

## PARKING SUB-LEASE

THIS PARKING SUB-LEASE (the “**Sub-Lease**”) is made and entered into as of the first (1<sup>st</sup>) day of September 2018 (the “**Effective Date**”), by and between NDC TAKOMA JUNCTION, LLC, a Maryland limited liability company (“**Tenant**”), and TAKOMA PARK-SILVER SPRING COOPERATIVE, INC., a Maryland nonprofit corporation (“**Sub-Tenant**” or “**TPSS**”).

### RECITALS

WHEREAS, on or about August 1, 2016, Tenant entered into a Development Agreement and 99-year Ground Lease (the “**Lease**”) with the City of Takoma Park, Maryland (the “**City**”), as Landlord, pursuant to which Tenant will redevelop the Premises (as defined below) and construct a mixed-use project to be known as Takoma Junction (the “**Project**”);

WHEREAS, TPSS is the lessee of land adjacent to the Premises and identified as 201 Ethan Allen Avenue, Takoma Park, Maryland, on which it operates a retail food store;

WHEREAS, TPSS has previously used a portion of the Premises (the “**Restricted Area**”) for parking spaces for its employees and customers, storage, trash receptacles and a loading and unloading area and wishes to lease the entire Premises for the purpose of continuing such uses in the Restricted Area until Tenant commences the construction of the Project;

WHEREAS, Tenant has agreed to lease the Premises to TPSS provided it agrees to operate the parking areas of the Premises not included in the Restricted Area as a public parking lot;

NOW, THEREFORE, in consideration of the covenants and promises of the parties set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Tenant and Sub-Tenant mutually agree as follows:

#### 1. DEFINITIONS.

A. **Premises**: The land identified as BF Gilbert’s Addition to Takoma Park, Block 19, Lots 34-36, Lot 39 and parts of Lots 32, 33, and 37, also known as the vacant lot immediately adjacent to the building located at 201 Ethan Allen Avenue, Takoma Park, Maryland (the “**Takoma Junction Surface Parking Lot**”).

B. **Term**: Month-to-month, terminable on 30 days’ written notice.

C. **Sub-Lease Commencement Date**: September 1, 2018.

D. **Rent Commencement Date**: September 1, 2018.

E. **Base Rent**: \$23,000.00 per year for the first twelve months. Base Rent shall increase on each anniversary of the Rent Commencement Date by a cost-of-living adjustment based on the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) All Items for Washington, DC – Baltimore, MD SMSA.

F. **Security Deposit**: An amount equal to one month of Base Rent, which totals \$1,916.67, paid upon execution of this Sub-Lease.

G. **Brokers:** None.

H. **Sub-Tenant Notice Address:** TPSS, 201 Ethan Allen Avenue, Takoma Park, Maryland 20912. Email: [rhardwick@tpss.coop](mailto:rhardwick@tpss.coop).

I. **Tenant Notice Address:** NDC Takoma Junction, LLC, c/o NDC, 3232 Georgia Avenue, N.W., Suite 100, Washington, D.C. 20010, Attention: Adrian Washington. Email: [awashington@neighborhooddevelopment.com](mailto:awashington@neighborhooddevelopment.com).

J. **Sub-Tenant Payment Address:** NDC Takoma Junction, LLC, c/o NDC, 3232 Georgia Avenue, N.W., Suite 100, Washington, D.C. 20010, Attention: Adrian Washington.

K. **Alterations:** Any improvements, alterations, modifications, or change to the Premises.

L. **Default Rate:** That rate of interest which is five (5) percentage points above the annual rate of interest which is publicly announced by Bank of America or its successor entity, if applicable ("**Bank of America**"), from time to time as its "prime" rate of interest, irrespective of whether such rate is the lowest rate of interest charged by Bank of America to commercial borrowers. In the event Bank of America ceases to announce such a prime rate of interest, Tenant, in Tenant's reasonable discretion, shall designate the prime rate of interest by another bank located in the Washington, D.C. metropolitan area, which shall be the prime rate of interest used to calculate the default rate.

M. **Land:** The real estate that is the Premises, including all associated easements.

N. **Mortgages:** All mortgages, deeds of trust and similar security instruments which may now or in the future encumber or otherwise affect the Premises, including mortgages related to acquisition of the Premises and construction and permanent financing of Tenant's development of the Premises. "Mortgagees" shall denote those persons and entities holding such mortgages, deeds of trust and similar security instruments.

O. **Rent:** Shall mean all Base Rent and Additional Rent.

(1) **Base Rent:** The amount payable by Sub-Tenant pursuant to Section 1.E. above and Section 4.A. below.

(2) **Additional Rent:** All sums of money payable by Sub-Tenant pursuant to this Sub-Lease other than Base Rent. Additional Rent shall be calculated at such time as the City notifies Tenant of the annual City property taxes for the Premises. TPSS shall be responsible for paying 30% of such taxes as Additional Rent. As of the Effective Date, the Premise's annual property taxes are estimated to be \$11,700.

(3) **Monthly Rent:** A monthly installment of Base Rent and Additional Rent, which shall equal one-twelfth (1/12th) of Base Rent and Additional Rent then in effect.

P. **Sub-Tenant's Personal Property:** All equipment, improvements, furnishings and/or other property now or hereafter installed or placed in or on the Premises by and at the sole expense of Sub-Tenant or with Sub-Tenant's permission (other than any property of Tenant), with respect to which Sub-Tenant has not been granted any credit or allowance by Tenant, and which: (i) is removable without damage to the Premises, and (ii) is not a replacement of any property of Tenant, whether such replacement is made at Sub-Tenant's expense or otherwise.

Q. **Sub-Tenant Work:** None.

R. **Unavoidable Delay:** Any delays due to strikes, labor disputes, acts of God, governmental restrictions, war, terrorism, civil commotion, fire, unavoidable casualty or any other causes beyond the control of Tenant.

S. **Invitee:** Any invitee, agent, employee, assignee, contractor, client, family member, licensee, customer or guest of Sub-Tenant or its licensee.

## 2. TERM.

A. *Term of Sub-Lease:* The term of this Sub-Lease (the “**Term**”) shall commence on the Effective Date and shall continue on a month-to-month basis unless terminated on thirty (30) days’ written notice by either party pursuant to the provisions hereof (the “**Sub-Lease Expiration Date**”). Notwithstanding the preceding, in the event Sub-Tenant fails to deliver a certificate of insurance to Tenant evidencing Sub-Tenant’s compliance with Section 17 by 5:00 p.m., Friday, September 7, 2018, this Sub-Lease shall terminate immediately without notice.

B. *Declarations:* If requested by Tenant at any time during the Term, Sub-Tenant promptly will execute a declaration in the form attached hereto as **Exhibit A**.

C. *Effective Date:* The rights and obligations set forth in this Sub-Lease, except as otherwise specifically provided herein to the contrary, shall become effective on the Effective Date. Sub-Tenant shall pay to Tenant on the Effective Date the first month’s Base Rent, which shall be applied to the first month’s rental payment.

## 3. AS-IS CONDITION.

The Premises are accepted by Sub-Tenant in “as is” condition and configuration without any representations or warranties by Tenant as of the Effective Date.

## 4. RENT.

The “**Rent Commencement Date**” shall be the Sub-Lease Commencement Date. From and after the Rent Commencement Date, Sub-Tenant shall pay all amounts to be paid by Sub-Tenant, including, but not limited to, all Base Rent in accordance with this Section 4 and in Section 5 below.

