omission on the part of Sublandlord or any of its agents, contractors, subcontractors, servants, employees, licensees or invitees; or

(ii) any failure by Sublandlord to comply with any applicable Law governing its leasing or use of the Premises; or

(iii) any failure to the part of Sublandlord to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Sublease or the Master Lease on its part to be performed or complied with.

In case any action or proceeding is brought against Subtenant by reason of any such claim, Sublandlord, upon written notice from Subtenant, shall, at Sublandlord's expense, resist or defend such action or proceeding.

## **30. FORCE MAJEURE**

For the purposes hereof, an "Event of Force Majeure" shall be defined as the occurrence of any of the following (to the extent the same is unforeseeable): Act of God, war, terrorism, civil commotion, casualty, extreme weather conditions, labor difficulties, general shortages of labor, materials or equipment, government regulations or other causes beyond the reasonable control of such party, its agents, employees, contractors or subcontractors (other than causes related to such party's financial condition). To qualify as an Event of Force Majeure, the delayed party must have (i) provided notice to the other party hereto of such Event of Force Majeure within five (5) business days of same, (ii) thereafter periodically kept the other party hereto reasonably advised by notice of such delays, and (iii) used commercially reasonable efforts and all due diligence to effect the required performance. The provisions of this Section 30 shall in no event be applicable with respect to the payment of money.

### **31. HAZARDOUS MATERIALS**

(a) For the purposes hereof, the term "Hazardous Materials" shall include, without limitation, substances defined as "hazardous substances", "hazardous materials", or "toxic substances" in any applicable federal law, any applicable state law, and/or any rules or regulations adopted or promulgated pursuant to any of said laws.

(b) Subtenant represents and warrants that it will not use, store or dispose of any Hazardous Materials in the Premises. With regard to any Hazardous Materials introduced by Subtenant, Subtenant shall remove same, in compliance with all applicable Laws, and at Subtenant's sole cost and expense; and Subtenant agrees to defend, indemnify and hold Sublandlord and Master Landlord harmless from and against any and all costs, damages, expenses, and/or liabilities (including reasonable attorneys' fees) which Sublandlord or Master Landlord may reasonably incur or suffer as a result of any claim, suit or action regarding any such Hazardous Materials introduced onto the Premises by Subtenant (or its agents, employees, contractors or, while inside the Premises, invitees), and/or regarding the removal and clean-up of same.

(c) Subtenant's obligations pursuant to this Section shall survive any expiration and/or termination of this Sublease.

(d) In the event any Hazardous Materials (including, without limitation, asbestos or asbestos containing material) is located in, on, or upon the Premises prior to or during the Term, and such Hazardous Materials were introduced by Sublandlord or anyone acting by, through, or under Sublandlord, Sublandlord shall, at its own expense, promptly remove and/or remediate such Hazardous Materials to the full extent required by applicable Law. Sublandlord shall defend, indemnify, and hold harmless Subtenant, agents, contractors and employees from and against any and all demands, claims, causes of action, fines, penalties, damages (including, without limitation, reasonable attorney's fees and court costs) Subtenant may reasonably incur or suffer as a result of any claim, suit or action regarding any such Hazardous Materials introduced onto the Premises by Sublandlord (or its agents, employees, contractors or, while within the Premises, invitees), and/or regarding the removal and clean-up of same. This indemnity shall survive the expiration or termination of this Sublease.

### **32. PARKING**

Subtenant shall have the same rights to the non-exclusive use of the parking area as Sublandlord has as tenant under the Master Lease.

### **33. COMPLIANCE WITH LAWS**

Subtenant shall, at its sole cost and expense, comply with all laws, statutes, ordinances, and regulations (collectively, "Laws") relating to the Premises and/or Subtenant's use thereof, and any other compliance obligations expressly set forth in the Master Lease as being the responsibility of Sublandlord thereunder.

### **34. GOVERNING LAW**

This Sublease shall be governed and construed in accordance with the laws of the State in which the Premises are located.

**35. ENTIRE AGREEMENT**

This Sublease contains and embraces the entire agreement between the parties hereto and may not be changed or terminated orally or by any agreement unless such agreement shall be in writing and signed by the party against whom enforcement of such change or termination is sought. Capitalized terms not defined herein shall have the meanings ascribed to them under the Master Lease.

