



## AGENDA REPORT

**Meeting Date:** May 15, 2012  
**Item Number:** H-5  
**To:** Honorable Mayor and City Council Members  
**From:** Brenda Lavender, Real Estate & Property Manager  
**Subject:** LEASE, GUARANTY OF LEASE AND MEMORANDUM OF LEASE BY AND BETWEEN THE CITY OF BEVERLY HILLS AND FIRST PICKS BREAD COMPANY IX L.P., DBA PANERA BREAD; AND A COMMISSION AGREEMENT BY AND BETWEEN THE CITY OF BEVERLY HILLS; DEMBO REALTY AND CB RICHARD ELLIS, INC.

**Attachments:**

1. Lease
2. Guaranty of Lease
3. Memorandum of Lease
4. Commission Agreement

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### RECOMMENDATION

It is recommended that City Council approve the Lease and Memorandum of Lease, by and between The City of Beverly Hills and First Picks Bread Company IX, L.P. dba Panera Bread; and a commission agreement by and between the City of Beverly Hills, Dembo Realty and CB Richard Ellis, Inc. A copy of the lease, memorandum of lease and commission agreement is on file with the City Clerk.

### INTRODUCTION

Panera will lease the ground floor of the 239 S. Beverly Drive building for a restaurant and the majority of the 2<sup>nd</sup> floor for office space. AT&T currently occupies a portion of the 2<sup>nd</sup> floor of the building for their communications facility.

### DISCUSSION

This lease will be for a term of ten (10) years, with starting monthly rent of \$24,000. The City will provide a Tenant Improvement Allowance of (\$400,560), nine (9) months of free rent (\$216,000) and pay a broker commission of \$84,018.47. 50% of the broker commission will be paid to Dembo Realty (\$42,009.24) and 50% to CB Richard Ellis (\$42,009.24). Panera will perform the improvements which will include installing the

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infrastructure for a full kitchen and bakery; renovating the exterior of the building and creating an outdoor dining area.

**FISCAL IMPACT**

The fiscal impact includes upfront costs of (\$664,578.47) for the Tenant Improvement Allowance at (\$400,560), free rent of (\$216,000), and a broker commission of (\$84,018.47). The annual base rent revenue of \$288,000 will offset the upfront costs over the first 28 months of the lease term.



Scott G. Miller, Director of  
Administrative Services, CFO

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Approved By

# **Attachment 1**

**CITY OF BEVERLY HILLS LEASE**

by and between the

CITY OF BEVERLY HILLS,

Landlord

and

FIRST PICKS BREAD COMPANY IX L.P.,  
a Delaware limited partnership (dba "Panera Bread")

Tenant

239 S. Beverly Drive,  
Beverly Hills, California

DATE: May 15, 2012

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- Exhibit A – Diagram of Premises
- Exhibit B – Initial Tenant Improvements
- Exhibit C – Rules and Regulations
- Exhibit D – Memorandum of Lease

## LEASE

THIS LEASE (this "Lease") is dated as of May 15, 2012 (the "Effective Date"), and is entered into by and between the CITY OF BEVERLY HILLS, a municipal corporation ("Landlord"), and FIRST PICKS BREAD COMPANY IX L.P., a Delaware limited partnership (dba "Panera Bread") ("Tenant").

**1. TERMS AND DEFINITIONS.** For the purposes of this Lease, the following terms shall have the following definitions and meanings:

(a) Address of Premises:

239 S. Beverly Drive  
Beverly Hills, CA 90210

(b) Addresses of Tenant (for notices):

First Picks Bread Company IX L.P.  
205 North Moorpark Road, Unit N  
Thousand Oaks, California 91360  
Attn: Real Estate Department

With a copy of default notices to:  
Panera LLC  
3630 South Geyer Road, Suite 100  
St. Louis, Missouri 63127  
Attn: Vice President of Franchise

and:

Panera LLC  
3630 South Geyer Road, Suite 100  
St. Louis, Missouri 63127  
Attn: General Counsel

(c) Address of Landlord (for notices):

City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attn: Real Estate Property Manager  
Phone: (310) 285-2426

With a copy to:

City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attention: City Attorney

(d) Premises: Those certain premises configured as shown on the diagram attached hereto as Exhibit A. The Premises consist of portions of the first and second floors of the building located at 239 S. Beverly Drive, Beverly Hills, California (the "Building").

(e) Term; Landlord Termination Option: Ten (10) years, commencing one hundred and twenty (120) days after the date on which Landlord has completed the work described on Exhibit B-1 ("Landlord's Work") and has tendered to Clarence Mah of Tenant at 205 North Moorpark Road, Unit N, Thousand Oaks, CA 91360, the keys to the Premises (which shall not occur prior to October 1, 2012), as may be extended pursuant to Section 3 below (which contains two 5-year extension options in favor of Tenant); provided, however, that if Landlord then intends to re-develop the Building with a project that includes public parking, Landlord may terminate this Lease on the tenth (10<sup>th</sup>) or fifteenth (15<sup>th</sup>) anniversary of the Commencement Date by written notice given at least one (1) calendar year prior to the applicable termination date. Upon request of either party after the Commencement Date, the other party shall confirm the Commencement Date in writing.

(f) Monthly Rent: Commencing on the Commencement Date, \$24,000.00 per month, increased by six percent (6%) of the then-current Monthly Rent every thirty (30) calendar months after the Commencement Date (including during any extension period); provided, however, that Monthly Rent shall be abated for the first nine (9) full calendar months after the Commencement Date if this Lease is not terminated by Landlord as a result of an Event of Default by Tenant.

(g) Security Deposit: \$24,000.00.

(h) Operating Expenses: Tenant is not obligated to reimburse Landlord for taxes, insurance or other operating expenses. Tenant shall pay possessory interest taxes and personal property taxes, as provided in Sections 6 and 8, respectively.

(i) Utilities: All utilities serving the Premises are separately metered and Tenant will contract directly with the utility providers for all such services, as described in Section 14.

(j) Permitted Uses: On the first floor: Panera Bread restaurant; on the second floor: office use and/or storage space for storage of items used in the restaurant. The interior dining area may not, however, exceed 1,000 usable square feet.

(k) Brokers: Dembo & Associates and CBRE (both representing the Tenant). Landlord shall pay all commissions to said brokers pursuant to a separate written agreement between Landlord and such brokers.

(l) Parking: Six (6) surface parking spaces for Tenant's exclusive use at the rear of the Building (at no extra charge to Tenant); provided, however, that Landlord shall not be responsible for ensuring that third parties do not park in such spaces, or for towing any cars.

(m) Tenant Improvement Allowance and Tenant Improvements. \$400,560; see Exhibit B-2.

(n) Outdoor Dining Permit. Landlord (acting in its proprietary capacity as the Landlord under this Lease, and not in its governmental capacity) shall execute Tenant's application for an outdoor dining permit, but issuance of such permit shall be subject to the approval of the City of Beverly Hills in its governmental capacity.

(o) Lease Guarantor. First Picks Bread Management LLC, a Delaware limited liability company, pursuant to a Guaranty of Lease dated concurrently herewith.

This Section 1 represents a summary of the basic terms of this Lease. In the event of any inconsistency between the terms contained in this Section 1 and any specific provision of this Lease, the terms of the more specific provision shall prevail.

## **2. PREMISES LEASED; COMMON AREAS.**

(a) Landlord hereby leases the Premises to Tenant and Tenant hereby hires the Premises from Landlord. The Premises are to be improved by Tenant with the "Tenant Improvements" which will be designed, approved and constructed as described in Exhibit B attached hereto and incorporated herein by this reference, in accordance with the terms set forth in Exhibit B-2.

(b) The term "Project", as used in this Lease, shall mean the building commonly referred to as the "239 S. Beverly Drive Building".

(c) Tenant shall have the nonexclusive right, subject to the Rules and Regulations described in Section 32(a), to use and enjoy the following areas to the extent included in the Project (collectively, "Common Areas"): (i) common lobbies, restrooms, elevators, stairways, access ways, loading docks, ramps, drives and platforms and any passageways and service ways thereto, and the common pipes, conduits, wires and appurtenant equipment serving the Project; and (ii) loading and unloading areas, trash areas, parking areas, including, without limitation, roadways, sidewalks, walkways, driveways and landscaped areas and similar areas and facilities within the Project made available by Landlord for the common use and enjoyment of the occupants of the Project. Notwithstanding the generality of the foregoing, Landlord shall provide Tenant with reasonable means of access to the Premises during business hours for purposes of the ingress and egress of merchandise, which may include access through Common Areas.

(d) Landlord reserves the right from time to time, expressly provided Tenant's use and enjoyment of and access to the Premises and the visibility of the Premises and Tenant's exterior signage from the public street are not adversely affected (provided that in no event shall anything in this Lease affect or restrict in any way Landlord's rights with respect to public right of ways), including, without limitation: (i) to designate other land outside the current boundaries

of the Project to be a part of the Project, in which event the Site shall be deemed to include such additional land, and the Common Areas shall be deemed to include Common Areas upon such additional land; (ii) to add additional buildings and/or other improvements to the Project, which (by way of example only and without limitation) may be located on land added to the Site pursuant to clause (i) above, and/or to remove existing and/or future buildings and/or improvements; (iii) to make changes to the Common Areas, including, without limitation, addition of additional improvements, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscape areas and walkways (provided that in no event shall anything in this Lease affect or restrict in any way Landlord's rights with respect to public rights of way); (iv) to close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available; (v) to use the Common Areas while engaged in making additional improvements, repairs or alterations to the Building or the Project, or any portion thereof; and (vi) to install, use, maintain, repair and replace pipes, ducts, conduits, wires and appurtenant meters and equipment for service to other parts of the Project above the ceiling surfaces, below the floor surfaces, within the walls and in the central core areas, and to relocate any pipes, ducts, conduits, wires and appurtenant meters and equipment included in the Premises which are located in the Premises or located elsewhere outside the Premises, provided any damage to the Premises is promptly restored by Landlord, and to alter, expand and/or demolish any building within the Project; and (vii) to do and perform such other acts and make such other changes in, to or with respect to the Common Areas, the Building or any other portion of the Project as Landlord deems to be appropriate in the exercise of its good faith business judgment, except that Landlord will not erect or install any temporary or permanent cart, kiosk or other structure obscuring the storefront of the Premises, access to Premises or Tenant's exterior signage.

### **3. TERM; EXTENSION OPTIONS.**

(a) The term of this Lease shall be for the initial period referenced in Section 1(e) above (such initial period is referred to herein as the "Initial Term"), subject to earlier termination or extension, in accordance with and subject to the terms of this Lease.

(b) Tenant shall have options (each, an "Extension Option") to extend the Term of this Lease for two (2) periods of five years each (the "Extension Term"). Tenant may exercise an Extension Option only by delivery to Landlord of written notice given no later than six (6) months nor earlier than twelve (12) months prior to expiration of the then-current Term.

**4. DELIVERY OF POSSESSION; "AS IS" CONDITION.** Subject to Landlord's Work as set forth in Exhibit B-1 below, Tenant hereby accepts the Premises on the Effective Date, in their current "AS IS" condition, without representation or warranty, express or implied, and Tenant acknowledges that Tenant has fully inspected the heating, ventilation, air conditioning and plumbing systems and all other utilities and that they are in good working condition.

### **5. RENT; SECURITY DEPOSIT.**

(a) Tenant shall pay Landlord the Monthly Rent designated in Section 1(f) and, if applicable 3(b), in monthly installments in advance, on the first day of each and every calendar month during the Term, subject to the conditional abatement described in Section 1(f). In the event the Term of this Lease commences on a day other than the first day of a calendar month or ends on a day other than the last day of a calendar month, then the rent (as hereinafter defined) for such periods shall be prorated in the proportion that the number of days this Lease is in effect during such periods bears to the actual number of days in such month, and such rent shall be paid at the commencement of such period. All charges to be paid by Tenant under this Lease shall constitute rent and are collectively referred to herein as “Rent”. Except as otherwise specifically provided in this Lease, Rent shall be paid to Landlord, without any prior notice or demand therefor, and without any abatement, deduction or offset whatsoever except as specifically authorized in this Lease, in lawful money of the United States of America, which shall be legal tender at the time of payment, at the address of Landlord designated in Section 1(c) or to such other person or at such other place as Landlord may from time to time designate in writing.