A. *Base Rent:* Sub-Tenant shall pay Base Rent to Tenant (i.e. Tenant shall receive the Base Rent) in the appropriate amount set forth in Section 1.E. hereof in equal monthly installments (“**Monthly Base Rent**”) in advance by the fifth (5<sup>th</sup>) day of each calendar month during the Term, without notice, except that the first monthly installment of Base Rent shall be paid upon execution of this Sub-Lease. If the Rent Commencement Date occurs on a date other than the first day of a calendar month, Sub-Tenant shall owe Base Month for that partial month in an amount calculated by multiplying the Monthly Base Rent by the number of days in said calendar month including and after the Rent Commencement Date and divided by the number of days in such month, which amount shall be added to the installment of Monthly Base Rent next due hereunder.

B. *Payment:* All Base Rent due and payable to Tenant under this Sub-Lease shall be paid to Tenant at the Tenant Payment Address. Payments of Rent (other than in cash), if initially dishonored, shall not be considered rendered until ultimately honored as cash by Tenant’s depository. Except as expressly set forth otherwise in this Sub-Lease, Sub-Tenant will pay all Rent to Tenant without demand, deduction, set-off or counter-claim. If any sum payable by Sub-Tenant under this Sub-Lease is paid by check which is returned due to insufficient funds, stop payment order, or otherwise, then: (a) such event shall be treated as a failure to pay such sum when due; and (b) in addition to all other rights and remedies of Tenant hereunder, Tenant shall be entitled (i) to impose, as Additional Rent, a returned check charge of One Hundred Dollars (\$100.00) to cover Tenant’s administrative expenses and overhead for processing, and (ii) to require that all future payments be remitted by wire transfer, money order, or cashier’s or certified check.

C. *Late Fee:* If Sub-Tenant fails to make any payment of Rent on or before the date when payment is due, then Sub-Tenant also shall pay to Tenant a late fee equal to five percent (5%) of the amount that is past due for each month or part thereof until such Rent is fully paid. Said late fee shall be deemed reimbursement to Tenant for its costs

of carrying and processing Sub-Tenant's delinquent account. Acceptance by Tenant of said late fee shall not constitute a waiver or release of any other rights or remedies to which Tenant may be entitled because of such late payment.

## 5. ADDITIONAL RENT.

A. *Additional Rent:* In addition to Base Rent, Sub-Tenant shall be obligated to pay any other amounts to Tenant under this Sub-Lease, including 30% of all City taxes imposed on the Premises, if any, and shall be responsible for 100% of all costs related to maintaining and operating the Premises, including but not limited to, all costs for trash service, and electrical and water (if any) utilities, and the cost of keeping the Premises clean and well-lit (collectively, "Operating Expenses"). Operating Expenses, other than taxes, shall be paid by Sub-Tenant directly to the third-party contractors.

B. *Payment:* Tenant shall notify Sub-Tenant of the nature and amount of Additional Rent, which shall be payable in equal monthly installments and paid on the same day as Base Rent. ("Monthly Additional Rent"). All Additional Rent due and payable to Tenant under this Sub-Lease shall be paid to Tenant at the Tenant Payment Address. In the event Tenant is notified of the annual cost of a component of Additional Rent during the Term, Tenant shall notify Sub-Tenant of the amount and nature of the Monthly Additional Rent, and if applicable, collect from Sub-Tenant Monthly Additional Rent for prior months during which the Monthly Additional Rent was not paid.

## 6. USE.

A. *Permitted Use:* Sub-Tenant shall use the Premises exclusively for parking spaces for its employees, contractors, invites, owners and customers, containerized storage, trash receptacles, as a means of ingress and egress for deliveries, as a loading and unloading area in connection with Sub-Tenant's operation of its business located at 201 Ethan Allen Avenue, Takoma Park, Maryland and for parking for the general public (the "Permitted Uses"). Sub-Tenant may retain a third-party licensed operator to manage the parking lot and may retain all revenue received in connection with such use, net of expenses; provided, however, any agreement between Sub-Tenant and such third party shall require such third party to meet the insurance requirements set forth in Section 17 of this Sub-Lease, provide for the agreement's automatic termination upon the termination of this Sub-Lease, and be subject to Tenant's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. Sub-Tenant may not build any temporary or permanent structures on the Premises without the prior written approval of Tenant, which approval may be withheld in Tenant's sole and absolute discretion. Sub-Tenant also may allow the Premises to be used for community events and activities including, but not limited to, the sale of Christmas trees; holiday parades; temporary art, craft, food or other local market events; music or art events; and may sublease space for up to three food trucks on any given day. Sub-Tenant must obtain all required permits for these activities. Sub-Tenant may post temporary signage related to these community events and activities without Tenant's prior written approval. Events that last 8 or fewer hours in duration do not require Tenant's prior written approval, except food trucks may occupy a parking space for up to 12 hours without Tenant's prior written approval.

B. *Legal and Other Restrictions of Sub-Tenant's Use:* Sub-Tenant shall not use or occupy the Premises for any unlawful purpose, or in any manner that will violate the zoning or certificate of occupancy for the Premises or that will constitute waste, nuisance or unreasonable annoyance to neighbors. Sub-Tenant shall not cause a violation of all present and future laws (including, without limitation, the Americans with Disabilities Act and Environmental Laws and the regulations promulgated thereunder, as the same may be amended from time to time), ordinances (including without limitation, zoning ordinances and land use requirements), regulations, orders and recommendations (including, without limitation, those made by any public or private agency having authority over insurance rates)

concerning the use, occupancy and condition of the Premises and all machinery, equipment, furnishings, fixtures and improvements therein (collectively, "Laws"), all of which shall be complied with in a timely manner at Sub-Tenant's sole expense. If any such Law requires an occupancy or use permit or license for the Permitted Uses of any portion of the Premises or the operation of the business conducted thereon or therein (including a certificate of occupancy or nonresidential use permit), then Sub-Tenant shall obtain and keep current such permit or license at Sub-Tenant's expense and shall promptly deliver a copy thereof to Tenant; provided, however, that Tenant shall obtain the initial certificate of occupancy for the Premises and shall deliver a copy to Sub-Tenant.

#### **7. CARE OF PREMISES.**

Sub-Tenant shall at its sole expense keep the Premises in a neat and clean condition and in good order and repair and will suffer no waste or injury thereto. Sub-Tenant shall make all required repairs and replacements thereto at its sole expense. All maintenance and repair work shall be performed by licensed contractors in accordance with all applicable Laws, and otherwise in accordance with the provisions of this Sub-Lease. Sub-Tenant shall send written notification of all maintenance and repair work that exceeds \$5,000 in cost to Tenant within 5 business days of such work, and if Tenant does not object in writing within 10 business days the quality of the work shall be deemed approved by Tenant. Sub-Tenant shall surrender the Premises at the end of the Term in as good condition as they were in on the Sub-Lease Commencement Date, ordinary wear and tear excepted.

#### **8. ALTERATIONS.**

A. *Making of Alterations; Tenant's Consent:* Sub-Tenant shall not make or permit to be made any Alterations without the prior written consent of Tenant both as to whether the Alterations may be made and as to how and when they will be made. Any Alterations shall be made at Sub-Tenant's sole cost and expense, by its contractors and subcontractors, in a good and workmanlike manner, in compliance with all applicable codes and in accordance with complete plans and specifications approved in advance in writing by Tenant, and only after Sub-Tenant: (i) has obtained all necessary permits from governmental authorities having jurisdiction and has furnished copies thereof to Tenant, and (ii) has complied with all other requirements reasonably imposed by Tenant, including without limitation any requirements due to the underwriting guidelines of Tenant's insurance carriers. Tenant's consent to any Alterations and approval of any plans and specifications constitutes approval of no more than the concept of these Alterations and not a representation or warranty with respect to the quality or functioning of such Alterations, plans and specifications.