**36. SEVERABILITY**

If any term or provision of this Sublease or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Sublease or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Sublease shall be valid and enforceable to the fullest extent permitted by Laws.

**37. HEADINGS**

The captions of the Sections contained herein are for convenience only and do not define, limit, construe or describe the scope or intent of such Sections.

**38. SUCCESSORS AND ASSIGNS**

This Sublease shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of Subtenant and the successors and assigns of Sublandlord.

**39. COUNTERPARTS**

This Sublease may be executed in separate counterparts, each of which shall be an original and all of which shall be deemed to be one and the same instrument.



**40. FACSIMILE SIGNATURES**

Subtenant and Sublandlord agree that a PDF, electronic or facsimile signature on this Sublease is as valid as an original signature.

**41. MERGER WITH MASTER LEASE**

In the event that Subtenant, or any of its officers, directors, trustees, individual members, or partners, becomes the owner of the Premises, or succeeds to the interest of the Master Landlord during the term of the Master Lease, Subtenant hereby agrees with Sublandlord that the Term of this Sublease and the Master Lease shall automatically terminate on the effective date of such purchase.

**42. HOLDOVER**

If Subtenant remains on the Premises after the expiration or earlier termination of the Term, then such holding over shall not be deemed to extend or renew the Term or to create any tenancy at will, but such holding over shall be deemed a tenancy-at-sufferance and, as a result thereof, Subtenant shall pay to Sublandlord fixed annual rent equal to one and one-half times the amount due hereunder to Sublandlord for the month of the Term immediately preceding such expiration of earlier termination, plus all additional rent and all other charges due hereunder, and otherwise subject to all the terms and provisions of this Sublease. Notwithstanding the foregoing, Sublandlord may, at its option, regain possession of the Premises or any part thereof by any and all legal means available to Sublandlord under this Sublease, the Master Lease or Laws.

**43. WAIVER OF TRIAL BY JURY**

Sublandlord and Subtenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either against the other, upon any matters whatsoever arising out of or in any way connected with this Sublease, Subtenant's use or occupancy of the Premises, and/or any claim of injury or damage.

**44. TRANSFER OF SUBLANDLORD'S INTEREST**

In the event of any transfer of Sublandlord's interest in the Premises, following such transfer, provided and to the extent that the transferee assumed in writing all of Sublandlord's obligations hereunder, Sublandlord's liability shall cease and Sublandlord shall be released from all liability for the performance or observance of any agreements or conditions on the part of Sublandlord to be performed or observed. Sublandlord shall transfer the Security/Damage Deposit and any prepaid rent (if any) to Sublandlord's successor, and on such transfer Sublandlord shall be discharged from any further liability in connection with the Security/Damage Deposit and any prepaid rent (if any).

**45. NO SUBLANDLORD REPRESENTATIONS**

Subtenant agrees that Sublandlord has not made any representations or covenants except those that are expressly set forth in this Sublease. Sublandlord shall not be liable, and Subtenant shall not be entitled to any remedy including the termination of this Sublease, for the breach of any representations or covenants, which are not expressly set forth in this Sublease.

**46. INTERPRETATION**

All exhibits attached to this Sublease shall be deemed incorporated into this Sublease in their entirety. Each party acknowledges that this Sublease has been the subject of active and complete negotiations, and that this Sublease shall not be construed in favor of or against any party based on such party's or its advisors' participation in the preparation of this Sublease.

**47. EFFECT OF SUBLEASE**

The preparation, revision or delivery of this Sublease for examination and discussion shall in no event be deemed to be an offer to lease the Premises but shall be merely a part of the negotiations between Sublandlord and Subtenant. Neither party hereto shall have any obligation or liability to the other whatsoever at law or in equity (including any claims for detrimental reliance or promissory estoppel) unless and until such time as both parties shall have executed and delivered this Sublease.

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**LIST OF EXHIBITS**

- EXHIBIT A: Premises = red
- EXHIBIT B: Rent Commencement Letter
- EXHIBIT C: Acknowledgment and Acceptance Letter

IN WITNESS WHEREOF, Sublandlord and Subtenant have duly executed this Sublease on the day and year first above written.