(b) Concurrently with Tenant’s execution and delivery of this Lease, Tenant shall deliver to Landlord the amount described in Section 1(g) (the “Security Deposit”). The Security Deposit shall be held by Landlord as security for the faithful performance by Tenant of all of the terms, covenants, and conditions of this Lease to be kept and performed by Tenant during the Term hereof. If an Event of Default (as defined in Section 21) by Tenant occurs under this Lease, including but not limited to the provisions relating to the payment of Rent, Landlord may (but shall not be required to) use all or any part of the Security Deposit for the payment of any Rent or any other sum in default, or for the payment of any other amount which Landlord may spend or become obligated to spend by reason of the Event of Default or to compensate Landlord for any loss or damage which Landlord may suffer by reason of the Event of Default. If any portion of the Security Deposit is so used or applied, Tenant shall, within ten (10) days after demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to the then required amount. Landlord shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on such Security Deposit. TENANT WAIVES ANY RIGHTS IT MAY HAVE UNDER SECTION 1950.7 OF THE CALIFORNIA CIVIL CODE WITH RESPECT TO THE SECURITY DEPOSIT. Within thirty (30) days following the expiration of the Term or earlier termination of this Lease and Tenant’s performance of all of its obligations under this Lease, the Security Deposit shall be returned to Tenant. If Landlord sells its interest in the Project during the Term hereof and deposits with the purchaser thereof the then unappropriated Security Deposit funds, identified in writing as the Security Deposit and delivered as the Security Deposit (and not as any deposit or payment by Landlord), Landlord shall be discharged from any further liability with respect to such Security Deposit funds accruing after the date Landlord deposits such Security Deposit with such purchaser.

(c) Tenant acknowledges that the late payment by Tenant to Landlord of any sums due under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any encumbrance or note secured by all or any portion of the Project. Therefore, if Tenant fails to pay any Rent within five (5) business days after the due date under

this Lease for any reason, Tenant shall pay to Landlord, as Additional Rent, the sum of five percent (5%) of the overdue amount as a late charge. Any past-due installment of Rent shall also bear interest, the "Interest Rate" (as hereinafter defined), from the date due until paid. For purposes of this Lease, the "Interest Rate" shall mean the lesser of (i) ten percent (10%) per annum, or (ii) two percent (2%) per annum plus the then prevailing per annum "prime rate" as most recently published in the Wall Street Journal (or the then "prime" rate as established by a comparable alternate source reasonably designated by Landlord in the event the Wall Street Journal ceases to publish a prevailing "prime" rate), provided that in no event shall the Interest Rate exceed the maximum rate permitted by applicable law. Landlord's acceptance of any late charge or interest shall not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Landlord from exercising any of the other rights and remedies available to Landlord under this Lease, at law or in equity.

**6. POSSESSORY INTEREST TAXES.** TENANT ACKNOWLEDGES AND AGREES THAT FOR SO LONG AS LANDLORD'S INTEREST IN THE PROJECT IS OWNED BY THE STATE OR ANY LOCAL PUBLIC ENTITY OR GOVERNMENT, INCLUDING WITHOUT LIMITATION A MUNICIPAL CORPORATION, THIS LEASE AND TENANT'S INTEREST HEREUNDER MAY CONSTITUTE A POSSESSORY INTEREST SUBJECT TO PROPERTY TAXATION AND AS A RESULT TENANT MAY BE SUBJECT TO THE PAYMENT OF POSSESSORY INTEREST TAXES LEVIED ON THAT INTEREST. TENANT SHALL PAY SUCH TAXES WHEN DUE.

**7. USE.**

(a) Tenant shall use the Premises for the use or uses set forth in Section 1(j) above subject to any limitations therein and the limitations hereinafter set forth. It is expressly understood and agreed that Tenant makes no representations or warranties, oral or written, as to the level of gross sales it may generate from the Premises or the number of customers that it will bring to the Building. Tenant shall use and occupy the Premises in compliance with all applicable federal, state and local laws, codes, rules, ordinances, statutes and other requirements (collectively, "Laws") (which Laws shall include, without limitation, the Americans with Disabilities Act, applicable fire-life safety codes of the City of Beverly Hills, and governmental requirements imposed in connection with the development or occupancy of the Building, including, without limitation, participation in any transportation management programs and compliance with any applicable air quality/trip reduction requirements), and shall, upon written notice from Landlord, discontinue any use of the Premises which is declared by any governmental authority having jurisdiction to be a violation of applicable Laws. Subject to the first sentence of the second paragraph of Exhibit "B-1", Tenant shall make any and all alterations or improvements to the Premises required to comply with applicable Laws, except that Tenant shall not be required to make structural alterations or improvements to the Premises required to comply with applicable Laws unless such compliance is necessitated by the Tenant Improvements or by Tenant's particular use of, or Alterations to, the Premises. Except for Tenant's obligations in the preceding sentence, Landlord, at its sole cost and expense, shall comply with all Laws affecting the Premises, the Building and/or the Project including, without limitation, all accessibility for the disabled requirements, if noncompliance would materially and adversely affect Tenant (including, without limitation, increasing the cost of, or time for, completion of the initial Tenant Improvements, or delaying the issuance of permits for the initial

Tenant Improvements). Tenant shall promptly, upon demand, reimburse Landlord for any additional premium charged for any existing insurance policy or endorsement required by reason of Tenant's failure to comply with the provisions of this Section or by reason of Tenant's use or occupancy of the Premises in violation of this Lease. Tenant shall not do or permit anything to be done in or about the Premises which will in any manner unreasonably obstruct or interfere with the rights of other tenants or occupants of the Project, or use or allow the Premises to be used for any unlawful purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises. Tenant shall not place a load upon the Premises exceeding the average pounds of live load per square foot of floor area specified for the Building by Landlord's architect, and Landlord reserves the right to prescribe the weight and positions of all safes, files and heavy equipment which Tenant desires to place in the Premises so as to distribute properly the weight thereof.

Except for supplies typically used in an office or retail area in the ordinary course of business, such as copier toner, liquid paper, glue, ink, cleaning solvents and Tenant's products used in connection with a permitted use of the Premises, for use in the manner for which they were designed and in accordance with applicable Laws, and in such amounts as may be normal for the business operations conducted by Tenant in the Premises, neither Tenant nor any of its subtenants nor any of their respective employees, agents, representatives, contractors, licensees or invitees, shall use, handle, store or dispose of any Hazardous Materials in, on, under or about the Premises, the Building or the Project. In the event of a breach of the covenant contained in the immediately preceding sentence, or in the event Hazardous Materials are released or otherwise caused to be located in, on, under or about the Premises, Building or Project by Tenant, any of its subtenants, or any of their respective employees, agents, representatives, contractors, licensees or invitees, Tenant shall be responsible for and shall indemnify, defend and hold Landlord harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities and losses (including, without limitation, diminution in valuation of the Premises, Building or Project, and sums paid in settlement of claims and for reasonable attorneys' fees, consultant fees and expert fees) which arise during or after the Term as a result of any contamination directly or indirectly arising from the activities of Tenant or its subtenants or any of their respective employees, agents, representatives, contractors, licensees or invitees. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work caused by Tenant or any of its subtenants or any of their respective employees, agents, representatives, contractors, licensees or invitees in violation of this Lease. Tenant shall promptly take all actions, at its cost and expense as are necessary to return the Premises, Building and/or Project to the condition existing prior to the introduction of any such Hazardous Materials by Tenant or any of its subtenants or any of their respective employees, agents, representatives, contractors, licensees or invitees in violation of this Lease, provided Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld, and Tenant shall fully cooperate in connection with any such clean-up, restoration or other work, at Tenant's cost and expense. Furthermore, Tenant shall immediately notify Landlord of any inquiry, test, investigation or enforcement proceeding by or against Tenant or the Premises concerning the presence of any Hazardous Materials in violation of this Lease. Landlord, at Landlord's election, shall have the sole right, at Tenant's expense, to negotiate, defend, approve and appeal any action taken or order issued by any governmental authority with

regard to any Hazardous Materials contamination which Tenant is obligated hereunder to remediate. The covenants of Tenant under this Section shall survive the expiration of the Term or earlier termination of this Lease.

Subject to Tenant's obligations set forth above, if any Hazardous Materials is deposited, released, stored, disposed, discovered or present in or on the Premises, Building and/or Project in violation of applicable Law, Landlord, at Landlord's expense, shall promptly and diligently, to the extent required by any applicable Law, and in compliance with such laws, remove, transport and dispose of such Hazardous Materials. Landlord shall use its best efforts to minimize direct and indirect impact on Tenant, including its operations in the Premises and effective use of the Common Areas, if any, during all activities related to remediation. If any Hazardous Materials are in violation of Law, or must be remediated in order to enable Tenant to complete its initial Tenant Improvements, and are discovered in the Premises during Tenant's inspection of the Premises, construction of its initial tenant improvements or at any other time during the Term, then Landlord shall promptly remove the same or cause it to be removed at Landlord's sole cost and expense and if the foregoing delays the construction or installation of Tenant's improvements, then the Commencement Date shall be extended for one (1) day for each day of delay. Landlord shall protect, defend, indemnify and hold harmless Tenant and its agents, officers, directors, contractors, employees, parents, subsidiaries, successors and assigns from and against any claims directly or indirectly related to a violation by Landlord of applicable laws except to the extent such violations are related to Tenant's, or Tenant's agents, contractors or employees use, manufacture, storage, release or disposal of Hazardous Materials on the Premises. This indemnity shall survive the termination of this Lease.

As used in this Lease, "Hazardous Materials" shall mean asbestos, petroleum fuel, natural gas or any fraction thereof, and any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government, including, but not limited to, any material or substance defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance," "hazardous material" or "toxic pollutant" under state or federal laws, statutes or regulations, including, without limitation, the California Health and Safety Code anti/or tinder the Comprehensive Environmental Response, Compensation and Liability Act, 42. U.S.C. §9601, et seq.

**8. TAXES ON TENANT'S PERSONAL PROPERTY.** Tenant shall be liable for and shall pay, before delinquency, all taxes levied against any personal property and/or trade fixtures placed by Tenant in or about the Premises. If any such taxes on Tenant's personal property, trade fixtures or Alterations are levied against Landlord or Landlord's property or if the assessed value of the Premises or the Project is increased by the inclusion therein of a value placed upon such personal property, trade fixtures or Alterations, Tenant shall pay the amount thereof as invoiced to Tenant by Landlord within thirty (30) days following receipt of such invoice together with reasonable evidence of such allocation, provided that Tenant may withhold payment in connection with Tenant's contesting the tax (if withholding payment is permitted by applicable Law), and Landlord will reasonably cooperate with Tenant, at no cost to Landlord in connection with such contest.

**9. CONDITION OF PREMISES.** Tenant acknowledges that except for the Landlord's Work (which is to be completed by Landlord at Landlord's expense) and Landlord's repair and maintenance obligations under the express terms of this Lease: (i) the lease of the Premises by Tenant pursuant hereto shall be on an "as is" basis, (ii) neither Landlord nor any employee, representative or agent of Landlord has made any representation or warranty (express or implied) with respect to the Premises or any other portion of the Project, and (iii) Landlord shall have no obligation to improve or alter the Premises, Building or Project for the benefit of Tenant.