B. *No Liens:* Sub-Tenant shall take all necessary steps to ensure that no mechanic's or materialmen's liens are filed against the Premises as a result of any Alterations made by the Sub-Tenant. If any mechanic's lien is filed, Sub-Tenant shall discharge the lien within ten (10) days of notice to Sub-Tenant thereof, at Sub-Tenant's sole expense, by paying off or bonding the lien. If Tenant gives its consent to the making of any Alteration, such consent shall not be deemed to be an agreement or consent by Tenant to subject its interest in the Premises to any liens which may be filed in connection therewith, nor shall Tenant's receipt of any fee in connection with any Alterations or Tenant's payment of any allowance to Sub-Tenant with respect to any work performed in or with respect to the Premises by or on behalf of Sub-Tenant be deemed to constitute a basis for Tenant's interest in the Premises to be subjected to any lien.

#### **9. EQUIPMENT.**

*Permitted Equipment:* Sub-Tenant shall not install or store any equipment or machinery on the Premises other than trash, recycling and composting receptacles, containerized storage items, and grocery carts pending collection

and return to the Sub-Tenant's property. Sub-Tenant may erect and maintain a sign on the Premises announcing to that the Premises is being operated as a parking lot open to the general public; provided, however, such sign may not interfere with or obscure any sign installed on the Premises by Tenant with respect to the Project.

#### **10. OWNERSHIP AND REMOVAL OF PROPERTY.**

A. *Tenant's Property:* Any Alterations and other improvements and any equipment, machinery, furnishings and other property, installed or located in the Premises by or on behalf of Tenant or Sub-Tenant, except for Sub-Tenant's dumpster, containers, and Personal Property: (i) shall immediately become the property of Tenant, and (ii) shall be surrendered to Tenant with the Premises as a part thereof at the end of the Term; provided, however, that if Tenant requests Sub-Tenant to remove any Alterations installed by or on behalf of Sub-Tenant, Sub-Tenant shall cause the same to be removed at Sub-Tenant's expense on or before the Sub-Lease Expiration Date, or shall reimburse Tenant for the cost of such removal, as elected by Tenant (unless Tenant expressly waives in writing the right to require such removal at the time Tenant gives its consent to the making of such Alterations).

B. *Removal of Property at End of Term:* Sub-Tenant shall remove all of Sub-Tenant's dumpsters, containers, and Personal Property, at Sub-Tenant's expense, from the Premises on or before the Sub-Lease Expiration Date. Any of Sub-Tenant's dumpsters, containers, and Personal Property which is left in the Premises after the date this Sub-Lease is terminated for any reason shall be deemed to have been abandoned. In such event, Tenant shall have the right to store such property at Sub-Tenant's sole cost for a period not to exceed three (3) months and/or to dispose of it in whatever manner Tenant considers appropriate, without waiving its right to claim from Sub-Tenant all expenses and damages caused by Sub-Tenant's failure to remove such property, and Sub-Tenant shall have no right to compensation from or any other claim against Tenant as a result.

#### **11. TENANT'S ACCESS TO PREMISES.**

Tenant may enter the Premises at any time upon 24 hours advance written notice to install or maintain a sign announcing the construction and leasing of the Project, to conduct tests or surveys, take measurements, make alterations, or make repairs thereto in the case of emergency or for any other purposes which Tenant considers necessary or advisable, provided such sign(s), tests and surveys and other activities do not unreasonably interfere with Sub-Tenant's Permitted Use of the Premises. Sub-Tenant shall allow the Premises to be shown by Tenant at any reasonable time to representatives of lending institutions or to prospective and to persons who may be interested in leasing or sub-leasing all or a portion of the Project.

#### **12. SERVICES AND UTILITIES.**

A. *Services Provided:* Sub-Tenant shall be responsible for maintaining the Premises, including but not limited to trash service and common electrical and water (if any) utilities (collectively, "**Operating Expenses**"). Sub-Tenant shall be responsible for the maintenance of the Premises. Sub-Tenant agrees and acknowledges that Tenant is under no obligation to provide or perform any other services to the Premises at any time during the Term. Sub-Tenant shall be responsible for paying all utilities provided to the Premises directly to the utility providers.

B. *Failure to Provide Services:* Tenant shall have no liability to Sub-Tenant or others based on any party's failure to perform service, repair or maintenance work or any other reason, and such failure shall neither render Tenant liable for damages to either person or property, nor be construed as an eviction of Sub-Tenant, nor cause a diminution or abatement of Rent nor relieve Sub-Tenant of any of Sub-Tenant's obligations hereunder, unless any such failure is due to Tenant's actions or failure to act.

C. *Deleted*

D. *Recycling*: Without limiting the foregoing, Sub-Tenant covenants and agrees, at its sole cost and expense, to comply with all present and future Laws of the jurisdiction in which the Premises is located and of the federal, municipal, and local governments, departments, commissions, agencies and boards having jurisdiction over the Premises to the extent that any of them or this Sub-Lease impose on Sub-Tenant duties and responsibilities regarding the collection, sorting, separation, and recycling of trash. Sub-Tenant shall pay all costs, expenses, fines, penalties, or damages that may be imposed on Tenant or Sub-Tenant by reason of Sub-Tenant's failure to comply with any provision herein or any provision contained in any D.C Law or Regulation, and, at Sub-Tenant's sole cost and expense, shall indemnify, defend and hold Tenant harmless (including the payment of legal fees and expenses) from and against any actions, claims, and suits arising from such noncompliance, using counsel reasonably satisfactory to Tenant.

### **13. RULES AND REGULATIONS.**

Sub-Tenant shall abide by and observe all laws, rules and/or regulations of the State of Maryland, Montgomery County, and the City of Takoma Park, Maryland. A failure to do so shall be deemed a material breach under this Sub-Lease.

### **14. INDEMNIFICATION.**

*Indemnification*: Sub-Tenant hereby agrees to defend, indemnify and hold Tenant harmless from and against all costs, damages, claims, liabilities and expenses, including attorneys' fees, suffered by or claimed against Tenant, directly or indirectly, based on, arising out of or resulting solely from: (i) Sub-Tenant's use and occupancy of the Premises, the business conducted thereon by Sub-Tenant or its contractors or licensees, or Sub-Tenant's presence on the Premises, (ii) the making by Sub-Tenant of any Alterations, (iii) any act or omission of Sub-Tenant or its employees, agents, contractors, licensees or Invitees, and (iv) any breach or default by Sub-Tenant in the observance or performance of its covenants and obligations under this Sub-Lease.

Tenant hereby agrees to defend, indemnify and hold Sub-Tenant harmless from and against all costs, damages, claims, liabilities and expenses, including attorneys' fees, suffered by or claimed against Sub-Tenant, directly or indirectly, based on, arising out of or resulting solely from: (i) any act or omissions of Tenant or its employees, agents, contractors, licenses or Invitees, and (ii) any breach or default by Tenant in the observance or performance of its covenants and obligations under this Sub-Lease.

### **15. LIMITATION ON TENANT LIABILITY.**

A. *Liability Standard*: Tenant shall not be liable to Sub-Tenant or any other individual or entity for any damage, loss or claim whatsoever, except damages, losses and claims that are the direct result of Tenant's gross negligence or willful misconduct; however, in no event shall Tenant be liable for consequential damages.

B. *Limitation on Total Liability*: Notwithstanding any other provision of this Sub-Lease, it is expressly understood and agreed that the total liability of Tenant arising out of or in connection with this Sub-Lease, the relationship of Tenant and Sub-Tenant hereunder and/or Sub-Tenant's use of the Premises, shall be limited to the estate of Tenant in the Premises. No other property or assets of Tenant or any partner or owner of Tenant shall be subject to levy, execution, or other enforcement proceedings or other judicial process for the satisfaction of any judgment or any other right or remedy of Sub-Tenant arising out of or in connection with this Sub-Lease, the relationship of Tenant and Sub-Tenant hereunder and/or Sub-Tenant's use of the Premises.