WITNESS:

Tara Shaw  
WITNESS

Allen Wood  
WITNESS

WITNESS:

Harold Brander  
WITNESS

\_\_\_\_\_  
WITNESS

SUBTENANT:

BBC 2280 MARKET STREET LLC

BY: Adgen Skane  
NAME: Adgen Skane  
TITLE: CEO  
DATE: 5/17/18

SUBLANDLORD:

GARFIELD BEACH CVS, L.L.C.

BY: Robert T. Marcello  
NAME: Robert T. Marcello  
TITLE: Senior Vice President

LEGAL APPROVAL: Robert K. Hirsch  
Robert K. Hirsch

## GUARANTY

**IN CONSIDERATION** of the execution and delivery of the within Sublease dated the 30 day of May, 2018, by and between GARFIELD BEACH CVS, L.L.C., as Sublandlord, and BBC 2280 MARKET STREET LLC, as Subtenant, the undersigned, BARRY'S BAY AREA, LLC, a California limited liability company ("Guarantor"), having its office at c/o Barry's Bootcamp, 2246 Lombard Street, San Francisco, California 94123, does hereby unconditionally guarantee to Sublandlord the full and timely payment, performance, compliance and observance of all covenants, agreements, indemnities, obligations and liabilities of Subtenant under the Sublease (the "Guaranteed Obligations"), including, but not limited to, all obligations of Subtenant for the payment of all rent, additional rent and other sums due from time to time under the Sublease and all damages resulting from any breach or default by Subtenant under the Sublease (subject to the Liability Amount from and after the Limited Liability Date, each as defined below); provided, however, that nothing in this Guaranty shall be deemed to infer, imply or require Guarantor to guaranty the payments and/or obligations set forth under the Master Lease required thereunder to be performed by Sublandlord (except to the extent expressly assumed hereunder by Subtenant or expressly made Subtenant's obligation hereunder).

Wherever reference is made to the liability of Subtenant in the Sublease, such reference shall be deemed likewise to refer to Guarantor, jointly and severally, with Subtenant, subject to the terms in this Guaranty. The liability of Guarantor for the Guaranteed Obligations shall be primary. In any right of action which shall accrue to Sublandlord under the Sublease with respect to the Guaranteed Obligations, Sublandlord may, at Sublandlord's option, proceed against any one or more of the parties comprising Guarantor without having demanded performance of, commenced any action against, or having obtained any judgment against, Subtenant. Guarantor hereby waives any obligation on the part of Sublandlord to enforce or seek to enforce the terms of the Sublease against Subtenant as a condition to Sublandlord's right to proceed against Guarantor hereunder. Guarantor hereby expressly waives: (i) notice of acceptance of this Guaranty and of presentment, demand and protest; (ii) notice of any default hereunder or under the Sublease and all indulgences; (iii) demand for observance, performance or enforcement of any terms or provisions of this Guaranty or of the Sublease; and (iv) all other notices and demands otherwise required by law which Guarantor may lawfully waive. This Guaranty is a guaranty of payment and not a guaranty of collection. Guarantor agrees that in the event this Guaranty shall be enforced by suit or otherwise, Guarantor will reimburse the Sublandlord, upon demand, for all reasonable and reasonably documented expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs.

Guarantor further covenants and agrees that this Guaranty shall be and remain in full force and effect with respect to any renewal, modification or extension of the Sublease, whether or not known to or approved by Guarantor, and that no subletting, assignment or other transfer of the Sublease, or any interest therein, or any such renewal, modification, or extension, shall operate to extinguish or diminish the liability of Guarantor hereunder. In the event of any termination of the Sublease by Sublandlord, Guarantor's liability hereunder shall not be terminated, but Guarantor shall be and remain fully liable for Guaranteed Obligations which may arise under or in connection with the Sublease (subject to the Liability Amount from and after the Limited Liability Date).

Guarantor hereby expressly agrees that the validity and enforceability of this Guaranty and the obligations of Guarantor hereunder shall in no way be terminated, affected or impaired by reason of any forbearances, settlements or compromises between Sublandlord and Subtenant or the invalidity of the Sublease for any reason whatsoever or by the relief of Subtenant from any of Subtenant's obligations under the Sublease by operation of law or otherwise, including, without limitation, the rejection or assignment of the Sublease in connection with proceedings under any present or future provision of the federal Bankruptcy Act, or any similar law or statute of the United States or any state thereof.