**10. ALTERATIONS.**

(a) Tenant shall not make or allow to be made any alterations, additions or improvements (collectively, any "Alterations") in or to the Premises during the Term without obtaining Landlord's prior written consent (which consent shall not be unreasonably withheld or delayed); except that Tenant may make interior, non-structural Alterations to the Premises costing less than Fifty Thousand Dollars (\$50,000.00) per work of improvement and not (i) requiring the demolition of any existing improvements or (ii) affecting the roof, structure, mechanical or utility systems serving the Premises or the exterior appearance of the Building, without Landlord's prior consent but upon at least ten (10) business days' prior written notice to Landlord. Any request for consent to Alterations requiring consent and a building permit shall be accompanied by two (2) complete sets of plans and specifications for the proposed Alterations suitable for submission to Landlord's architect for evaluation and a statement of the identity of the contractor who will perform such Alterations. If Landlord's consent is required for any Alterations, Tenant shall pay any out-of-pocket costs incurred by Landlord in contracting with qualified third parties to evaluate the plans and specifications (such as general contractor's, architects' and engineers' fees). In addition, as a condition to Landlord's granting of its consent to any Alterations, Landlord shall have the right to approve Tenant's designated contractor performing such Alterations, such approval not to be unreasonably withheld or delayed (provided that in any event Building standard subcontractors shall be used for work on Building roof, exterior, mechanical and utility systems), and Landlord shall have the right to require that Tenant furnish assurances reasonably satisfactory to Landlord that all contractors and subcontractors who will perform such work have in force workers' compensation and such other employee and comprehensive general liability insurance in accordance with the standards set forth in Section 17(a) (but with a liability limit of not less than Two Million Dollars (\$2,000,000.00)), and such other insurance as Landlord reasonably deems necessary to supplement the insurance coverage provided for in Section 17(a). Tenant's contractor and any subcontractors shall name the City of Beverly Hills as additional insured by endorsement. All Alterations work to be performed by Tenant in the Premises requiring the consent of Landlord pursuant hereto shall be performed in accordance with any reasonable conditions or regulations imposed by Landlord. All Alterations work (whether or not Landlord's consent is required therefor) shall be completed in a good and workmanlike manner and in accordance with all applicable Laws. All Alterations requiring Landlord's consent shall be completed in accordance with the approved plans and specifications therefor. Promptly following the completion of any Alterations where the preparation of "as-built" plans would be customary for the particular Alterations work performed, Tenant shall deliver to Landlord both a "hard" copy and a copy on CAD diskette of the "as built" plans and specifications (including all working drawings) for such Alterations promptly following the completion of any Alterations for which any governmental

permit, approval or sign-off is required under applicable Laws, Tenant shall deliver to Landlord a copy of signed-off permits, inspection cards or other documentation, if any is available given the nature of the Alterations work performed, evidencing governmental approval of completion of the work. Any supervision by Landlord of such Alterations shall in no event constitute Landlord's approval of the work so performed, nor shall Landlord be responsible for or have any liability with respect to such supervision or work.

(b) All Alterations upon the Premises shall become the property of Landlord upon the expiration of the Term or earlier termination of this Lease, and shall remain upon and be surrendered with the Premises, as part thereof, at the expiration of the Term or earlier termination of this Lease (but exclusive of Tenant's trade fixtures and personal property as further provided in Section 10(c) below). If Landlord requires Tenant to remove any Alterations, Landlord shall notify Tenant in writing at the time of Landlord's consent to such Alterations, and Tenant, at its sole cost and expense, agrees to remove the identified Alterations on or before the expiration of the Term or earlier termination of this Lease and repair any damage to the Premises caused by such removal (or, at Landlord's option, Tenant agrees to pay to Landlord Landlord's reasonable estimate of the costs of such removal and repair prior to such expiration or termination). Notwithstanding the foregoing, in no event shall Tenant be required to remove any restroom fixtures, flooring, ceilings, walls or utility or electrical components located inside the walls or HVAC systems.

(c) Notwithstanding the foregoing or any other provision of this Lease, all articles of personal property and all business and trade fixtures (which are susceptible of removal without material damage to the Premises and which are not permanently affixed to the Premises), machinery, equipment, furniture and removable partitions owned by Tenant or installed by Tenant at its expense in the Premises shall be and remain the sole property of Tenant and may be removed by Tenant at any time during the Term of this Lease and shall be removed by Tenant prior to the expiration or any earlier termination of this Lease, provided that Tenant shall at its sole expense repair any damage caused by such removal. If Tenant shall fail to remove all of its personal property and business and trade fixtures from the Premises upon the expiration of the Term or earlier termination of this Lease for any cause whatsoever, Landlord may, at its option, either treat such property as being conveyed to Landlord in which case the same shall automatically and without further action be deemed to be the sole property of Landlord, or remove the same in any manner that Landlord shall choose, and store or dispose of said property without liability to Tenant for loss thereof, and Tenant agrees to pay to Landlord upon demand any and all expenses incurred in such removal, including court costs, reasonable attorneys' fees and storage charges on such property for any length of time that the same shall be in Landlord's possession. In the alternative, Landlord may, at its option, sell said property, or any of the same, in such manner as Landlord determines to be appropriate in Landlord's reasonable business judgment, for such prices as Landlord may obtain and apply the proceeds of such sale to any amounts due under this Lease from Tenant to Landlord and to the expense incident to the removal and sale of such property. Tenant waives the benefit of any statutory provisions governing the treatment by a landlord of a tenant's personal property left in leased premises following the expiration of the lease, in the event Tenant fails to remove all of its property from the Premises upon the expiration of the Term or earlier termination of this Lease, the parties hereby agreeing that the provisions of this Lease constitute the express agreement of the parties with respect thereto and are intended to govern such situation. In addition, Tenant may remove

from the Premises all items installed by Tenant that are indicative of Tenant's business and may otherwise "de-identify" the Premises, as Tenant reasonably believes necessary or appropriate the protection of Tenant's interest in Tenant's or Franchisor's trademarks, trade names or for copyrights. Tenant shall repair any damage to the Premises or the Building caused by such removal, including patching and filling holes.

## 11. MAINTENANCE AND REPAIRS.

(a) Tenant shall keep, maintain and preserve the interior and nonstructural portions of the Premises in a good condition and repair, and shall, as and when needed, at Tenant's sole cost and expense, make all repairs to the Premises, store front, and every part thereof and all personal property, trade fixtures and equipment within the Premises. Subject to the provisions of Section 10(c) above, upon the expiration of the Term or sooner termination of this Lease, Tenant shall surrender the Premises to Landlord in the same condition as when received, as improved by the Tenant Improvements and permitted Alterations which Tenant is not required to remove pursuant to Section 10(b) above, subject to reasonable wear and tear, damage or destruction by fire or other casualty or condemnation, and damage caused by Landlord. Subject to the provisions of Sections 18 and 19 below, there shall be no abatement of Rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Project or in or to fixtures, appurtenances and equipment therein. Landlord and Tenant acknowledge that the Premises included a stairway and corridor that may be improved by Tenant pursuant to Exhibit B-2, but will be subject to Section 11(c) below and will be useable as Common Area by Tenant and AT&T.

(b) Landlord shall maintain in good condition and repair the structural roof (including any skylights, and including as needed any replacement thereof), roof membranes, gutter system, handicap lift, exterior and other weight-bearing walls, structural elements, and foundation of the Building, but not any improvements installed by Tenant.

(c) Landlord shall repair any damage caused by AT&T to Common Areas (as defined in Section 2(c) above) used by AT&T.

**12. LIENS.** Tenant shall not permit any mechanics', materialmen's or other liens to be filed against the Project nor against Tenant's leasehold interest in the Premises on account of any work performed by or on behalf of Tenant or its employees, agents, invitees or contractors. Landlord shall have the right at all reasonable times to post and keep posted on the Premises any notices which it deems necessary for protection from such liens. If any such liens are filed and are not discharged by Tenant (by bonding or otherwise) within forty (40) days following receipt of notice thereof from Landlord), Landlord may, without waiving its rights and remedies based on such breach by Tenant and without releasing Tenant from any of its obligations, cause such liens to be released by any means it shall deem proper, including payment in satisfaction of the claim giving rise to such liens. Tenant shall pay to Landlord, as additional Rent, within ten (10) business days of receipt of written notice by Landlord, any sums paid by Landlord to remove such liens.

**13. ENTRY BY LANDLORD.** Landlord and its employees, agents, representatives, consultants and/or contractors shall have the right from time to time with reasonable advance notice to Tenant (but without the requirement of such notice to Tenant in the event access is necessary to deal with an emergency situation) to enter the Premises to inspect the same, to supply any service to be provided by Landlord to Tenant hereunder, to show the Premises to prospective purchasers, encumbrancers or tenants, to post "for lease" or similar signs in the Premises during the last six (6) months of the Term at reasonable locations provided such signs shall not be larger than two feet by two feet in size, or to post notices of non-responsibility. Landlord shall minimize any interference with the operation of Tenant's business from the Premises resulting from any such entry. Landlord shall at all times have and retain a key with which to unlock all doors to and in the Premises. In the event of an emergency, Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in order to obtain entry to the Premises. Any entry to the Premises obtained by Landlord by any of said means, or otherwise, shall not be construed or deemed to be a forcible or unlawful entry into the Premises, or an eviction of Tenant from the Premises or any portion thereof. It is understood and agreed that no provision of this Lease shall be construed as obligating Landlord to perform any alterations, improvements or decorations, except as otherwise expressly agreed in writing by Landlord. When entering or performing any repair or other work in the Premises, Landlord, its agents, employees and/or contractors (a) shall identify themselves to Tenant's personnel immediately upon entering the Premises, and (b) shall not unreasonably affect, interrupt or interfere with Tenant's use, business or operations on the Premises or unreasonably obstruct the visibility of or access to the Premises. Landlord will use good faith efforts to schedule with Tenant repair or other work in the Premises so that it is performed after Tenant's business hours.

**14. UTILITIES AND SERVICES.** Tenant agrees not to connect any apparatus or device with wires, conduits or pipes, or other means by which such services are supplied, for the purpose of using amounts of such services in excess of the capacity within the Premises without the written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. All utility services to the Premises are measured by separate meters and/or submeters to the Premises. Tenant agrees to pay directly to the appropriate utility company all charges for utility services supplied to the Premises. Landlord shall not be liable in damages for any failure or interruption of any utility or service and no failure or interruption of any utility or service shall entitle Tenant to terminate this Lease or discontinue making payments of Rent payable by Tenant under this Lease.

**15. INDEMNIFICATION.**

(a) Subject to Section 17(b), Tenant shall indemnify, defend and hold Landlord harmless from and against, any and all claims, damages, judgments, suits, causes of action, losses, liabilities, penalties, fines, expenses and costs, including, without limitation, reasonable attorneys' fees and expenses (collectively, "Indemnified Claims"), arising or resulting from (i) any act or omission of Tenant, its subtenants and/or assignees and their respective agents, employees, representatives, licensees, contractors and/or invitees (collectively, the "Tenant Parties") in the Premises; (ii) Tenant's use of the Premises, conduct of Tenant's business by Tenant or any Tenant Parties, or any other activity, work or thing done, permitted or suffered by Tenant or any Tenant Parties, in or about the Premises, (iii) work performed by Tenant or any Tenant Parties in or about the Building or elsewhere within the Project. The foregoing provision

shall not extend to: (A) the negligence, wrongful act or strict or statutory liability of Landlord or its agents and contractors, and their respective employees, licensees, contractors and agents (the "Landlord Parties"); or (B) any defect or deficiency in the Building or the Premises which was not created by Tenant or any of the Tenant Parties. In case any action or proceeding is brought against Landlord by reason of any such Indemnified Claims, Tenant, upon notice from Landlord, agrees to promptly defend the same at Tenant's sole cost and expense by counsel approved in writing by Landlord, which approval shall not be unreasonably withheld.