**16. Deleted**

**17. INSURANCE.**

*A. Sub-Tenant's Insurance:*

(a) Throughout the Term, Sub-Tenant shall obtain and maintain (1) commercial general liability insurance (written on an occurrence basis) including contractual liability coverage insuring the obligations assumed by Sub-Tenant under this Sub-Lease, premises and operations coverage, broad form property damage coverage and independent contractors coverage, and containing an endorsement for personal injury, and (2) comprehensive automobile liability insurance (covering automobiles owned by Sub-Tenant, if any). Such commercial general liability insurance shall be in minimum amounts typically carried by prudent Sub-Tenants engaged in similar operations, but in no event shall be in an amount less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence with a Five Million Dollars (\$5,000,000.00) annual aggregate, and Sub-Tenant shall also obtain and maintain umbrella excess liability insurance with a policy limit of not less than Five Million Dollars (\$5,000,000.00). Such automobile liability insurance shall be in an amount not less than One Million Dollars (\$1,000,000.00) bodily injury and property damage for each accident. Such employer's liability insurance shall be in an amount not less than One Hundred Thousand Dollars (\$100,000.00) for each accident, Five Hundred Thousand Dollars (\$500,000.00) per person for illness or disease-policy limit, and One Hundred Thousand Dollars (\$100,000.00) disease-each employee.

(b) All insurance to be carried by Sub-Tenant under this Sub-Lease shall: (1) be issued by a company that is licensed to do business in the State of Maryland, that has been approved in advance by Tenant and that has a rating equal to or exceeding A:XI from Best's Insurance Guide; (2) name Tenant and the City and the parking lot operator (if any), as additional insureds/loss payees; (3) contain an endorsement that such policy shall remain in full force and effect notwithstanding that the insured may have waived its right of action against any party prior to the occurrence of a loss (Sub-Tenant hereby waiving its right of action and recovery against and releasing Tenant and its employees and agents (including, but not limited to, Tenant's managing agent) from any and all liabilities, claims and losses for which they may otherwise be liable to the extent Sub-Tenant is covered by insurance carried or would have been covered by insurance it is required to carry under this Sub-Lease); (4) provide that the insurer thereunder waives all right of recovery by way of subrogation against Tenant, its partners, agents (including, but not limited to, Tenant's insurer), employees, and representatives, in connection with any loss or damage covered by such policy; (5) be acceptable in form and content to Tenant; (6) be primary and non-contributory; (7) contains an endorsement for cross liability and severability of interests; and (8) contain an endorsement prohibiting cancellation, failure to renew, reduction of amount of insurance or change in coverage without the insurer first giving Tenant thirty (30) days' prior written notice (by certified or registered mail, return receipt requested) of such proposed action. No such policy shall contain any deductible provision except as otherwise approved in writing by Tenant, which approval shall not be unreasonably withheld. Sub-Tenant shall deliver a certificate (on Acord Form 27) of all such insurance and receipts evidencing payment therefor (and, upon request, copies of all required insurance policies, including endorsements and declarations) to Tenant at least fifteen (15) days prior to the Sub-Lease Commencement Date and at least annually thereafter. Sub-Tenant shall give Tenant immediate notice in case of fire, theft or accident on the Premises. Neither the issuance of any insurance policy required under this Sub-Lease nor the minimum limits specified herein shall be deemed to limit or restrict in any way Sub-Tenant's liability arising under or out of this Sub-Lease.

*B. Deleted.*



C. *Effect of Sub-Tenant's Activities on Insurance:* Sub-Tenant shall not conduct or permit to be conducted any activity, or place any equipment in or about the Premises which will increase the rate of, or make void or voidable, any fire or other insurance maintained or required to be maintained by Tenant or any Mortgagee on the Premises or the property kept thereon or therein, which will conflict with the provisions of any such insurance policy or which will make it impracticable for Tenant to obtain insurance covering any risks against which Tenant reasonably deems it advisable to obtain insurance. In the event any increases in the rates of such insurance are, in Tenant's reasonable judgment, due to Sub-Tenant's presence on the Premises, to any activity conducted or property installed or placed by Sub-Tenant on or about the Land, the Premises or to Alterations installed by Sub-Tenant or at Sub-Tenant's request, Sub-Tenant shall reimburse Tenant for the amount of such increases promptly upon demand therefor. Statements by the applicable insurance company or insurance rating bureau that such increases are due to any of Sub-Tenant's activity, property or improvements shall be conclusive for the purposes of determining Sub-Tenant's liability hereunder.

#### **18. CONDEMNATION.**

A. *Right to Terminate:* If more than fifty percent (50%) of the Premises is taken or condemned by any governmental or quasi-governmental authority ("authority") for any purpose or is granted to any authority in lieu of condemnation (collectively, a "taking"), then Tenant and Sub-Tenant, each at its option, may give the other party, written notice of termination of this Sub-Lease, and upon the giving of such notice, the Term shall terminate as of the date title vests in the authority, and Base Rent payable pursuant to Section 4 hereof shall be abated as of that date.

B. *Adjustment of Rent:* If a portion of the Premises is taken and neither Tenant nor Sub-Tenant elects to terminate this Sub-Lease as otherwise provided for herein, then Base Rent payable pursuant to Sections 4 hereof shall be equitably adjusted as of the date title vests in the authority and this Sub-Lease shall otherwise continue in full force and effect.

C. *Division of Award:* Sub-Tenant shall have no claim against Tenant arising out of or related to any taking or for any portion of the amount that may be awarded as a result, damages or compensation attributable to damage to the Premises, value of the unexpired portion of the Term, loss of profits or goodwill, Sub-Leasehold improvements or severance damages, and Sub-Tenant hereby assigns to Tenant all its rights, title and interest in and to any such award; provided, however, that Sub-Tenant may assert any claim it may have against the authority for compensation for Sub-Tenant's Personal Property and for any relocation expenses compensable by statute, as long as such awards shall be made in addition to and stated separately from the award made for the Premises.

#### **19. DEFAULT.**

A. *Default of Sub-Tenant:* The following events shall be a default by Sub-Tenant (a "**Default**") under this Sub-Lease:

(1) Failure of Sub-Tenant to pay Base Rent and/or Additional Rent or Late Fees as due, and when due, under this Sub-Lease if the failure continues for five (5) days after notice from Tenant to Sub-Tenant.

(2) Failure of Sub-Tenant to comply with or perform any covenant or obligation of Sub-Tenant under this Sub-Lease, if, except as provided in Section 2A, the failure continues for fifteen (15) days after notice from Tenant to Sub-Tenant specifying the failure, other than those concerning the payment of Rent, unless such default cannot be cured with reasonable diligence and continuity within said fifteen (15) day period, then Sub-Tenant shall have any additional time as may be reasonably necessary to cure the default with reasonable diligence and continuity.

(3) If Sub-Tenant shall file a voluntary petition in bankruptcy or insolvency, shall be adjudicated bankrupt or insolvent or shall file a petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other Laws, or shall make an assignment for the benefit of creditors, or shall seek or acquiesce in the appointment of any trustee, receiver or liquidator of Sub-Tenant or of all or any part of the real or personal property of Sub-Tenant.

(4) If, within thirty (30) days after the commencement of any proceeding against Sub-Tenant, whether by the filing of a petition or otherwise, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future applicable federal, state or other Laws, such proceeding shall not have been dismissed or if, within thirty (30) days after the appointment of any trustee, receiver or liquidator of Sub-Tenant, or of all or any part of the property of Sub-Tenant, without the acquiescence of such individual or entity, such appointment shall not have been vacated or otherwise discharged, or if any execution or attachment shall have been issued against the real or personal property of Sub-Tenant, pursuant to which the Premises shall be taken or occupied or attempted to be taken or occupied.

(5) Failure of Sub-Tenant to comply with or perform any covenant or obligation of Sub-Tenant set forth in this Sub-Lease, within the specific timeframe for the performance of such covenant or obligation set forth in the applicable Section.