Guarantor hereby waives, to the maximum extent permitted by law, all defenses available to a guarantor or surety, whether the waiver is specifically herein enumerated or not; provided, however, that Guarantor shall be entitled to assert: (i) any defense of Subtenant under the Sublease, including, without limitation, that a default has not occurred under the Sublease, other than a defense relating to a discharge of Subtenant pursuant to any bankruptcy filing; (ii) any counterclaims that Subtenant might have against Sublandlord that are based upon a breach or default by Sublandlord under the Sublease; and (iii) any offset rights of Subtenant under the Sublease.

Sublandlord shall have the right, at Sublandlord's sole option and discretion, to assign its rights and interests under this Guaranty in whole or in part, and no such assignment shall extinguish, diminish or otherwise affect the obligations and liabilities of Guarantor hereunder. All of the terms and provisions hereof shall inure to the benefit of the respective heirs, executors, administrators, successors and assigns of Sublandlord, and shall be binding upon the respective heirs, executors, administrators, successors and permitted assigns of Guarantor.

In the event more than one person or entity executes this Guaranty, the liability of such signatories hereunder shall be joint and several.

Notwithstanding anything contained in this Guaranty to the contrary (it being understood that in the event of a conflict between this paragraph and the remainder of this Guaranty, the terms of this paragraph shall apply), prior to Limited Liability Date (as defined below), Guarantor shall be liable for (i) the payment by Subtenant of all rentals and other sums payable by Subtenant under the Sublease, and (ii) the performance by Subtenant of each and every one of the terms, conditions and covenants of the Sublease to be kept and performed by Subtenant (the "**Obligations**"). As used herein, the "**Limited Liability Date**" shall mean the first day of the calendar month immediately following the calendar month in which the fifth (5<sup>th</sup>) anniversary of the Date of Rent Commencement (as defined in the Sublease) occurs. If Subtenant is not in default under the Sublease as of the Limited Liability Date, then the liability of Guarantor for the Obligations of Subtenant arising under the Sublease from and after the Limited Liability Date thereafter shall not exceed, in the aggregate, the Liability Amount plus the Enforcement Costs (as those terms are defined hereinbelow). As used herein, the "**Liability Amount**" shall mean an amount equal to the fixed rent payable by Subtenant for the period commencing on the fifth (5<sup>th</sup>) anniversary of the Date of Rent Commencement and expiring on the day before the sixth (6<sup>th</sup>) anniversary of the Date of Rent Commencement. Notwithstanding anything to the contrary set forth in the remainder of this Guaranty, in addition to liability up to the Liability Amount,

Guarantor shall be liable for, and the Liability Amount shall not be reduced by, amounts recovered or collected by Sublandlord from Guarantor and/or Subtenant to the extent such amounts are reimbursement for late charges and interest due under the Sublease and/or this Guaranty or are incurred by Sublandlord in collecting or attempting to collect amounts due Sublandlord under the Sublease and/or this Guaranty, including without limitation, reasonable attorneys' fees and costs (collectively, the "Enforcement Costs").

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed this 30 day of may, 2018.

WITNESS:

GUARANTOR:

BARRY'S BAY AREA, LLC

Tam Shue  
\_\_\_\_\_

BY: Adam Skane  
\_\_\_\_\_

WITNESS  
NAME: Adam Skane  
TITLE: CEO

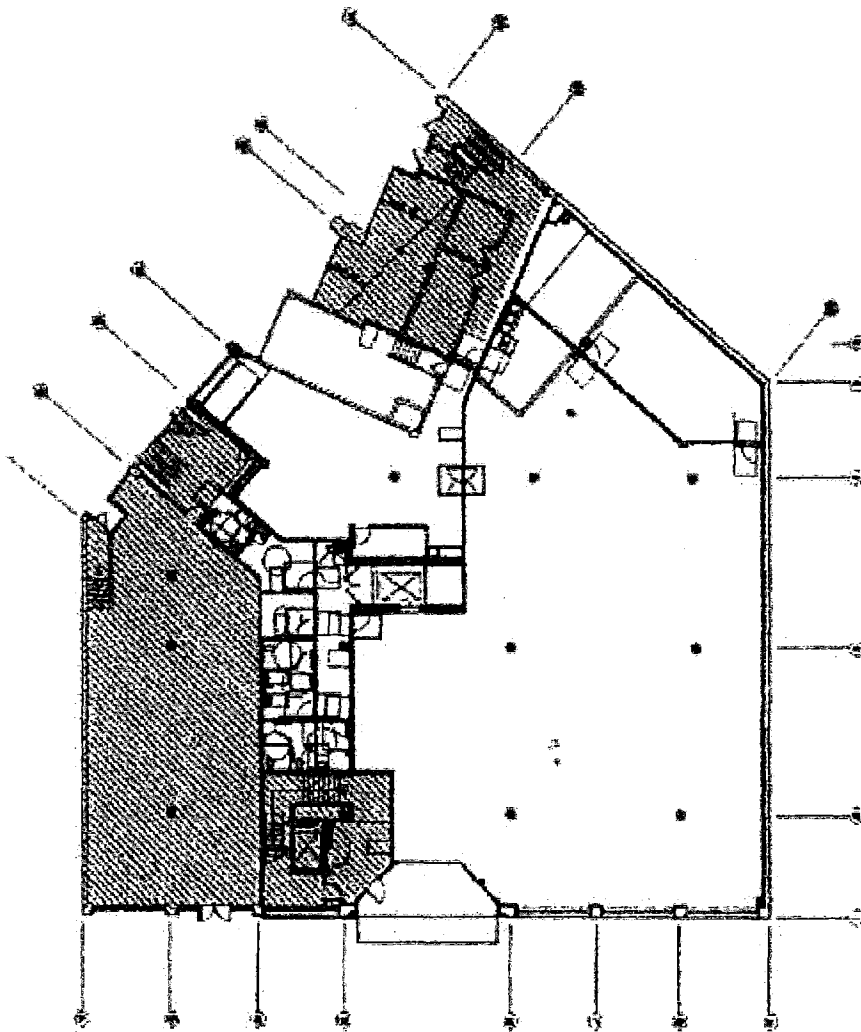
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WITNESS

**EXHIBIT A**

**SITE PLAN**

2280 Market Street -- Site Plan





**EXHIBIT B**

**RENT COMMENCEMENT - LEASE TERM LETTER**

Date

Subtenant Name  
Attention:  
Address  
City, ST Zip

**Re: Sublease Agreement dated \_\_\_\_\_, by and between \_\_\_\_\_, as Sublandlord, and \_\_\_\_\_, as Subtenant for property located at \_\_\_\_\_ CVS Store No. \_\_\_\_\_**

Dear Subtenant:

This letter is sent to confirm significant dates and information in accordance with our Sublease Agreement dated \_\_\_\_\_:

1. Possession of the above-referenced premises was delivered to the Subtenant on \_\_\_\_\_, with \_\_\_\_ ( ) days free rent.
2. Minimum rent due under the Sublease will commence as of \_\_\_\_\_.
3. The Sublease term commenced on \_\_\_\_\_, and will expire on \_\_\_\_\_. Subtenant has \_\_\_\_ ( ) renewal options available to extend the term of the Sublease. Notice of the first option, if elected, must be provided no later than \_\_\_\_\_, and would be effective \_\_\_\_\_.

Please note the following:

1. **Rent payments** should be sent to: **CVS, P.O. Box 1525 Woonsocket, RI 02895**. As you are aware, your Sublease requires that rent and other payments are due on or before the first of each month. As a courtesy, CVS will send you a monthly statement regarding any outstanding balance. While CVS will continue to provide you with this statement, CVS will not allow late payments without penalty, except as otherwise expressly provided in the Sublease Agreement. **All rent checks must have the CVS Store Number listed** in order for us to properly credit your account.
2. All other correspondence should be sent to: CVS, c/o Lease Administration, One CVS Drive, Mail Code: 1105; Woonsocket, RI 02895. All rent checks and correspondence must have the CVS Store Number (#\_\_\_\_\_) listed in order for us to properly credit your account.
3. All **Repairs and Maintenance** calls should be placed to 844-825-6065. **Please be sure to have your store number available** in order for your issue to be handled promptly. For any follow up requests regarding repair and maintenance issues already reported to our Facilities Department, you may email [vendorservices@cvscaremark.com](mailto:vendorservices@cvscaremark.com).