Subject to Sections 14, 15(b) and 17(b), Landlord shall indemnify, defend and hold Tenant harmless from and against, any Indemnified Claims, arising or resulting from: (i) any act or omission of Landlord, its subtenants and/or assignees and their respective agents, employees, representatives, licensees, contractors and/or business invitees (excluding customers) (collectively, the "Landlord Parties") in the Premises; (ii) Landlord's use of the Premises, conduct of Landlord's business by Landlord or any Landlord Parties, or any other activity, work or thing done, permitted or suffered by Landlord or any Landlord Parties, in or about the Premises, (iii) work performed by Landlord or any Landlord Parties in or about the Building or elsewhere within the Project. The foregoing provision shall not extend to the negligence, wrongful act or strict or statutory liability of Tenant or its agents and contractors, and their respective employees, licensees, contractors and agents (the "Tenant Parties"). In case any action or proceeding is brought against Tenant by reason of any such Indemnified Claims, Landlord, upon notice from Tenant's, agrees to promptly defend the same at Landlord's sole cost and expense by counsel approved in writing by Tenant, which approval shall not be unreasonably withheld.

(b) In no event shall Landlord be liable for the indirect, consequential damages of Tenant, such as lost profits.

(c) The provisions of this Section 15 shall survive the expiration of the Term or earlier termination of this Lease.

**16. DAMAGE TO TENANT'S PROPERTY; WAIVER.** Notwithstanding anything contained in this Lease to the contrary, Landlord or its agents and employees shall not be liable for (a) loss or damage to any property by theft or otherwise, or (b) any damage to property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Building or from pipes, appliances or plumbing work therein or from the roof, street, sub-surface or from any other place or resulting from dampness or any other cause whatsoever. Landlord or its agents shall not be liable for interference with light or other similar intangible property interests. Tenant shall give prompt notice to Landlord in case of fire or accidents in the Premises or the Building, and of defects therein or in the fixtures or equipment located therein.

#### **17. INSURANCE.**

(a) Tenant shall, during the Term hereof, at its sole cost and expense, keep in full force and effect the following insurance:

(i) All-Risk insurance (including a vandalism and malicious mischief endorsement and sprinkler leakage coverage) upon all of Tenant's personal property, trade fixtures, furniture and equipment in the Premises, in an amount not less than one hundred percent (100%) of the full replacement cost thereof. Tenant shall have the right to self-insure plate glass.

(ii) Commercial general liability insurance coverage, including personal injury, bodily injury, broad form property damage, automobile, Premises operations hazard, contractual liability (covering the indemnity contained in Section 15(a)), and products and completed operations liability, with a combined single limit of not less than Three Million Dollars (\$3,000,000.00); provided, however, that Tenant shall have the right to satisfy such amounts by an umbrella insurance policy coverage provided that the amount of insurance required herein is allocated to and preserved for the Premises, as shown by reasonable evidence delivered to Landlord. Such insurance shall name Tenant as named insured thereunder and shall name Landlord as additional insured thereunder, shall contain a cross liability endorsement, and shall be primary and non-contributing with respect to any insurance maintained by Landlord. Such liability insurance shall insure Tenant and each additional insured for (1) the actions of Tenant and/or any of Tenant's employees, agents, representatives, contractors and/or invitees, (2) Alterations to, and occurrences in, the Premises, and (3) the use or operation of the Premises. Landlord shall have the right, from time to time, to require an increase in such liability insurance limit if consistent with then standard industry practices for prudent risk management by a tenant of comparably-sized premises within comparable buildings.

(iii) Workers' Compensation and Employer's Liability Insurance in form and amounts as required by applicable Law.

(iv) Any other insurance as Landlord may reasonably require from time to time.

The minimum limits of insurance set forth in this Section are not intended to limit the liability of Tenant under this Lease. All policies of insurance maintained by Tenant under this Section, shall be taken out with insurance companies holding a General Policyholders Rating of "A" and a Financial Rating of "VII" or better, as set forth in the most current issue of Best's Insurance Reports. As soon as practicable after the placing of the required insurance but prior to the date Tenant takes possession of all or any part of the Premises, Tenant shall deliver to Landlord certificates evidencing the existence of the amounts and forms of coverage required hereunder. No such policy shall be cancelable or reducible in coverage except after at least thirty (30) days' prior written notice to Landlord. Tenant shall, within thirty (30) days prior to the expiration of such policies, furnish Landlord with certificates of renewals or binders thereof; provided that if Tenant fails to furnish the same within five (5) business days after written notice from Landlord, then Landlord may obtain such insurance and Tenant shall reimburse Landlord for the cost thereof within ten (10) days after written demand. Tenant may satisfy its insurance obligations under this Lease by blanket, umbrella and/or, as to liability coverage in excess of One Million Dollars (\$1,000,000), excess liability coverage, so long as the coverage afforded under the applicable policy is not reduced or diminished as a result thereof.

(b) Landlord shall during the Term hereof, at its sole cost and expense, keep in full force and effect property insurance that shall include the Premises, the Building and the

Project (excluding Tenant's personal property on the Premises and Tenant Improvements) insuring against risks of direct physical loss or damage written by insurance companies licensed to do business in the state of California, together with such other insurance, and in such amounts, covering such other risks as Landlord may from time-to-time determine in its reasonable judgment, including, without limitation (if Landlord so elects), Commercial General Liability insurance and insurance against earthquake, flood and rental loss; provided Landlord shall carry insurance during the entire Term hereof with terms, coverages and companies (which shall be licensed to do business in California and shall be rated no lower than A-VII by A.M. Best Company) and such insurance shall cover the Project with amounts and standards no less than the amounts and standards that Tenant is obligated to maintain under the terms and conditions of this Lease. Any insurance procured by Landlord under this Section may be included in a policy or policies of blanket insurance covering additional items or locations or insureds.

(c) All policies of property damage insurance required hereunder shall include a clause or endorsement denying the insurer any rights of subrogation against the other party to the extent rights have been waived by the insured before the occurrence of injury or loss. Each party waives any rights of recovery against the other for injury or loss due to risks covered by policies of property damage insurance to the extent insurance proceeds covering the injury or loss are received by such party.

#### **18. DAMAGE OR DESTRUCTION.**

(a) If the Premises shall be damaged or destroyed by fire or other casualty so as to render all or a portion of the Premises untenable (which shall expressly include a loss of basic utility services to the Premises), then, for so long as Tenant is actually not occupying all or a portion of the Premises as a result of such prevention from use, Tenant shall be entitled to an equitable abatement of Tenant's obligation for payment of Monthly Rent on a proportionate basis to the extent that Tenant's use and enjoyment of the Premises is effectively prevented; provided, however, that if the event in question renders more than twenty percent (20%) of the Premises unusable, and Tenant does not use the Premises, then rent shall be abated altogether. The abatement shall commence as of the date of the casualty and continue during the period of such repair or reconstruction, until such time as Tenant is no longer so effectively prevented from using the Premises, Tenant is reasonably able to re-open for business in the affected area and Landlord has restored the Premises and the Building to substantially the same or better condition that existed before the date of the casualty.

(b) In the event of the total destruction or material damage to the Premises (i.e., with an expected cost to repair in excess of fifty percent (50%) or more of the then full replacement cost, and with an expected completion date of more than one (1) year from the date of material damage occurring) which is the result of an event not covered by insurance, then Landlord shall have the right to elect to terminate this Lease by written notice to Tenant delivered within sixty (60) days following the occurrence of the casualty. The proceeds from any insurance paid by reason of damage to or destruction of the Project or any part thereof insured by Landlord, shall belong to and be paid to Landlord. Tenant shall not be entitled to any compensation or damages from Landlord or Landlord's insurance provider for loss in the use of the whole or any part of the Premises and/or any inconvenience or annoyance by such damage, repair, reconstruction or restoration. Unless Landlord or Tenant elects to terminate this Lease as

hereinafter provided, Landlord shall use reasonable diligence to repair any casualty to the Premises, Building or Common Areas to the extent of available insurance proceeds, subject to delays and adjustment of insurance proceeds (provided that Tenant shall be responsible for the repair of the Tenant Improvements and Tenant's furniture, fixtures, equipment and personal property).

(c) In the event of material damage to the Project not caused by Tenant or any of its members, officers, employees or agents, and not otherwise resulting in termination of this Lease under Section 18(b) above, Landlord shall deliver written notice to Tenant within sixty (60) days following such casualty damage or occurrence setting forth Landlord's good faith estimate of the time required for completion of repair and/or restoration of the Project, and if: (i) such estimated time exceeds twelve (12) months from the occurrence of the casualty; or (ii) the restoration is not estimated to be completed at least eighteen (18) months before the expiration of the Term, Tenant may terminate this Lease by written notice to Landlord within thirty (30) days following Tenant's receipt of such notice (or in the case of phrase (iii), within thirty (30) days after expiration of the twelve month period, as extended by delays beyond Landlord's control). However, in the event the Lease is not so terminated, and Landlord fails to restore the Premises or the Building to substantially the same or better condition that existed before the date of the casualty, within such twelve-month period, as extended by delays beyond the control of Landlord, then Tenant may terminate this Lease by written notice given within thirty (30) days after the end of such twelve-month period, as so extended.

(d) In the event of any damage or destruction of all or any part of the Premises, Tenant agrees to immediately notify Landlord thereof.

(e) Landlord and Tenant hereby waive the provisions of any statutes (including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code) or court decisions which provide a party to a lease with a right to abatement of rent or termination of the lease when leased property is damaged or destroyed and agree that such event shall be exclusively governed by the terms of this Lease.

## **19. EMINENT DOMAIN.**

(a) If any part of the Premises shall be taken for any public or quasi-public purpose by any lawful power or authority by exercise of the right of appropriation, condemnation or eminent domain, or sold to prevent such taking, to such an extent as to render the Premises untenable or to the extent that Tenant's operation from the Premises is not reasonably practicable, Tenant shall have the right to terminate this Lease effective as of the date possession is required to be surrendered to said authority by written notice to Landlord by the effective date of such taking. Tenant may assert a claim for a separate award attributable to the value of any goodwill and any personal property or trade fixtures of Tenant which are taken, costs of Tenant's relocation, and the value of the leasehold estate, including any bonus value. If Tenant does not so elect to terminate, Landlord shall commence to restore the Premises and Common Areas to substantially their same condition prior to such taking, and a proportionate abatement of Monthly Rent shall be made for the time during which Tenant is deprived of use on account of such taking and restoration.

(b) In the event of a taking of the Premises or any part thereof for temporary use, (i) this Lease shall be and remain unaffected thereby and Rent shall abate for portions not useable by Tenant, and (ii) Tenant shall be entitled to receive for itself such portion or portions of any award made for such use with respect to the period of the taking which is within the Term, provided that if such taking shall remain in force at the expiration of the Term or earlier termination of this Lease, Tenant shall elect to either (i) perform Tenant's obligations set forth in Section 10(c) , or (ii) then pay to Landlord a sum equal to the reasonable cost of performing Tenant's obligations under Section 10(c) with respect to surrender of the Premises and upon such payment shall be excused from such obligations.

(c) Landlord and Tenant hereby waive the provisions of any statutes (including, without limitation, Section 1265.130 of the California Code of Civil Procedure) or court decisions which provide a party to a lease with a right to abatement of rent or termination of the lease when leased property is condemned or taken and agree that such event shall be exclusively governed by the terms of this Lease.