B. *Remedies Upon Default:* Upon the occurrence of a Default, Tenant shall have the right, then or at any time thereafter:

(1) Without demand or notice, to reenter and take possession of all or any part of the Premises, to expel Sub-Tenant and those claiming through Sub-Tenant and to remove any property therein, either by summary proceedings or by any other action at law, in equity or otherwise, with or without terminating this Sub-Lease, without being deemed guilty of trespass and without prejudice to any other remedies of Tenant for breach of this Sub-Lease, and/or

(2) To terminate this Sub-Lease by written notice to Sub-Tenant, whereupon this Sub-Lease shall terminate on the date specified in Tenant's notice, and Sub-Tenant's right to possession of the Premises shall cease as of such date, and/or

(3) To use or apply the whole or any part of the Security Deposit to the extent required for the payment of any sums due to Tenant by reason of Sub-Tenant's default in respect of any of the terms, provisions, covenants, and conditions of this Sub-Lease, it being understood that any use of the whole or any part of the Security Deposit shall not constitute a bar or defense to any of Tenant's other remedies under this Sub-Lease or any Law.

If Tenant elects to terminate this Sub-Lease, everything contained in this Sub-Lease on the part of Tenant to be done shall cease, without prejudice to Tenant's right to recover from Sub-Tenant all Rents past due. If Tenant elects to reenter, Tenant may terminate this Sub-Lease.

C. *Liability of Sub-Tenant:* If Tenant terminates this Sub-Lease or reenters the Premises, Sub-Tenant shall remain liable (in addition to all other liabilities of Sub-Tenant accrued at the time of the Default) for the sum of (i) any unpaid Rent accrued prior to the time of termination and/or reentry, as the case may be, plus interest thereon from the due date at the Default Rate, (ii) any and all expenses (including but not limited to attorneys' and brokerage fees) incurred by Tenant in reentering and repossessing the Premises, in correcting any default, in protecting and preserving the Premises and in reletting or attempting to relet the Premises, and (iii) any other amounts necessary to compensate Tenant for any other injury or detriment caused by the Default.

D. *Waiver:* Sub-Tenant, on its own behalf and on behalf of all persons and entities claiming through Sub-Tenant, including but not limited to creditors of Sub-Tenant, hereby waives any and all rights and privileges which

Sub-Tenant and such other persons and entities might otherwise have under any present or future Laws: (i) to redeem the Premises, (ii) to reenter or repossess the Premises, or (iii) to restore the operation of this Sub-Lease, with respect to any dispossession of Sub-Tenant by judgment or warrant of any court, any reentry by Tenant or any expiration or termination of this Sub-Lease, whether by operation of law or pursuant to the provisions of this Sub-Lease.

E. Deleted.

F. Deleted.

G. *Attorneys' Fees*: In the event of any Default hereunder, Sub-Tenant shall pay to Tenant all reasonable attorneys' fees incurred by Tenant in connection with such Default or the enforcement of Tenant's rights or remedies arising in connection therewith, whether or not this Sub-Lease is terminated and whether or not Tenant institutes any lawsuit against Sub-Tenant as a result of such Default. In addition to the foregoing, whether or not this Sub-Lease is terminated, Sub-Tenant shall pay to Tenant all other actual costs incurred by Tenant with respect to any lawsuit instituted or action taken by Tenant to enforce the provisions of this Sub-Lease.

H. *Survival*: Sub-Tenant's liability to Tenant shall survive the termination of this Sub-Lease, the institution of summary proceedings and/or the issuance of a warrant thereunder.

## **20. NO WAIVER.**

No failure or delay by Tenant in enforcing its right to strict performance by Sub-Tenant of every provision of this Sub-Lease or in exercising any right or remedy hereunder, and no acceptance by Tenant of full or partial rent during the continuance of any Default, shall constitute a waiver of the provision or the Default, and no provision shall be waived or modified except by a written instrument executed by Tenant. No payment by Sub-Tenant, or receipt by Tenant, of a lesser amount than the full Rent shall be deemed to be other than a payment on account, notwithstanding any endorsement or statement on any check or letter accompanying any payment of any Rent. No waiver of any Default or settlement of any proceeding instituted on account of any claimed Default shall affect or alter this Sub-Lease or constitute a waiver of any of Tenant's rights hereunder.

## **21. HOLDING OVER.**

If Sub-Tenant shall be in possession of the Premises after termination of this Sub-Lease (whether by normal expiration of the Term or otherwise), Sub-Tenant shall be in Default, and, without demand or notice, shall pay Tenant as liquidated damages for its use and occupancy of the Premises for each calendar month or partial calendar month subsequent to the expiration or earlier termination of this Sub-Lease the sum of one hundred fifty percent (150%) of the Monthly Base Rent in effect for the last full month of the Term. In addition, Sub-Tenant shall comply with all of the other provisions of this Sub-Lease. Any such holdover shall be deemed to be a tenancy-at-sufferance and not a tenancy-at-will or tenancy from month-to-month. In no event shall any holdover be deemed a permitted extension or renewal of the Term, and nothing contained herein, including acceptance of the liquidated damages payment described above, shall be construed to constitute Tenant's consent to any holdover or to give Sub-Tenant any right with respect thereto or to waive Tenant's right to demand possession and re-enter the Premises.

## **22. SUBORDINATION.**

A. *Sub-Lease Subordinate*: This Sub-Lease shall be subject and subordinate to the Lease and the lien of any and all Mortgages, and any and all renewals, extensions, modifications, recastings and refinancings thereof. This clause shall be self-operative, without execution of any further instrument; but if requested by Tenant or any Mortgagee, Sub-Tenant shall promptly execute a certificate or other document or instrument evidencing and providing

for such subordination. Tenant shall have the right to execute said document on behalf of Sub-Tenant if Sub-Tenant fails to do so within five (5) days after receipt of the request. Sub-Tenant agrees that, if any Mortgage is foreclosed, upon request by the purchaser at the foreclosure sale, Sub-Tenant shall attorn to and recognize the purchaser as the Tenant under this Sub-Lease and shall make all payments required hereunder to such new Tenant without any deduction or set-off of any kind whatsoever. Sub-Tenant agrees that upon any such attornment, such transferee shall not be (a) bound by any payment of the Base Rent or Additional Rent of more than one (1) month in advance, except prepayments in the nature of security for the performance by Sub-Tenant of its obligations under this Sub-Lease, but only to the extent such prepayments have been delivered to such transferee, (b) bound by any amendment of this Sub-Lease made without the consent of the holder of each Mortgage existing as of the date of such amendment, (c) liable for damages for any breach, act or omission of any prior Tenant, (d) subject to any offsets or defenses which Sub-Tenant might have against any prior Tenant, (e) obligated for construction of any improvements otherwise to be constructed by Tenant under the Sub-Lease (provided, however, if the Tenant Work is not completed by Mortgagee, Sub-Tenant shall retain the right to terminate this Sub-Lease as otherwise provided for herein), or (f) obligated under any provision of this Sub-Lease setting forth terms of indemnification by Tenant of Sub-Tenant; provided, however, that after succeeding to Tenant's interest under this Sub-Lease, such transferee shall agree to perform in accordance with the terms of this Sub-Lease all obligations of Tenant arising after the date of transfer. Sub-Tenant waives the provisions of any Laws, now or hereafter in effect, which may give or purport to give Sub-Tenant any right to terminate or otherwise affect this Sub-Lease or the obligations of Sub-Tenant hereunder in the event that any such foreclosure, termination or other proceeding is filed, prosecuted or completed. Notwithstanding anything herein to the contrary, any Mortgagee may at any time subordinate the lien of its Mortgage to the operation and effect of this Sub-Lease without Sub-Tenant's consent, by giving Sub-Tenant written notice of such subordination, in which event this Sub-Lease shall be deemed to be senior to such Mortgage, and thereafter such Mortgagee shall have the same rights as it would have had if this Sub-Lease had been executed, delivered and recorded before said Mortgage. Notwithstanding the foregoing, (I) Tenant shall obtain from the holder of the existing Mortgage which encumbers the Building or the Land a non-disturbance agreement for the benefit of Sub-Tenant in such holder's usual form, and (II) with respect to any future Mortgage on the Building or the Land, if (A) at the time that any such future Mortgage is placed Sub-Tenant is then paying all of its obligations to its creditors on a timely basis as such obligations become due, and (B) there is no Default existing under this Sub-Lease, or any circumstance which with the giving of notice or passage of time would constitute a Default hereunder, then Tenant shall obtain from the holder of such future Mortgage a non-disturbance agreement for the benefit of Sub-Tenant in such holder's usual form.