4. A copy of your Certificate of Insurance as outlined in your Sublease must be forwarded to my attention as soon as possible. The additional insureds as required by the Sublease are to be \_\_\_\_\_. **All Certificates must have the CVS Store Number listed.** If not, the Certificate may not be applied to the correct location.

If the above accurately reflects your understanding, please sign below, **retain one copy** for your records, and return one copy to my attention. In the event of any inconsistency between this Rent Commencement Lease Term Letter and the Sublease, the terms of this Rent Commencement Lease Term Letter shall control, and the Sublease shall be deemed amended accordingly. If you have any questions, or need my assistance at any time, please feel free to contact me at 401-770-7472 or at [Bethany.Fay@CVSHealth.com](mailto:Bethany.Fay@CVSHealth.com).

AGREED AND CONSENTED TO:

Sincerely,  
CVS ENTITY.

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

Date: \_\_\_\_\_

Bethany L. Fay  
Senior Lease Administrator

CC: S/T #

Sent via 2<sup>nd</sup> Day UPS

**EXHIBIT C**

**ACKNOWLEDGEMENT AND ACCEPTANCE LETTER**

CVS Store number: \_\_\_\_\_

Address: \_\_\_\_\_

This letter is to acknowledge delivery of possession of the Premises from Sublandlord's agent this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

Accepted by the duly authorized agent of Tenant/Subtenant:

Name of Tenant/Subtenant: \_\_\_\_\_

Written Name: By: \_\_\_\_\_

Printed name: By: \_\_\_\_\_

It is agreed that a facsimile signature on this Acknowledgement and Acceptance Letter shall be as valid as an original signature.

**Sublandlord's Agent: Please Fax to Bethany Fay at (401) 770-7472**

## EXHIBIT B

### CONSTRUCTION RIDER

This Construction Rider Work Letter Agreement (“**Work Letter**”) is a part of that certain Fifth Amendment to Lease, by and between, Market & Noe Center, a California limited partnership, as “**Master Landlord**,” Garfield Beach CVS, L.L.C., a California limited liability company, as “**Sublandlord**,” and BBC 2280 Market Street LLC, a California limited liability company, as “**Subtenant**,” relating to the Premises more fully identified in the Sublease. Capitalized terms used herein, unless otherwise defined in this Work Letter, shall have the respective meanings ascribed to them in the Sublease. For and in consideration of the agreement to sublease the Premises and the mutual covenants contained herein and in the sublease, Sublandlord and Subtenant hereby agree as follows:

1. **Improvements.** In accordance with and subject to the provisions of this Work Letter, Subtenant shall, at Subtenant’s sole cost and expense, construct and install certain improvements to the Premises as follows: (i) Subtenant shall be responsible for all new plumbing in the Premises including, without limitation, (a) installation of a tee in a location to be approved by Master Landlord and Sublandlord along the two (2)-inch Building water supply line in the service hallway, (b) installation of a reducer immediately downstream of that tee (two (2)-inch pipe to one (1)-inch pipe), and (c) in the service hallway and immediately downstream from the reducer, installation of the water meter to be provided by Sublandlord and (ii) installation by Pacific Gas & Electric Company of a separate gas meter in the service hallway next to the Building’s gas meter to feed the gas line supplying hot water to Subtenant’s shower and client restroom facilities (collectively, the “**Work**”).

2. **Plans and Specifications.**

(a) The Work shall be completed in accordance with detailed architectural and engineering working drawings and material specifications (the “**Plans and Specifications**”) which shall be prepared at Subtenant’s expense and shall be in form and content as necessary to allow Subtenant’s contractor(s) to obtain all required building permits and approvals.

(b) Subtenant shall utilize a certified and licensed architect and a certified and licensed engineer to prepare the Plans and Specifications, as applicable.