## 20. ASSIGNMENT AND SUBLETTING.

(a) Tenant shall not assign its interest in this Lease (an “assignment”) or sublease or permit occupancy by third parties of all or any part of the Premises (a “sublease”), without first obtaining Landlord’s prior written consent, which consent shall not be unreasonably withheld. Any assignment, sublease or encumbrance without Landlord’s prior written consent shall be voidable at Landlord’s election and shall constitute an Event of Default hereunder. Any transfer of more than fifty percent (50%) of Tenant’s ownership interests in one or more transfers, or the transfer by the controlling member of so much of its stock or membership interest that it is no longer the controlling member, shall constitute a voluntary assignment and shall be subject to the provisions of this Section 20; provided, however, that the provisions of this sentence shall not apply if Tenant is a publicly held corporation, the shares of stock in which are traded on a public exchange. Despite any contrary provision of this Lease, Tenant may assign its rights under this Lease or sublet all or a portion of the Premises, at any time during the Term without Landlord's prior written consent, to: (i) any parent, subsidiary or affiliate entity of Tenant; or (ii) the surviving entity in connection with a merger, consolidation or acquisition; or (iii) any entity acquiring all or substantially all of Tenant’s assets; (iv) Panera, LLC, if it is then the “franchisor” of Tenant’s business at the Premises, or (v) another franchisee of Panera, LLC; provided: (A) the transferee continues to operate the business conducted in the Premises under the same name and in the same manner as Tenant and pursuant to all the provisions of this Lease, (B) Landlord receives a copy of the assignment and the organizational documents of the transferee (redacted to omit financial information) within thirty (30) days after the date of the transfer, and (C) the net worth of the assignee (plus the net worth of any Lease guarantor under a lease guaranty acceptable to Landlord) is not less than Five Million Dollars (\$5,000,000.00), as shown by reasonable evidence delivered to Landlord. All of the foregoing transfers in this Section are hereinafter collectively referred to as “Permitted Transferees”, and an assignment or sublease to or with a Permitted Transferee are hereinafter referred to as a “Permitted Transfer”. The Extension Options granted to Tenant under Section 3 of this Lease may be exercised by a Permitted Transferee. Additionally, a Permitted Transfer shall also include the transfer of equity interests of Tenant without Landlord’s consent: (i) to another existing partner, and (ii) for estate planning, tax planning or marital planning purposes, (a) among immediate members of such

member's family; or (b) to a living trust or by will or intestacy. No assignment or sublease shall in any manner release Tenant from its liability under this Lease.

(b) No consent to an assignment or sublease shall constitute a further waiver of the provisions of this Section 20. If Landlord's consent is required for an assignment or sublease, Tenant shall notify Landlord in writing of Tenant's intent to assign this Lease or sublease the Premises, the name of the proposed assignee or subtenant, information concerning the financial responsibility of the proposed assignee or subtenant and the economic and other material terms of the proposed assignment or subletting, and Landlord shall, within fifteen (15) days after receipt of such written notice, and the financial responsibility information and such other information as may be requested by Landlord concerning the proposed assignee or subtenant, elect one of the following: (i) consent to such proposed assignment or sublease; or (ii) refuse such consent. In the event Landlord refuses such consent, Landlord shall provide to Tenant a reasonable statement explaining such refusal.

(c) Any assignee of Tenant's interest in this Lease which requires Landlord's prior consent hereby agrees that notwithstanding any consent by Landlord, it shall be a condition to such assignment that Landlord receive an instrument executed by such assignee and expressly enforceable by Landlord agreeing that such assignee assumes and agrees to be bound by all of the terms and provisions of this Lease and to perform all of the obligations of Tenant hereunder. Any subtenant of all or any portion of the Premises (whether or not under a subletting requiring Landlord's consent) hereby agrees that it shall be a condition to such sublease that Landlord receive an instrument executed by such subtenant agreeing that such sublease is subject and subordinate to this Lease and to all mortgages or deeds of trust; that Landlord may enforce the provisions of the sublease, including (following the occurrence of any default by Tenant under this Lease which is not cured within any applicable period for cure pursuant to Section 21 below) collection of rent; that in the event of termination of this Lease for any reason, including, without limitation, a voluntary surrender by Tenant, or in the event of any re-entry of repossession of the Premises by Landlord, Landlord may, at its option, either (i) terminate the sublease, or (ii) take over all of the right, title and interest of Tenant, as sublandlord, under such sublease, in which case such subtenant will attorn to Landlord, but that nevertheless Landlord will not (1) be liable for any previous act or omission of Tenant under such sublease, (2) be subject to any defense or offset previously accrued in favor of the subtenant against Tenant, or (3) be bound by any previous modification of any sublease made without Landlord's written consent, or by any previous prepayment by subtenant of more than one month's rent.

(d) In connection with any request for Landlord's consent to an assignment or sublease as required under the provisions of this Section, Tenant shall pay a \$1,500 processing fee to Landlord.

Additionally, in the event any assignment or sublease is approved, Landlord shall receive as additional rent hereunder one hundred percent (100%) of Tenant's "Excess Consideration" derived from such assignment or sublease. "Excess Consideration" shall mean all rent, additional rent, or other consideration actually received by Tenant and/or actually paid on behalf of Tenant in connection with the transaction (whether a sublease or assignment), which in the case of a sublease shall exceed the rent, additional rent and other sums payable by Tenant under this Lease during the term of the sublease on a per square foot basis if less than all of the

Premises is subleased, less the following (the "Exclusions"): (1) the reasonable costs actually incurred by Tenant for brokerage commissions, attorneys' fees, costs of improvements made by Tenant as part of the transaction and/or rent that would otherwise be paid for free rent periods granted (all as shown by reasonable evidence delivered to Landlord) and (2) the consideration reasonably and specifically allocated (as shown by reasonable evidence delivered to Landlord) and paid for the acquisition of Tenant's furniture, trade fixtures, equipment, and/or franchise rights, and (3) the reasonable amounts reasonably and specifically allocated (as shown by reasonable evidence delivered to Landlord) for and paid to Tenant in consideration of covenants not to compete, goodwill and the like (but goodwill and the like shall not be deemed to include amounts allocable to the so-called "bonus value" of this Lease, being the amount by which the rent payable under this Lease is less than the then fair market rental for the Premises). If part of the Excess Consideration shall be payable by the assignee or subtenant other than in cash, then Landlord's share of such non-cash consideration shall be in such form as is reasonably satisfactory to Landlord.

(e) Notwithstanding any permitted assignment or subletting (whether or not the same requires Landlord's consent pursuant to this Section), Tenant shall at all times remain directly, primarily and fully responsible and liable for all payments owed by Tenant under this Lease and for compliance with all obligations under the terms and conditions of this Lease. Landlord's waiver or consent to any assignment or subletting shall not relieve Tenant or any assignee or sublessee from any obligation under this Lease whether or not accrued and Tenant shall at all times remain directly, primarily and fully responsible and liable for all payments owed by Tenant under this Lease and for compliance with all obligations of Tenant under the terms and conditions of this Lease.

## **21. DEFAULT BY TENANT.**

(a) The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder by Tenant:

(i) The failure by Tenant to make any payment of Rent as and when due where such failure shall continue for a period of five (5) days after written notice thereof from Landlord to Tenant; provided however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure §1161 or any similar successor statute.

(ii) The failure by Tenant to observe or perform any of the covenants or other provisions of this Lease to be observed or performed by Tenant, other than as specified in Section 21(a)(i), where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant specifying wherein Tenant has failed to perform such obligation; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure §1161 or any similar successor statute; provided, further, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant shall promptly commence such cure within such thirty (30) day period and thereafter continuously and diligently prosecute such cure to completion.

(iii) The making by Tenant of any general assignment for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); the appointment of a trustee or receiver by petition of third party creditor to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within sixty (60) days; the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease where such seizure is not discharged within sixty (60) days; or if this Lease shall, by operation of law or otherwise, pass to any person or persons other than Tenant.

(iv) Any violation of Section 20(a).

(b) In the event of any such Event of Default by Tenant, in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder. In the event that Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant: (i) the worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus (ii) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental that Tenant proves could have been reasonably avoided; plus (iii) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus (iv) any other amount necessary to compensate Landlord for all actual damages caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of timings would be likely to result therefrom.

As used in Sections 21(b)(i) and (ii) above, the "worth at the time of award" is computed by allowing interest at the Interest Rate. As used in Section 21(b)(iii) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(c) In the event of any such default by Tenant, Landlord may also elect the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and lessor may recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations), in which case Landlord shall not unreasonably withhold its consent to assignment or subletting.

(d) Upon the expiration or earlier termination of this Lease, any personal property and trade fixtures and business fixtures, of Tenant may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant, or may be disposed of in any manner Landlord desires, in its sole and absolute discretion and without liability to the owner(s) thereof, and Tenant hereby waives any and all claims and rights it may have against Landlord for doing so, and agrees to defend, indemnify and hold Landlord harmless from and against any and all claims, losses, liabilities, damages, costs and expenses relating directly or indirectly to such storage or disposal. No re-entry or taking possession of the Premises by Landlord pursuant to this Section shall be construed as an election to terminate this Lease unless

a written notice of such intention is given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction.

(e) TENANT HEREBY WAIVES, FOR ITSELF AND ALL PERSONS CLAIMING BY AND UNDER TENANT, ALL RIGHTS AND PRIVILEGES WHICH IT MIGHT HAVE UNDER ANY PRESENT OR FUTURE LAW TO REDEEM THE PREMISES OR TO CONTINUE THIS LEASE AFTER BEING DISPOSSESSED OR EJECTED FROM THE PREMISES.

(f) If Tenant fails to perform any covenant or condition to be performed by Tenant, Landlord shall have the right (but not the obligation) to perform such covenant or condition (i) immediately, in the event of an emergency situation of imminent risk of personal injury or material property damage, or (ii) following Tenant's failure to cure such failure to perform within the period provided for cure after Tenant's receipt of written notice from Landlord. All reasonable costs incurred by Landlord in so performing shall immediately be reimbursed to Landlord by Tenant, together with interest at the Interest Rate computed from the due date, which shall be five (5) days following the receipt of such written notice. Any performance by Landlord of Tenant's obligations shall not waive or cure such default. All costs and expenses incurred by Landlord, including reasonable attorneys' fees (whether or not legal proceedings are instituted), in collecting Rent or enforcing the obligations of Tenant under the Lease pursuant to this Section shall be paid by Tenant to Landlord upon demand.

(g) All rights, options and remedies of Landlord contained in this Lease shall be construed and held to be cumulative to the extent permitted by law, and no one of them shall be exclusive of the other, and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease.

**22. DEFAULT BY LANDLORD.** Landlord shall not be in default hereunder unless Landlord fails to perform the obligations required of Landlord within thirty (30) days after written notice by Tenant to Landlord specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. Notwithstanding any contrary provision contained in this Lease, Landlord shall not be liable under any circumstances for any indirect or consequential damages or any injury or damage to, or interference with, Tenant's business, including, but not limited to, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use; provided, that the foregoing is not intended to be a waiver by Tenant of any rights it may have to condemnation awards in the event of a condemnation by Landlord of Tenant's interest under this Lease or Tenant's business. In the event of a default by Landlord, Tenant, at its option, without further notice or demand, shall have the right to any and all rights and remedies provided at law or in equity. All rights, options and remedies of Tenant contained in this Lease shall be construed and held to be cumulative to the extent permitted by law, and no one of them shall be exclusive of the other, and Tenant shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease. Additionally, if Landlord fails to make required repairs as set forth in this

Lease within thirty (30) days after Tenant's written notice (except when the repairs require more than thirty (30) days for performance and Landlord commences the repair within thirty (30) days and diligently pursues the repair to completion), Tenant may, at its option, after additional prior written notice to Landlord, undertake such repairs and deduct the cost thereof from the installments of Rent next falling due provided, however, that if Landlord disputes the default, Tenant may not deduct the costs from Rent unless and until Tenant shall have obtained a final judicial determination that Landlord was in default. Notwithstanding the foregoing, in the event of an emergency, Tenant may give Landlord such shorter notice as is practicable under the circumstances, and if Landlord fails to make such repairs immediately after being notified by Tenant, Tenant may immediately undertake such repairs and deduct the cost thereof from the installments of Rent next falling due provided, however, that if Landlord disputes the default, Tenant may not deduct the costs from Rent unless and until Tenant shall have obtained a final judicial determination that Landlord was in default.