B. *Modifications to Sub-Lease:* If any of Tenant's insurance carriers or any Mortgagee requests modifications to this Sub-Lease, then Sub-Tenant shall execute a written amendment incorporating such requested modifications within thirty (30) days after the same has been submitted to Sub-Tenant by Tenant, provided that such modifications do not materially adversely affect Sub-Tenant's use of the Premises as herein permitted or increase the rents and other sums payable by Sub-Tenant hereunder. Furthermore, if any Mortgagee succeeds to the interest of Tenant hereunder and is advised by its counsel that all or any portion of the Rent payable by Sub-Tenant hereunder is or may be deemed to be unrelated business income within the meaning of the United States Internal Revenue Code or Regulations issued thereunder, then from time to time Mortgagee may require modifications to this Sub-Lease and Sub-Tenant shall execute a written amendment incorporating such requested modifications within thirty (30) days after the same has been submitted to Sub-Tenant, provided that such modifications do not materially adversely affect Sub-Tenant's use of the Premises as herein permitted or increase the rents and other sums payable by Sub-Tenant hereunder. In the event that Sub-Tenant refuses or fails to execute such amendment within thirty (30) days after Tenant's delivery of

same to Sub-Tenant, then Tenant shall have the right, at its sole option, in addition to Tenant's other remedies for Default, to terminate and cancel this Sub-Lease by written notice to Sub-Tenant specifying the date on which this Sub-Lease will terminate. From and after said termination date, both Tenant and Sub-Tenant shall be relieved of any and all further obligations hereunder, except liabilities arising prior to the date of termination.

C. *Mortgagee's Performance of Tenant's Obligations:* If (a) the Land and/or Lease is at any time subject to a Mortgage, (ii) this Sub-Lease and Rent payable hereunder is assigned to the holder of the Mortgage, and (iii) Sub-Tenant is given notice of such assignment, including the name and address of the assignee, then Sub-Tenant shall not terminate this Sub-Lease or make any abatement or offset in Rent payable hereunder for any default on the part of Tenant without first giving notice, in the manner provided elsewhere in this Sub-Lease for the giving of notices, to the holder of such Mortgage, specifying the default in reasonable detail, and affording such holder a reasonable opportunity to make performance, at its election, for and on behalf of Tenant, except that (x) such holder shall have at least thirty (30) days to cure the default; and (y) if such default cannot be cured with reasonable diligence and continuity within thirty (30) days, then such holder shall have any additional time as may be reasonably necessary to cure the default with reasonable diligence and continuity. If more than one such holder makes a written request to Tenant to cure the default, the holder making the request whose lien is the most senior shall have such right.

### **23. ASSIGNMENT AND SUBLETTING.**

A. *No Transfer Without Consent:* Sub-Tenant shall not, without the prior written consent of Tenant in each instance (which consent may be withheld in Tenant's sole and absolute discretion) do the following: (i) assign, mortgage or otherwise encumber this Sub-Lease or any of its rights hereunder; (ii) sublet the Premises or any part thereof or permit the occupancy or use of the Premises or any part thereof by any persons or entities other than Sub-Tenant; or (iii) permit the assignment of this Sub-Lease or any of Sub-Tenant's rights hereunder by operation of law. Any attempted assignment, mortgaging or encumbering of this Sub-Lease or any of Sub-Tenant's rights hereunder and any attempted subletting or grant of a right to use or occupy all or a portion of the Premises in violation of the foregoing sentence shall be void.

B. Deleted.

C. *Transfer of Ownership Interests:* If Sub-Tenant is a corporation, limited partnership, or limited liability company, then any dissolution of Sub-Tenant or a withdrawal or change, whether voluntary, involuntary or by operation of law, of one or more members owning a controlling interest in Sub-Tenant shall be deemed a voluntary assignment of this Sub-Lease which is subject to the provisions of this Section 23. In addition, a transfer of all or substantially all of the assets of Sub-Tenant, either by merger, consolidation, or otherwise shall be deemed to be an assignment which is subject to the provisions of this Section 23. At the option of Tenant, a sale of all or substantially all of Sub-Tenant's assets, a change in Sub-Tenant's name of which Tenant has not received prior notice, or a conversion into any other type of entity shall also be deemed a voluntary assignment of this Sub-Lease which is subject to the provisions of this Section 23.

D. Deleted.

E. *Conditions of Assignment:* All restrictions and obligations imposed pursuant to this Sub-Lease on Sub-Tenant shall be deemed to extend to any assignee and Sub-Tenant shall cause such person to comply with such restrictions and obligations. Any assignee shall be deemed to have assumed obligations as if such assignee had originally executed this Sub-Lease and at Tenant's request shall execute promptly a document confirming such assumption.

**24. SALE, ASSIGNMENT OR TRANSFER BY TENANT.**

Tenant (and any successor or affiliate of Tenant) may freely sell, assign or transfer all or any portion of its interest in this Sub-Lease or the Premises, and in the event of any such sale, assignment or transfer, shall be relieved of any and all obligations under this Sub-Lease from and after the date of the sale, assignment or transfer. From and after the date of sale, assignment or transfer, Sub-Tenant shall be bound to such purchaser, assignee or other transferee, as the case may be, as though the latter had been the original Tenant hereunder, provided that the purchaser, assignee or transferee agrees to assume the obligations of Tenant hereunder.

**25. INABILITY TO PERFORM.**

This Sub-Lease and Sub-Tenant's obligation hereunder shall in no way be affected, impaired or excused, nor shall Sub-Tenant have any claim against Tenant for damages, because Tenant, due to Unavoidable Delays, is unable to fulfill any of its obligations under this Sub-Lease, including, but not limited to, any obligations to provide any services, repairs, replacements, alterations or decorations or to supply any improvements, equipment or fixtures. At all junctures, rent (both Base Rent and Additional Rent, as defined in Sections 4 and 5 herein) shall remain due and owing to Tenant for any period in which Sub-Tenant occupies the Premises, or for any un-expired term of this Sub-Lease or any extension hereof.

**26. ESTOPPEL CERTIFICATES.**

Sub-Tenant shall, without charge, within fifteen (15) days after receipt of any request therefor, execute and deliver to Tenant a certificate stating: (i) whether this Sub-Lease is unmodified and in full force and effect (or if there have been modifications, that the Sub-Lease is in full force and effect and setting forth all such modifications); (ii) whether there then exist any defenses against the enforcement of any right of Tenant hereunder (and, if so, specifying the same in detail); (iii) the dates to which rent and any other charges hereunder have been paid by Sub-Tenant; (iv) that Sub-Tenant has no knowledge of any then uncured defaults under this Sub-Lease (or, if Sub-Tenant has knowledge of any such defaults, specifying the same in detail); (v) that Sub-Tenant has no knowledge of any event that will or may result in the termination of this Sub-Lease (or if Sub-Tenant has such knowledge, specifying the same in detail); (vi) the address to which notices to Sub-Tenant are to be sent; and (vii) such other information as may be reasonably requested. It is understood that any such certificate may be relied upon by Tenant, any Mortgagee, prospective Mortgagee or purchaser or prospective purchaser of the Land or the Building.