(c) Subtenant shall cause the Plans and Specifications to be prepared, at Subtenant’s expense, and submitted to Master Landlord and Sublandlord for approval. Master Landlord and Sublandlord shall then have a period of not more than ten (10) business days following such submittal (or, in the event of modifications, such re-submittal) in which to review and approve the Plans and Specifications or state any reasonable objections to same in writing. Master Landlord and Sublandlord’s approval (except as to structural elements of the Building and Building systems, for which approval shall be in Master Landlord’s absolute discretion) shall not be unreasonably withheld, conditioned or delayed, and any objections shall be reasonable in nature and stated in sufficient detail so as to allow necessary modification by Subtenant. Subtenant shall make necessary modifications to the Plans and Specifications and resubmit same to Master Landlord and Sublandlord within ten (10) business days. Once accepted by Master

Landlord and Sublandlord in final form, the Plans and Specifications may be materially modified only with Master Landlord and Sublandlord's written approval, which will not be unreasonably withheld, conditioned or delayed, and Subtenant shall be liable for any additional costs incurred as a result of any such change. In the event Master Landlord and/or Sublandlord have not provided Subtenant with the approval or any modifications to the Plans and Specifications within such ten (10) business day period after the Plans and Specifications have first been submitted for approval, Master Landlord and/or Sublandlord's approval, as the case may be, shall be deemed given.

**3. Contractor(s); Permits; Bond.**

(a) Subtenant shall use its own contractor(s) and shall obtain all building permits necessary to complete all of the Work. At no cost or expense to Master Landlord and Sublandlord, Master Landlord and Sublandlord shall cooperate with Subtenant in connection with Subtenant's obtainment of its building permits. Subtenant shall bear the cost of all building permits. Sublandlord shall not be liable in any way for any injury, loss, damage, or delay which may be caused by or arise from entry into the Premises by Subtenant, its employees, or contractor(s), during the performance of the Work, unless such injury, loss, damage or delay was caused by the negligence or willful misconduct of Sublandlord, or its agents, contractors or employees.

(b) Subtenant's general contractor and all subcontractors shall be licensed as required by the County and State where the Premises are located. Sublandlord shall have the right to disapprove of Subtenant's general contractor or any subcontractor if Sublandlord reasonably believes that such contractor is not licensed as required by any governmental agency. Subtenant shall cause its general contractor to furnish Sublandlord with an original certificate of insurance for hazard and liability coverage pursuant to subsection (c), below. All subcontractors shall be insured in such amounts as set forth in the Sublease. Subtenant (or, at Subtenant's option, its general contractor) shall furnish Sublandlord with the names and addresses of its subcontractors whose portion of the Work exceeds \$25,000.00.

(c) Subtenant's general contractor shall maintain at all times during the course of the Work, the following types of insurance:

(1) workers' compensation insurance to cover full liability under workers' compensation laws of the State where the Premises are located with employers' liability coverage in limits not less than \$1,000,000.00;

(2) commercial general liability insurance on an "occurrence" basis for the hazards of operations, elevators and escalators, independent contractors, products and completed operations (for one (1) year after the date of acceptance of the work by Subtenant), and contractual liability specifically covering the indemnification provision in the construction contract, such commercial general liability to include broad form property damage and afford coverage for explosion, collapse and underground hazards, and "personal injury" liability insurance and an endorsement providing that the insurance afforded under the

contractor's policy is primary insurance as respects Sublandlord and Subtenant and that any other insurance maintained by Sublandlord or Subtenant is excess and non-contributing with the insurance required hereunder, provided that such insurance may be written through primary or a combination of primary and umbrella/excess insurance policies with a minimum policy limit of \$5,000,000.00; and

(3) Master Landlord and Landlord are to be included as an additional insured for insurance coverages required in subparagraph (2) above.

**4. Construction of the Improvements.**

(a) Subtenant shall cause Substantial Completion of the Work, in accordance with the Plans and Specifications. Once Subtenant has commenced construction, Subtenant shall cause the construction to be diligently prosecuted to completion. "**Substantial Completion**" or "**Substantially Completed**" shall mean the earlier of the date that (i) a Certificate of Occupancy or its equivalent has been obtained for the entire Premises and that the Work is completed except for minor punch-list items so as to allow Subtenant to occupy the Premises for the Permitted Use, or (ii) Subtenant occupies the Premises and begins conducting business operations for its Permitted Use.

(b) Subtenant's contractors shall, at Subtenant's expense, apply for and obtain all necessary building permits, inspections, and approvals necessary and appropriate to complete the Work in accordance with the Plans and Specifications and as necessary to obtain a Certificate of Occupancy (or its equivalent) for the Premises. All of the Work shall be completed in a good and workmanlike manner using Building Grade materials and methods, and shall be in conformity with all applicable building codes. Master Landlord and Sublandlord shall, at no cost or expense to Sublandlord, cooperate with Tenant and/or Tenant's contractors with Tenant's and/or its contractor's obtainment of the building permits, inspections and approvals necessary and appropriate to complete the Work.