**23. SUBORDINATION.** Landlord warrants that, as of the Effective Date, the Project is not subject to any ground lease, mortgage, deed of trust or other superior interest of any "Lienholder" (defined below). This Lease shall be subject and subordinate at all times to all ground leases which may hereafter be executed affecting the Building, the Project, or the land upon which the Building and Project are situated, or both, and any and all amendments, renewals, modifications, supplements and extensions thereof; and (b) the lien of any mortgage or deed of trust which may hereafter be executed, and any and all advances made thereunder, and interest thereon and all modifications, renewals, supplements, consolidations and replacements thereof; provided that if any such superior Lienholder or purchaser at any foreclosure sale or the successor of any them acquires the interest of the Landlord under this Lease for any reason, such successor shall not disturb Tenant's rights under this Lease, so long as there is no Event of Default by Tenant hereunder. Notwithstanding the foregoing, Tenant acknowledges that Landlord shall have the right to subordinate or cause to be subordinated any such ground leases or any such liens to this Lease. In the event that any ground lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall, notwithstanding any subordination, attorn to and become the tenant of the successor in interest to Landlord, at the option of such successor in interest, Tenant shall execute and deliver, upon reasonable prior notice from Landlord, any additional documents in such form as are reasonably acceptable to Landlord and Tenant evidencing the priority or subordination of this Lease with respect to any such ground leases or the lieu of any such mortgage or deed of trust provided that as a condition to any subordination by Tenant of any future ground lease, mortgage or deed of trust, Landlord shall obtain from any Lienholder to whose mortgage, deed of trust or ground lease this Lease is hereafter subordinated, an agreement of non-disturbance on in a form reasonably acceptable to Lienholder and Tenant for the benefit of Tenant. For purposes of this Lease, a "Lienholder" shall mean any mortgagee under a mortgage, beneficiary under a deed of trust, or lessor under a master lease or ground lease, encumbering all or a portion of the Project.

**24. ESTOPPEL CERTIFICATES.** Within ten (10) business days following any written request by Landlord to Tenant, Tenant shall execute and deliver to Landlord a statement, in a form reasonably satisfactory to the parties, certifying: (i) the Commencement Date; (ii) that this Lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this Lease is in full force and effect, as modified, and stating the date and nature of such

modifications); (iii) the date to which the sums payable under this Lease have been paid; (iv) that, to such party's knowledge, there are no current defaults under this Lease by Landlord except as specified in such statement; and (v) such other matters reasonably requested by Landlord. Any statement delivered pursuant to this Section may be relied upon by any existing or prospective mortgagee, beneficiary, encumbrancer, transferee or purchaser of the interest of Landlord in the Project, Premises or this Lease. In addition, Tenant shall have the right to request from Landlord a similar statement, and Landlord shall respond within the time frame provided for herein.

**25. DEFINITION OF LANDLORD.** The term "Landlord" as used in this Lease, so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners, at the time in question, of the fee title to the Premises. In the event of any transfer or assignment of such title, the successor in interest will be immediately and automatically liable for all obligations of Landlord arising under this Lease from and after the date of the transfer, assignment or conveyance, and the Landlord herein named (and in case of any subsequent transfers or conveyances, the then-grantor) shall be automatically freed and relieved from and after the date of such transfer, assignment or conveyance of all liability respecting the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter arising under this Lease; provided that Landlord's successor assumes all Landlord's obligations under this Lease arising after the transfer.

**26. SIGNAGE.** Subject in all events to applicable Laws and governmental approvals and requirements (and the prior written approval of Landlord as hereinafter set forth), Tenant may at Tenant's cost install exterior signs. The exact location, size, materials, coloring and lettering of all Tenant signage shall be subject to Landlord's prior written approval. Tenant, at Tenant's sole cost and expense, shall maintain all of Tenant's signage in first class condition and repair; provided, however, that if Tenant fails to commence, within ten (10) days after written notice from Landlord (or thereafter fails to diligently prosecute) any maintenance or repair of Tenant's signs, then Landlord may elect, at Landlord's sole option to maintain any or all of the Tenant's signage in good condition and repair (in which event Tenant shall be obligated to reimburse Landlord from time to time for all actual and reasonable costs and expenses incurred by Landlord in connection with the same upon billing therefor). Notwithstanding anything to the contrary contained herein, Tenant shall have the right, without Landlord consent, to install and maintain such interior signs that are professionally prepared and consistent with Tenant's Franchisor's interior sign program (including signage that may include cling-on signage).

**27. NOTICES.** All notices, demands, consents and approvals which may be or are required to be given by either party to the other hereunder shall be in writing and shall be either served personally, or sent by overnight courier, or sent by registered or certified mail, return receipt requested with postage prepaid, as follows: if to Tenant, addressed at the address(es) designated in Section 1(b), or if to Landlord, at the address(es) designated in Section 1(c) or to such other place as the party to be notified may from time to time designate by at least fifteen (15) days' notice to the other party. Such notices, demands, consents and approvals shall be deemed sufficiently served or given for all purposes hereunder, unless otherwise specified in this Lease, either (a) if personally served, upon such service, or (b) if sent by reputable overnight courier providing proof of delivery, or (c) by certified mail, on the date of delivery or refused delivery shown on the receipt.

**28. HOLDING OVER.** If Tenant holds over in the Premises after the expiration of the Term or earlier termination of this Lease, Tenant shall become a tenant at sufferance only, subject to the provisions of this Lease, except that Rent during such holding over shall equal one hundred fifty percent (150%) of the Rent in effect immediately prior to such expiration or termination. Acceptance by Landlord of Rent after such expiration or earlier termination shall not result in a renewal or extension of this Lease. If Tenant fails to surrender the Premises upon the expiration of the Term or earlier termination of this Lease, then Tenant shall indemnify, defend and hold harmless Landlord from and against any and all claims, demands, losses, liabilities, costs and/or expenses (including, without limitation, reasonable attorneys' fees and expenses) arising as a result thereof, including, without limitation, any claim made by any succeeding tenant founded on or resulting from such failure to surrender.

**29. QUIET ENJOYMENT.** Landlord covenants and agrees with Tenant that upon Tenant paying the Rent required under this Lease and paying all other charges and performing all of the covenants and provisions on Tenant's part to be observed and performed under this Lease, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises in accordance with and subject to the terms of this Lease, applicable laws and existing matters of record.

**30. BROKERS.** Landlord and Tenant each represent and warrant that it has had no dealings with any real estate broker, or agent in connection with the negotiation of this Lease except the brokers named in Section 1(k) above, and that it knows of no other real estate broker or agent who is or might be entitled to a commission or fee in connection with this Lease. Landlord shall pay fees and commissions to the brokers identified in Section 1(k) in connection with this Lease in accordance with a separate written agreement between Landlord and such brokers. In the event of any other claim for broker's or finder's fees or commissions in connection with this Lease, Landlord shall indemnify, hold harmless and defend Tenant from and against any and all liability, claims, demands, damages and costs (including, without limitation, reasonable attorneys' fees and other litigation expenses) on account of such claim if it shall be based upon any statement, representation or agreement claimed to have been made by Landlord, and Tenant shall indemnify, hold harmless and defend Landlord from and against any and all liability, claims, demands, damages and costs (including, without limitation, reasonable attorneys' fees and other litigation expenses) if it shall be based upon any statement, representation or agreement claimed to have been made by Tenant.

**31. MISCELLANEOUS.**

(a) Tenant shall faithfully observe and comply with the Rules and Regulations attached hereto as Exhibit C, and all modifications thereof and additions thereto from time to time delivered in writing to Tenant, so long as: (i) Landlord gives Tenant at least thirty (30) days prior written notice of all additions or revisions to the Rules and Regulations. Landlord shall not be responsible to Tenant for the violation or non-performance by any other tenant or occupant of the Project of their leases or of any of said Rules and Regulations. However, Landlord will not enforce any Rules and Regulations in a discriminatory manner. The Lease provisions shall control and supersede any contradictory or inconsistent provisions contained in the Rules and Regulations. Any modifications or additions to the Rules and Regulations shall not materially, or unreasonably interfere with Tenant's conduct of its business or Tenant's use or enjoyment of

the Premises, and shall not require payment of additional rent or the incurring of any other material costs and expenses.

(b) This Lease shall be governed by the laws of the State of California.

(c) Except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

(d) In the event either party shall institute any action or proceeding against the other party relating to this Lease, the party not prevailing in such action or proceeding shall reimburse the prevailing party for its disbursements incurred in connection therewith and for its reasonable attorneys' fees and costs, in addition to the foregoing award of attorneys' fees and costs to the prevailing party, the prevailing party shall be entitled to its attorneys' fees and costs incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Lease into any judgment.

(e) The waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any term, covenant or condition herein contained, nor shall any custom or practice which may become established between the parties in the administration of the terms hereof be deemed a waiver of or in any way affect the right of either party to insist upon the performance by the other party in strict accordance with the terms of this Lease. The acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No acceptance by Landlord of a lesser sum than that owed and due pursuant to this Lease shall be deemed to be other than on account of the earliest installment of such Rent or other amount due, nor shall any endorsement or statement on any check or any letter accompanying any check be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or other amount or pursue any other remedy provided in this Lease.

(f) Submission of this document for examination or signature by Tenant does not constitute a reservation of or option for lease, and it is not effective as a lease or otherwise until execution by and delivery to both Landlord and Tenant.

(g) Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

(h) If any term or provision of this Lease, or the application thereof to any persons or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provisions to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and shall be enforceable to the extent permitted by law.

(i) Tenant and Landlord shall execute and acknowledge a short form memorandum of this Lease for recording purposes in the form attached hereto as Exhibit D.

(j) In consideration of the benefits accruing hereunder, and notwithstanding anything contained in this Lease to the contrary, Tenant and all successors and assigns covenant and agree that, in the event of any actual or alleged failure, breach or default hereunder by Landlord or in the event of any other action against Landlord with respect to this Lease, their sole and exclusive remedy shall be against Landlord's interest in the Building and the Project. Tenant and all such successors and assigns agree that the obligations of Landlord under this Lease do not constitute personal obligations of the councilmembers or officers of Landlord, and Tenant shall not seek recourse against them or any of their personal assets for satisfaction of any liability with respect to this Lease.

(k) If in connection with obtaining financing for the Project any lender shall request modifications of this Lease as a condition to Landlord obtaining such financing, Tenant will not unreasonably withhold or delay its consent thereto, provided that such modifications do not increase the financial obligations of Tenant or adversely affect Tenant's rights hereunder. Landlord shall reimburse Tenant for its reasonable attorneys' fees and costs associated with analyzing and negotiating any such modification.

(l) This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, but any number of which, taken together, shall constitute one and the same instrument.

(m) This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provisions of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

(n) Nothing contained herein shall be deemed to limit, restrict, amend or modify, or to constitute a waiver or release of, any ordinances, notices, orders, rules, regulations or requirements (now or hereafter enacted or adopted and/or as amended from time to time) of the City of Beverly Hills or its departments, commissions, agencies and boards and the officers thereof, including any general plan or any zoning ordinances, or any of the duties, obligations, rights or remedies of the City of Beverly Hills thereunder or pursuant thereto or the general police powers, rights, privileges and discretion of the City of Beverly Hills in the furtherance of the public health, welfare and safety of the inhabitants thereof. To Landlord's knowledge, as of the Effective Date, this Lease does not violate any of the ordinances, orders, rules, regulations or requirements of the City of Beverly Hills.