**27. COVENANT OF QUIET ENJOYMENT.**

Tenant covenants that it has the right to make this Sub-Lease and that, if Sub-Tenant shall pay all Rent and perform all of Sub-Tenant's other obligations under this Sub-Lease, Sub-Tenant shall have the right, during the Term and subject to the provisions of this Sub-Lease, to quietly occupy and enjoy the Premises without hindrance by Tenant or its successors and assigns. No breach of the covenant of quiet enjoyment shall be actionable, unless, as a threshold matter, it meets the standards for injury as set forth in *Hyde v. Brandler*, D.C.Mun.App., 118 A.2d 398 (1955).

**28. WAIVER OF JURY TRIAL.**

Tenant and Sub-Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other with respect to any matter arising out of or connected with this Sub-Lease.

**29. BROKERS.**

Each party represents and warrants to the other that no brokers were employed in the negotiation of this Sub-Lease. Tenant and Sub-Tenant shall indemnify and hold each other harmless from any loss, claim or damage relating to the breach of the foregoing representations and warranties.

**30. CERTAIN RIGHTS RESERVED BY TENANT.**

Tenant shall have the following rights, exercisable without notice, without liability for damage or injury to property, person or business and without effecting an eviction, constructive or actual, or disturbance of Sub-Tenant's use or possession of the Premises or giving rise to any claim for set-off, abatement of Rent or otherwise:

- A. To change the address of the Premises.
- B. Deleted.
- C. To prohibit smoking on the Premises, so long as such prohibitions are in accordance with applicable Laws, in such case, Sub-Tenant shall only be required to use reasonable efforts to comply with such prohibition..
- D. If any excavation or other substructure work shall be made or authorized to be made upon land adjacent to the Premises, to, following advance written notice to Sub-Tenant, enter the Premises for the purpose of doing such work as is required to preserve the Premises from injury or damage, provided such work does not unreasonably interfere with Sub-Tenant's Permitted Use of the Premises.

**31. NOTICES.**

All notices, requests, approvals, waivers or other communications which may be or is required or permitted to be given under this Sub-Lease shall be in writing and delivered by (i) hand, (ii) email, (iii) first class U.S. Mail, or (iv) recognized same day or overnight air courier service, addressed to Tenant at the Tenant Notice Address or to Sub-Tenant at the Sub-Tenant Notice Address, as applicable, or at any other address of which either party shall notify the other in accordance with this Section 31. Such communications, if sent by email, shall be deemed to have been given when transmitted, if sent by first class U.S. Mail shall be deemed to have been given two (2) days after the date of mailing, or if sent by overnight air courier service, shall be deemed to have been given one (1) business day after the date of deposit with such service. If any Mortgagee shall notify Sub-Tenant that it is the holder of a Mortgage affecting the Premises, no notice, request or demand thereafter sent by Sub-Tenant to Tenant shall be effective until a copy of same shall be sent to such Mortgagee in the manner prescribed in this Section 31 at such address as such Mortgagee shall designate.

**32. MISCELLANEOUS PROVISIONS.**

- A. *Benefit and Burden:* The provisions of this Sub-Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and each of their respective successors and permitted assigns.
- B. *Governing Law:* This Sub-Lease shall be construed and enforced in accordance with the Laws of the State of Maryland.
- C. *No Partnership:* Nothing contained in this Sub-Lease shall be deemed to create a partnership or joint venture between Tenant and Sub-Tenant, or to create any other relationship between the parties other than that of Tenant and Sub-Tenant.
- D. *Delegation by Tenant:* Wherever Tenant has the authority to take any action under this Sub-Lease, Tenant

shall have the right to delegate such authority to others, and Tenant shall be responsible for the authorized actions of such agents, employees and others, to the same extent as if Tenant had taken such action itself.

E. *Sub-Tenant Responsibility for Agents:* In any case where Sub-Tenant is responsible for performing or refraining from an act or for preventing an action or result from occurring, Sub-Tenant shall also be responsible for any actions taken or omitted by Sub-Tenant's agents, employees, business Invitees, licensees, contractors, family members, guests and any other individuals or entities present on the Land at Sub-Tenant's invitation.

F. *Invalidity of Particular Provisions:* If any provision of this Sub-Lease or the application thereof to any person, entity or circumstance shall, to any extent, be held invalid or unenforceable, the remaining provisions and the application of such invalid or unenforceable provisions to persons, entities and circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby. Each provision of this Sub-Lease shall be valid and enforced to the fullest extent permitted by law.

G. *Counterparts:* This Sub-Lease may be executed in as many counterparts as may be required; and it shall not be necessary that the signatures of all parties appear on each counterpart; but it shall be sufficient that the signature of each Party or that the signatures of the persons required to bind any Party, appear on one or more such counterparts, which counterparts may be transmitted in PDF form to the other parties by email. All counterparts shall collectively constitute a single Agreement.

H. *Entire Agreement:* This Sub-Lease, and any exhibits and addenda attached hereto, including any personal guaranty(ies), embody the entire agreement of the parties hereto, and no representations, inducements or agreements, oral or otherwise, between the parties not contained in this Sub-Lease or in the exhibits or addenda shall be of any force or effect. No rights, privileges, easements or licenses are granted to Sub-Tenant hereby, except as expressly set forth herein. Any personal guarantor is not a party to this Sub-Lease, nor a Sub-Tenant, but rather solely liable for performance hereunder by the named Sub-Tenant.

I. *Amendments:* This Sub-Lease may not be modified in whole or in part in any manner other than in by a written agreement executed by both parties.

J. *Mortgagee's Performance:* Sub-Tenant shall accept performance of any of Tenant's obligations hereunder by any Mortgagee in accordance with the terms otherwise set forth herein.

K. *Limitation on Interest:* In any case where this Sub-Lease provides for a rate of interest that is higher than the maximum rate permitted by law, the rate specified herein shall be deemed to equal, and the party designated as recipient of such interest shall be entitled to receive, the maximum rate of interest permitted by law.

L. *Remedies Cumulative:* All rights and remedies of Tenant shall be cumulative and shall not be exclusive of any other rights or remedies of Tenant hereunder or now or hereafter existing at law or in equity.

M. *Deleted.*

N. *Construction of Sub-Lease:* There shall be no presumption that this Sub-Lease be construed more strictly against the party who itself or through its agent prepared it. Tenant and Sub-Tenant hereby agree that all parties hereto have participated in the preparation of this Sub-Lease and that each party had the opportunity to consult legal counsel before the execution of this Sub-Lease.

O. *Time of the Essence:* Time is of the essence with respect to each of Sub-Tenant's obligations hereunder.

P. *Effect of Deletion of Language:* The deletion of any printed, typed or other portion of this Sub-Lease shall not evidence the parties' intention to contradict such deleted portion. Such deleted portion shall be deemed not to have been inserted in this Sub-Lease.



Q. *Authority*: Sub-Tenant and the person executing and delivering this Sub-Lease on Sub-Tenant's behalf each represents and warrants that such person is duly authorized to so act; that Sub-Tenant is duly organized, is qualified to do business in the District of Columbia, is in good standing under the Laws of the District of Columbia, and has the power and authority to enter into this Sub-Lease; and that all action required to authorize Sub-Tenant and such person to enter into this Sub-Lease has been duly taken.

R. *Qualified Sub-Leases*: The parties intend that all payments made to Tenant under this Sub-Lease will qualify as rents from real property for purposes of Section 512(b)(3) of the Internal Revenue Code of 1986, as amended ("**Qualified Rents**"). If Tenant, in its sole discretion, advises Sub-Tenant that there is any risk that all or part of any payments made under this Sub-Lease will not qualify as Qualified Rents, Sub-Tenant agrees (i) to cooperate with Tenant to restructure this Sub-Lease in such manner as may be necessary to enable such payments to be treated as Qualified Rents, and (ii) to permit an assignment of this Sub-Lease, in each case provided such restructuring or assignment will not have a material impact on Sub-Tenant.