(c) Any damage to the Building caused by Subtenant, its contractors, subcontractors, or agents shall be repaired by Subtenant, at Subtenant's expense, in a good and workmanlike manner. Subtenant agrees to indemnify and hold harmless Master Landlord, Sublandlord, and their agents, and employees from and against any and all costs, expenses, damage, loss, or liability, including, but not limited to, reasonable attorneys' fees and costs (at all tribunal levels), which arise out of, is occasioned by, or is in any way attributable to the Work, except to the extent caused by the negligence or willful misconduct of Master Landlord, Sublandlord or their agents, contractors or employees. Subtenant, at its expense, shall be responsible for the maintenance, repair, and replacement of any and all items constructed by Subtenant as part of the Work.

(d) Master Landlord, Sublandlord or any of their representatives may, at any time, review and inspect the construction activities and performance of the Work by Subtenant's contractor and any subcontractor(s). Master Landlord and Sublandlord shall use commercially reasonable efforts to ensure that no disruption or delay of the Work occurs by Master Landlord,

Sublandlord or their representative's review and inspection of the construction activities and performance of the Work by Subtenant or its contractors. Subtenant agrees to reasonably cooperate with Sublandlord to facilitate such inspections and shall endeavor to notify Sublandlord prior to any and all governmental or regulatory inspections of the Work so that Sublandlord or Sublandlord's representatives can be present for such inspections.

**5. Miscellaneous.**

(a) This Work Letter shall be subject to the governing law, jurisdiction, and venue provisions set forth in the Sublease.

(b) This Work Letter may not be amended except by a written instrument signed by Master Landlord, Sublandlord and Subtenant.

(c) This Work Letter sets forth the entire agreement of Subtenant and Sublandlord regarding the Work.

(d) Any failure of Subtenant to comply with the requirements of this Work Letter after ten (10) business day's written notice to Subtenant shall constitute a default by Subtenant under the Sublease and Sublandlord may pursue all remedies available to Sublandlord under the Sublease, at law or in equity.

**6. Exculpation of Master Landlord and Sublandlord.** Notwithstanding anything to the contrary contained in this Work Letter, it is expressly understood and agreed by and between the parties hereto that:

(a) The recourse of Subtenant or its successors or assigns against Master Landlord and/or Sublandlord with respect to the alleged breach by or on the part of Master Landlord and/or Sublandlord of any representation, warranty, covenant, undertaking or agreement contained in this Work Letter or the Sublease (collectively, "**Master Landlord and/or Sublandlord's Work Letter Undertakings**") shall extend only to (i) Master Landlord's interest in the real estate (and the proceeds derived therefrom), of which the Premises demised under the lease (the "**Lease**") between Master Landlord and Sublandlord are a part (hereinafter, "**Landlord's Real Estate**") and not to any other assets of Master Landlord or its affiliated entities, and (ii) Sublandlord's leasehold interest in the real estate (and the proceeds derived therefrom), of which the Premises demised under the Sublease are a part (hereinafter, "**Sublandlord's Real Estate**"); and

(b) Except to the extent of Master Landlord's interest in Landlord's Real Estate and Sublandlord's interest in Sublandlord's Real Estate, no personal liability or personal responsibility of any sort with respect to any of Master Landlord and/or Sublandlord's Work Letter Undertakings or any alleged breach thereof is assumed by, or shall at any time be asserted or enforceable against, Master Landlord, Sublandlord, or against any of their respective directors, officers, employees, agents, affiliated entities, managers, members, shareholders, beneficiaries, trustees or representatives.

7. **Attorneys' Fees.** This Work Letter shall be subject to the terms and conditions of Section 50(f) of the Lease, regarding attorney's fees.

8. **Lease Provisions.** The terms and provisions of the Sublease, insofar as they are applicable to this Work Letter, are hereby incorporated herein by reference. All amounts payable by Subtenant to Sublandlord hereunder shall be deemed to be additional rent under the Sublease and, upon any default in the payment of same, Sublandlord shall have all of the rights and remedies provided for in the Sublease.

[NO FURTHER TEXT ON THIS PAGE]