(o) The City Manager (or his designee) of Landlord shall have the authority to give, in writing, all consents and approvals on behalf of the Landlord under this Lease.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

**LANDLORD:**

CITY OF BEVERLY HILLS

By: \_\_\_\_\_  
William W. Brien, MD,  
Mayor

ATTEST:

By: \_\_\_\_\_ (SEAL)  
Byron Pope,  
City Clerk

APPROVED AS TO FORM:

By: Laurence S. Wiener  
Laurence S. Wiener  
City Attorney

**TENANT:**

FIRST PICKS BREAD COMPANY IX L.P.,  
a Delaware limited partnership

By: FIRST PICKS GP LLC,  
a Delaware limited liability company  
Its: General Partner

By: First Picks Holdings LLC  
a Delaware limited liability  
company  
Its: Sole Member

By: Clarence Mah  
Clarence Mah  
Its: Manager

APPROVED AS TO CONTENT:

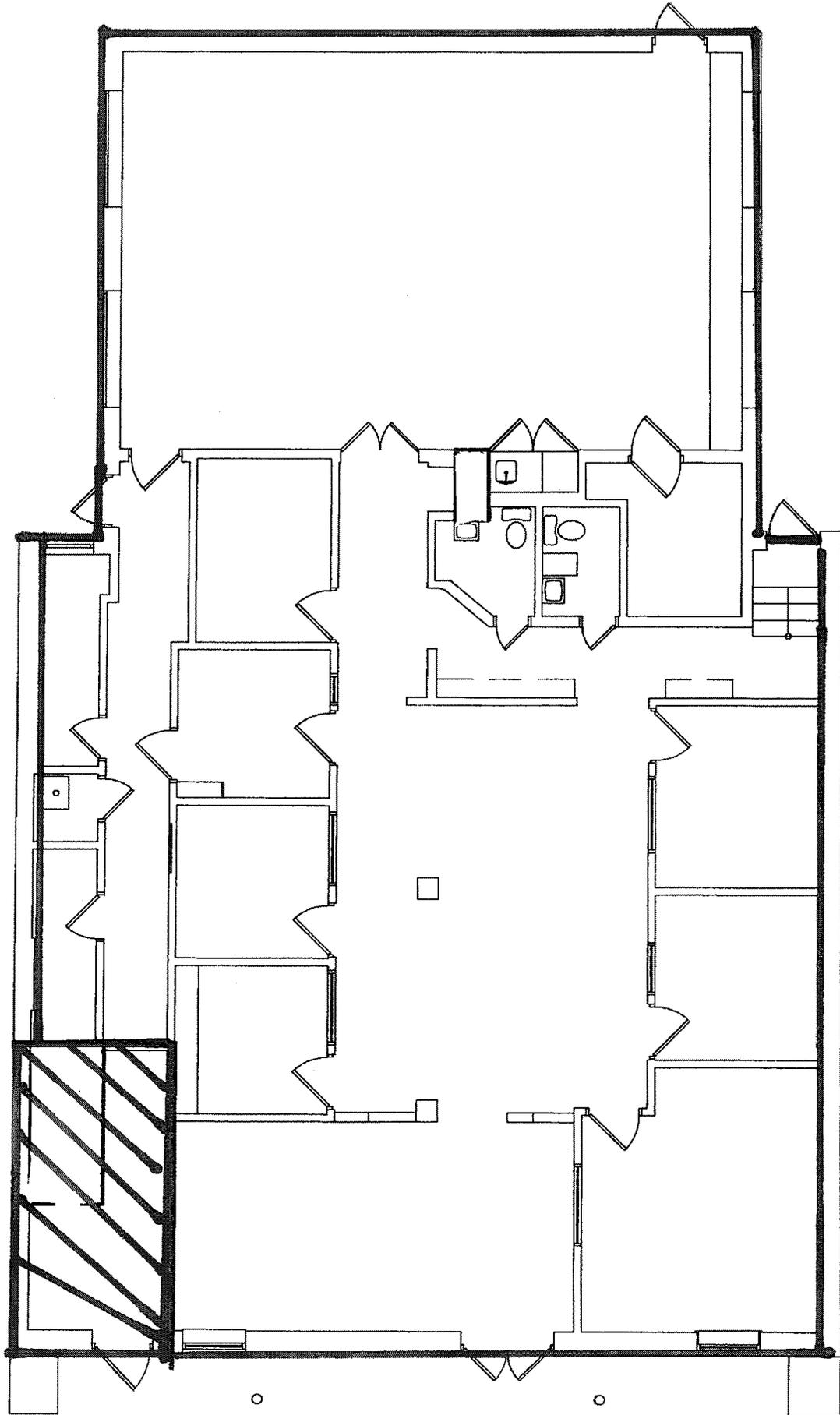
\_\_\_\_\_  
Jeffrey Kolin, CCM, City Manager

\_\_\_\_\_  
Scott Miller,  
Chief Financial Officer

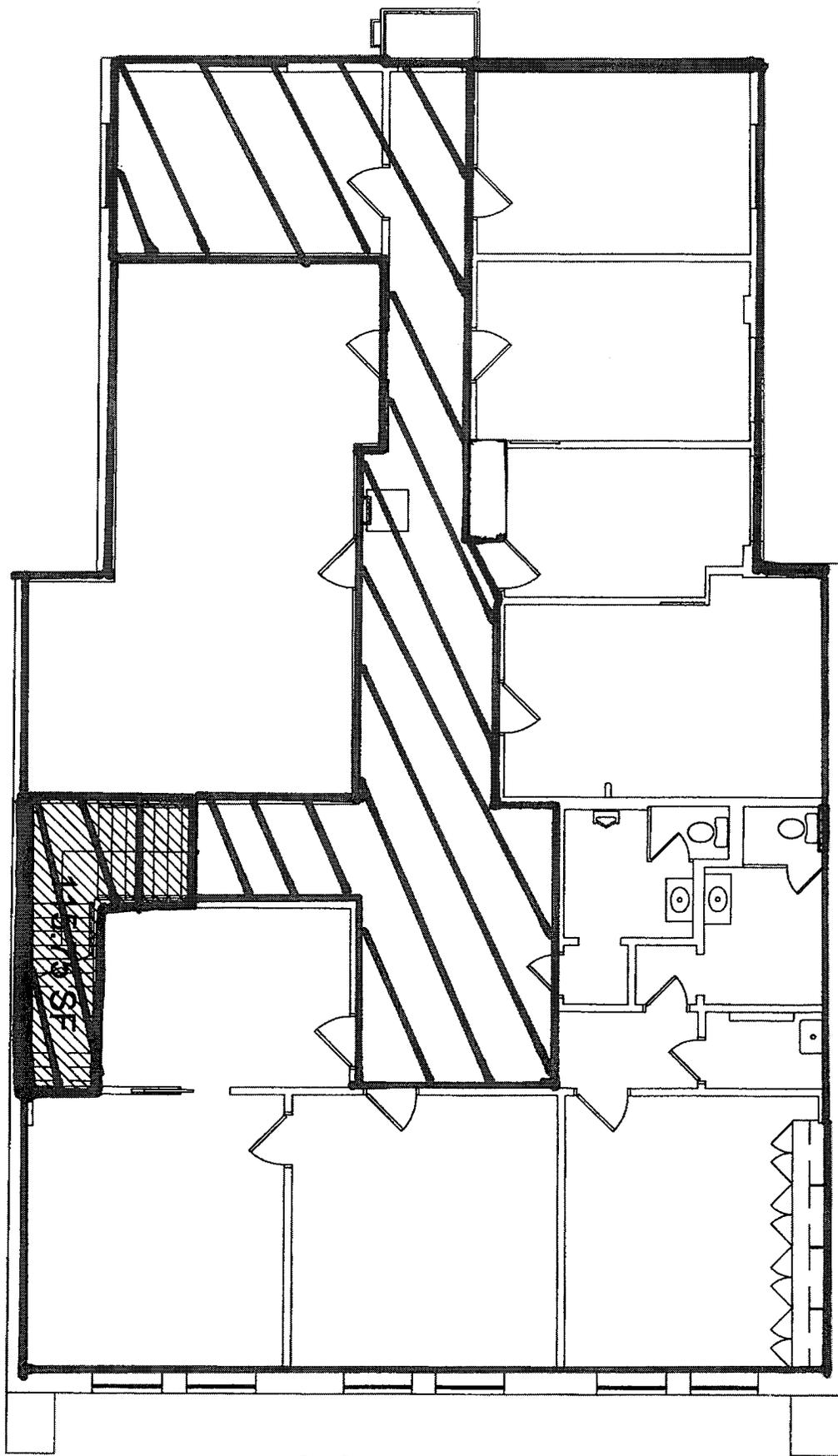
**EXHIBIT A**

**DIAGRAM OF PREMISES**

(Attached.)



First Floor



Second Floor

## **EXHIBIT B-1**

### **LANDLORD'S WORK**

Landlord shall perform the abatement of any existing Hazardous Materials in compliance with applicable Law, and Landlord shall install a lift that is useable by handicapped persons at a location approved by Tenant (which approval shall not be unreasonably withheld, conditioned or delayed) as may be required for ADA-compliant access to the 2nd floor of the Building.

Notwithstanding that Landlord intends to deliver possession of the Premises in its then "as is" condition, Landlord shall correct with reasonable diligence (at Landlord's cost) any latent defects or failures to comply with law that would increase the cost of, or delay the construction by Tenant of, the initial Tenant Improvements, but the foregoing shall not include improvements required by law that are required (or "triggered") as a result of the initial Tenant Improvements, unless they are improvements required under applicable Law to the structural portions of the Building. Tenant shall promptly deliver to Landlord a written description of all such items observed or discovered by Tenant. Notwithstanding anything herein to the contrary, nothing herein amends, modifies or alters Landlord's maintenance and repair obligations as set forth in the Lease including, but not limited to, Section 11.

Tenant acknowledges that Landlord is investigating the possibility of constructing a stairwell in back of the Building (outside of the Building) for use by AT&T to access their premises and that the installation of such a stairwell may require installation of a parking lift that will increase the number of parking spaces behind the Building (but will decrease the parking temporarily while the stairwell and lift are being installed). Tenant agrees to cooperate with Landlord, at no cost to Tenant, in the event that Landlord elects to install such stairwell and lift.

## EXHIBIT B-2

### TENANT IMPROVEMENTS

#### **A. GENERAL PROCEDURES**

The preparation of all design and working drawings and specifications relating to completion of the Premises for occupancy by Tenant and the letting of contracts relating to the Tenant Improvements and the supervision and completion of the Tenant Improvements and payment therefor shall be the responsibility of Tenant.

Approvals must be obtained by Tenant for its work from the applicable building department and all other authorities having jurisdiction and Tenant must submit evidence of these approvals to Landlord before commencing work. Tenant shall be responsible for payment of all fees and charges incurred in obtaining said approvals and for obtaining a certificate of occupancy prior to opening.

Tenant shall competitively bid the Tenant Improvement work, and shall obtain at least three (3) bids from qualified, licensed, and insured contractors. The general contractor and architect used by Tenant for the Tenant Improvements shall be subject to the prior written consent of the Landlord, which will not be unreasonably withheld. Landlord acknowledges and agrees that Landlord has approved ArcVision as the architect used by Tenant.

Tenant shall ensure that all the provisions and conditions contained or imposed in this Exhibit B-2 are observed and performed by all designers, contractors and trades engaged by Tenant.

Tenant shall be responsible for all utility costs for the Premises during construction of the Tenant Improvements.

#### **B. PLANS AND SPECIFICATIONS FOR THE TENANT IMPROVEMENTS**

So that the Tenant Improvements may proceed without delay and in an efficient manner, the following provisions shall apply:

**1. Target Dates.** On or before October 1, 2012, Tenant shall notify Landlord of target dates (and, thereafter, of any revised target dates) for the commencement and completion of the Tenant Improvements and for the opening of the Premises for business.

**2. Submission of Preliminary Plans and Specifications.** Within thirty (30) days following execution of this Lease, Tenant will provide Landlord with three (3) printed sets of preliminary plans and specifications which shall demonstrate design intent and shall be subject to the approval of Landlord (which approval shall not be in reasonably withheld or delayed) prior to Tenant's preparation of detailed working drawings and design specifications. The preliminary plans and specifications shall be accompanied by sample boards of finishes or an artistic rendering.

**3. Approval of Preliminary Plans and Specifications.** Landlord shall notify Tenant either of its approval thereof or of any changes required to the preliminary plans and specifications within ten (10) days after Landlord's receipt of the preliminary plans and specifications. If changes are required, Tenant, within fifteen (15) working days after being notified of the required changes by Landlord, shall submit amended plans and specifications to Landlord for approval.

**4. Submission of Final Plans and Specifications.** Within thirty (30) days of Landlord's approval of Tenant's preliminary plans and specifications, Tenant shall submit three (3) printed sets of final plans and specifications and such other information as may be necessary for the Tenant Improvements to be approved.