### 33. **HAZARDOUS MATERIALS.**

A. *Definition*. As used in this Sub-Lease, the term "**Hazardous Material**" means any flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials, including any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "infectious wastes", "hazardous materials" or "toxic substances" now or subsequently regulated under any Laws, including, without limitation, oil, petroleum-based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, PCBs and similar compounds, and including any different products and materials which are subsequently found to have adverse effects on the environment or the health and safety of persons.

B. *General Prohibition*. Sub-Tenant shall not cause or permit any Hazardous Material to be generated, produced, brought upon, used, stored, treated, discharged, released, spilled or disposed of on, in under or about the Premises or the Land (collectively, the "**Property**") by Sub-Tenant or Sub-Tenant's Invitees in violation of applicable Environmental Laws (as hereinafter defined). Sub-Tenant shall indemnify, defend and hold Tenant, Tenant's managing agent and all Mortgagees harmless from and against any and all actions (including, without limitation, remedial or enforcement actions of any kind, administrative or judicial proceedings, and orders or judgments arising out of or resulting therefrom), costs, claims, damages (including without limitation, attorneys', consultants' and experts' fees, court costs and amount paid in settlement of any claims or actions), fines, forfeitures or other civil, administrative or criminal penalties, injunctive or other relief (whether or not based upon personal injury, property damage, or contamination of, or adverse effects upon, the environment, water tables or natural resources), liabilities or losses arising from a breach of this prohibition by Sub-Tenant or Sub-Tenant's Invitees. If any lender or governmental agency shall require testing to ascertain whether an Environmental Default (as hereinafter defined) is pending or threatened, then Sub-Tenant shall pay the reasonable costs therefor as Additional Rent. An "**Environmental Default**" means any of the following by Sub-Tenant or any Invitee: a violation of an Environmental Law; a release, spill or discharge of a Hazardous Material on or from the Premises, the Land or the Building; an environmental condition requiring responsive action; or an emergency environmental condition. "**Environmental Law**" means any present and future law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of governmental authorities applicable to the Building or the Land and relating to the environment and environmental conditions or to any Hazardous Material.

C. *Notice.* In the event that Hazardous Materials are discovered upon, in, or under the Property, and such Hazardous Materials were introduced to the Property by Sub-Tenant or Sub-Tenant's invites, and any governmental agency or entity having jurisdiction over the Property requires the removal of such Hazardous Materials, Sub-Tenant shall be responsible for removing those Hazardous Materials arising out of or related to the use or occupancy of the Property by Sub-Tenant or Sub-Tenant's Invitees but not those of its predecessors. Notwithstanding the foregoing, Sub-Tenant shall not take any remedial action in or about the Property or any portion thereof without first notifying Tenant of Sub-Tenant's intention to do so and affording Tenant the opportunity to protect Tenant's interest with respect thereto. Sub-Tenant immediately shall notify Tenant in writing of: (i) any spill, release, discharge or disposal of any Hazardous Material in, on or under the Property or any portion thereof; (ii) if Sub-Tenant has notice thereof, any enforcement, cleanup, removal or other governmental or regulatory action instituted, contemplated, or threatened pursuant to any Laws respecting Hazardous Materials; (iii) if Sub-Tenant has notice thereof, any claim made or threatened by any person against Sub-Tenant or the Property or any portion thereof relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Materials; and (iv) if Sub-Tenant has notice thereof, any reports made to any governmental agency or entity arising out of or in connection with any Hazardous Materials in, on under or about or removed from the Property or any portion thereof, including any complaints, notices, warnings, reports or asserted violations in connection therewith. Sub-Tenant also shall supply to Tenant as promptly as possible, and in any event within ten (10) business days after Sub-Tenant first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises, the Property or Sub-Tenant's use or occupancy thereof.

34. Deleted.

35. **NO RECORDATION.**

Sub-Tenant shall not record or attempt to record this Sub-Lease or any memorandum hereof in any public records without the prior written approval of Tenant, which may be denied in Tenant's sole and absolute discretion. In the event that Tenant grants its approval to record this Sub-Lease or a memorandum hereof, Sub-Tenant shall pay all recordation fees, taxes and charges in connection with such recordation.

36. **SIGNS.**

At Sub-Tenant's sole cost and expense, Sub-Tenant shall provide and install one (1) appropriately sized sign displaying that the Premises is open to the general public and which may include Sub-Tenant's name and logo ("**Sub-Tenant's Sign**"), in accordance with all code requirements. Sub-Tenant shall be solely responsible for the maintenance, cleaning, repair and replacement of Sub-Tenant's Sign, all at Sub-Tenant's sole cost and expense. Sub-Tenant, upon the termination or expiration of this Sub-Lease, shall, at Sub-Tenant's sole cost and expense, remove Sub-Tenant's Sign.


[SIGNATURES FOLLOW ON NEXT PAGE]


IN WITNESS WHEREOF, Tenant and Sub-Tenant have executed this Sub-Lease under seal as of the day and year first above written.

WITNESS/ATTEST:

TENANT:

**NDC TAKOMA JUNCTION, LLC**, a Maryland limited liability company  
By: The Neighborhood Development Company, L.L.C.,  
Manager

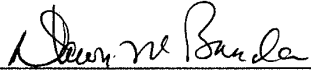
  
\_\_\_\_\_

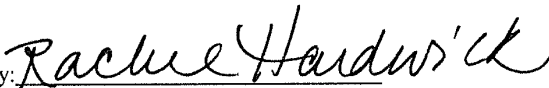
  
By: \_\_\_\_\_  
Adrian Washington, Manager

WITNESS/ATTEST:

SUB-TENANT:

**TAKOMA PARK-SILVER SPRING COOPERATIVE, INC.**, a Maryland nonprofit corporation

  
\_\_\_\_\_

  
By: \_\_\_\_\_  
Rachel Hardwick  
President, Board of Representatives

**EXHIBIT A**  
**DECLARATION**  
**BY TENANT AND SUB-TENANT**

THIS DECLARATION made this \_\_\_\_ day of September 2018, is hereby attached to and made a part of the Sub-Lease dated as of the 1st day of September 2018 (the "Sub-Lease"), entered into by and between **NDC TAKOMA JUNCTION, LLC**, a Maryland limited liability company, as Tenant, and **TAKOMA PARK-SILVER SPRING COOPERATIVE, INC.**, a Maryland nonprofit corporation, as Sub-Tenant. All terms used in this Declaration have the same meaning as they have in the Sub-Lease.

- (i) Tenant and Sub-Tenant do hereby declare that Sub-Tenant accepted possession of the Premises on the \_\_\_\_\_ day of \_\_\_\_\_ 2018;
- (ii) As of the date hereof, to Sub-Tenant's knowledge, (A) the Sub-Lease is in full force and effect, and (B) Tenant has fulfilled all of its obligations under the Sub-Lease required to be fulfilled by Tenant on or prior to said date;
- (iii) The Sub-Lease Commencement Date is hereby established to be \_\_\_\_\_, 2018; and
- (iv) The Rent Commencement Date is hereby established to be \_\_\_\_\_, 2018; and

WITNESS:

TENANT:

**NDC TAKOMA JUNCTION, LLC**, a Maryland limited liability company  
By: The Neighborhood Development Company, L.L.C.,  
Manager

\_\_\_\_\_

By: \_\_\_\_\_  
Adrian Washington, Manager

WITNESS/ATTEST:

SUB-TENANT:

**TAKOMA PARK-SILVER SPRING COOPERATIVE, INC.**, a Maryland nonprofit corporation

\_\_\_\_\_

By: \_\_\_\_\_  
Rachel Hardwick  
President, Board of Representatives