**5. Approval of Final Plans and Specifications.** Landlord shall notify Tenant of its approval within ten (10) days after receipt of Tenant's final plans and specifications or indicate any changes required, in which case Tenant shall resubmit for approval amended plans and specifications within an additional fifteen (15) business days after Tenant is notified of the required changes by Landlord.

**6. Working Drawings and Specifications.** Each set of working drawings and specifications shall be of uniform size to a minimum scale of 1/8" to each foot and shall include, but not be limited to, the following:

- (i) floor plans;
- (ii) reflected ceiling plans;
- (iii) specifications, identification and colors of materials for all plans and work;
- (iv) interior elevations and finish schedule; and
- (v) engineered plans and specifications for all electrical, mechanical, and plumbing work, including details and performance information relating to all fixtures, equipment and any under-floor services, including conduit runs to be recessed or buried in the floor.

## **C. GENERAL REQUIREMENTS**

**1. Workmanship and Materials.** All of the Tenant Improvements required by Tenant to complete the Premises for occupancy shall be carried out with good workmanship and with first class materials, which shall consistent with Tenant's approved final plans and specifications and shall conform with applicable laws.

**2. Proof of Insurance.** Before commencing The Tenant Improvements, Tenant shall furnish written proof to Landlord that general liability, worker's compensation and any other insurance required by Landlord (consistent with Tenant's obligations set forth in Lease) has been effected and is in force to the limits and on the terms which Landlord may approve.

Landlord shall be named as an additional insured in Tenant's and Tenants contractor's commercial general liability and automobile insurance.

**3. Access and Rules.** Tenant and its contractors shall access the Premises through the rear entrance only (or through the front entrance provided Landlord is notified in writing in advance, such entry is after business hours [or is during business hours and Tenant has obtained the appropriate permit from the City of Beverly Hills], and Tenant has installed barricades approved by Landlord shielding the activity from view), in order to execute the Tenant Improvements, subject to compliance with all reasonable rules, regulations and stipulations which Landlord make from time to time. These rules, regulations and stipulations may include, but shall not be limited to, matters relating to:

- (a) the handling and storage of material and equipment;
- (b) hours of work and coordination of activity;
- (c) use of the facilities and utilities;
- (d) scheduling of work;
- (e) deliveries; and
- (f) clean-up of work and the disposition of refuse.

**4. Refuse Removal.** Tenant shall at all times keep the Premises and all other areas clear of all waste materials and refuse caused by itself, its suppliers, contractors or by their work. Tenant shall remove all waste materials and refuse directly from the Premises and shall deposit them in places or in receptacles provided by Tenant at Tenant's sole cost and expense specifically for the disposal of waste materials and refuse in connection with the Tenant Improvements (which receptacles shall be located at a place designated by Landlord) preferably in the rear of the Premises. In no event shall Tenant's construction debris be placed in with the rubbish and trash of other tenants. Landlord may require Tenant to clean up on a daily basis, and shall be entitled to clean up at Tenant's expense if Tenant fails to comply with Landlord's reasonable requirements in this respect.

At the completion of The Tenant Improvements, Tenant shall leave the Premises clean and to the satisfaction of Landlord and shall remove all tools, equipment and surplus materials from the Premises and Project and remove all waste material and refuse from the Premises and deposit them in places or in receptacles designated by Landlord. The final clean-up shall include the cleaning of all lighting fixtures, millwork units, storefronts and space which may be affected by the work.

**5. Landlord's Reimbursement.** Landlord shall not in any way be responsible or liable with regard to any work carried out or any materials left or installed in or about the Premises and shall be reimbursed for any additional costs and expenses caused which may be occasioned to it by reason thereof, and for any delays which may be directly or indirectly caused thereby to Landlord.

6. **Damage by Tenant.** Any damage caused by Tenant's contractor or subcontractors employed on the Tenant Improvements to any work of the structure or the systems incorporated in the Building or to any property of Landlord or of other tenants shall be repaired to the satisfaction of Landlord.

7. **Failure to Perform Work.** If Tenant's contractor neglects to carry out the work properly or fails to perform any work required by or in accordance with the approved final plans and specifications, Landlord, after five (5) days' written notice to Tenant and Tenant's contractor, may without prejudice to any right or remedy Landlord may have, complete the work, remedy the defaults or make good any deficiencies and Tenant shall reimburse Landlord for such costs, as additional Rent, within ten (10) days after written demand.

8. **Security.** Tenant shall be entirely responsible for the security of the Premises during construction and Landlord shall not be liable for any loss or damage suffered by Tenant.

9. **Fire Protection.** Tenant shall maintain and keep on the Premises at all times during construction and the term of the Lease, a suitable portable fire extinguisher for Class A, B and C fires [Subject confirmation] and shall comply with any additional requirements and regulations imposed by the fire marshal and all other appropriate governmental agencies.

10. **Indemnification.** Tenant shall indemnify, defend and hold harmless Landlord from and against any and all claims, liabilities, losses, costs, damages and expenses arising out of work done by Tenant or Tenant's contractors.

11. **Performance of Construction.** Tenant shall perform its work expeditiously and efficiently and shall complete the same so as to permit Tenant to open on or before June 1, 2013 subject only to circumstances over which Tenant has no control and which by the exercise of due diligence could not have been avoided.

**D. PUBLIC WORK; PREVAILING WAGE REQUIREMENT**

Tenant acknowledges that the Tenant Improvements are a "public work" under Section 1720 of the California Labor Code and Tenant agrees that Tenant shall: (i) pay prevailing wages for all Tenant Improvement Work in accordance with Section 1720, et seq. of the California Labor Code; and (ii) otherwise comply with the provisions of Sections 1773.8, 1775, 1776, 1777.5, 1777.6 and 1813 of the California Labor Code and all other applicable Laws and regulations with respect to prevailing wages; and (iii) as required by the prevailing wage laws, obtain payment and performance bond(s) for the Tenant Improvement work.

**E. Tenant Improvement Allowance**

1. Landlord shall contribute the sum of Two Hundred Thousand Two Hundred Eighty and No/100 Dollars (\$200,280.00) for the actual costs of design and construction of the Tenant Improvements, including without limitation, payment of the fees and costs of the space planner, architect, engineer and other consultants in connection with the design and construction of the Tenant Improvements, actual costs of construction of the Tenant Improvements, and permitting costs (or for reimbursement to Tenant of such costs paid by

Tenant), but not for Tenant's moving expenses, furniture or fixtures (the "Tenant Improvement Allowance"). Provided Tenant has delivered reasonable evidence to Landlord that the Tenant Improvements cost in excess of \$400,560.00 and that Tenant has paid the costs of the Tenant Improvements (subject to reimbursement by Landlord of up to \$200,280.00 of such costs as provided elsewhere herein), Tenant may offset against Rent the sum of \$200,280.00. Tenant shall have the right to irrevocably elect to convert such offset amount against Rent to Landlord's contribution upon thirty (30) days prior written notice to Landlord. Except as expressly set forth herein, in no event shall any unused portion of the Tenant Improvement Allowance be paid to Tenant or credited against any obligation payable by Tenant under this Lease.

2. Subject to Section 3 below, Landlord shall pay to Tenant the Tenant Improvement Allowance for the actual costs of Tenant Improvements in monthly installments, within thirty (30) days after Tenant delivers written request to Landlord for payment describing the applicable Tenant Improvement work completed by Tenant for which the funds are requested (together with any additional supporting documentation reasonably requested by Landlord), subject to the satisfaction of the following conditions:

a) All building permits for the Tenant Improvements have been issued by the applicable governmental authorities and copies of such building permits have been delivered to Landlord;

b) Tenant has submitted to Landlord (i) all invoices for that portion of the Tenant Improvements for which payment is requested; and (ii) appropriate conditional lien releases and waivers from any and all contractors and materialmen that provided services or installed supplies to or for the account of Tenant (unconditional as to any work for which a disbursement of the Tenant Improvement Allowance was previously made); and

c) Tenant has completed that portion of the Tenant Improvements described on the invoices submitted for which the installment payment is requested; and

d) Tenant is not in default of any provisions of this Lease.

3. Landlord shall be entitled to retain ten percent (10%) of each requested installment for the hard costs of the Tenant Improvements (but not with respect to payments to the architect, project manager and other consultants).

4. Landlord shall pay a final payment of the Tenant Improvement Allowance equal to ten percent (10%) of the hard costs of the Tenant Improvements (i.e., the retention described in Paragraph 3 above) within thirty (30) days after Landlord's receipt of Tenant's written request thereof, together with documentation sufficient (in Landlord's reasonable determination) to establish that items (a) through (f) below have been satisfied:

a) All required inspections of the Tenant Improvements by the applicable governmental agencies have taken place and the completed Tenant Improvements have passed all such inspections;

b) Tenant has completed the Tenant Improvements;

- c) Tenant has received a temporary certificate of occupancy;
  - d) Tenant has submitted to Landlord (i) all invoices and proof of payment for all of the Tenant Improvements evidencing expenditures by Tenant of any amount equal to or greater than the amount of the Tenant Improvement Allowance; and (ii) appropriate final lien releases and waivers, conditioned only upon final payment of the applicable sum specified therein, from any and all contractors and materialmen which provided services or installed supplies to or for the account of Tenant with respect to the Tenant Improvements;
  - e) Tenant is not in default of any provisions of the Lease beyond applicable notice and cure periods.
  - f) Tenant has provided to Landlord two (2) sets of as-built plans and a disk with an electronic file of same.
5. Within thirty (30) days after Landlord's final payment of the Tenant Improvement Allowance, Tenant shall submit to Landlord final, unconditional lien releases and waivers from any and all contractors and materialmen which provided services or installed supplies to or for the account of Tenant with respect to the Tenant Improvements.
6. All items of the Tenant Improvements paid for with the Tenant Improvement Allowance shall be deemed Landlord's property.
7. Landlord will not charge Tenant any supervisory or administrative fees in connection with Landlord's Work or Tenant's initial Tenant Improvement work, and Landlord will not charge any fee to review Tenant's plans and specifications (other than normal permit fees charged by Landlord in its governmental capacity).

## **F. NON-COMPLIANCE**

1. **Non-Compliance.** If Tenant does not comply with the provisions of the Lease or any other agreement relative to the construction or occupation of the Premises, including this Exhibit, Landlord, in addition to and not in lieu of any other rights or remedies, may (subject to applicable notice and cure provisions in Section 21(a)(ii) of the Lease): declare and treat Tenant's noncompliance as a default or breach of covenant under this Lease and exercise any right available under the provisions of this Lease, including the right of termination.

2. **Termination; Retention or Demolition of Tenant Improvements.** In any event of termination pursuant to the above provision, Landlord may further elect either to:

(a) retain for its own use without payment therefor all or any of the Tenant Improvements which has been commenced, installed or completed to the date of such termination; or

(b) forthwith demolish or remove all or any work and restore the Premises to the condition in which the same were prior to the commencement, installation or completion of all or such of the Tenant Improvements and recover the cost of so doing from Tenant.

## EXHIBIT C

### RULES AND REGULATIONS

1. Except as may be specifically provided in the Lease to which these Rules and Regulations are attached, no sign, placard, picture, advertisement, name or notice shall be installed or displayed on any part of the outside of the Building or Project (except within the Premises) without the prior written consent of Landlord. Tenant shall not place anything against or near exterior windows or doors which may appear unsightly from outside the Premises or which are visible from the exterior of the Premises (other than approved window coverings, automobiles or other merchandise or displays consistent with Tenant's permitted uses of the Premises). Landlord shall have the right to remove, at Tenant's expense and with reasonable notice, any sign installed or displayed in violation of this rule.

2. Except as may be permitted by any outdoor dining permit obtained by Tenant from the City of Beverly Hills, Tenant shall not obstruct any sidewalks, passages, exits, entrances, elevators or stairways of the Project. The passages, exits, entrances, elevators and stairways are not open to the general public, but are open, subject to reasonable regulations, to Tenant's business invitees. Landlord shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of Landlord would be prejudicial to the safety and interest of the Project and its tenants. Neither Tenant nor any employee or invitee of Tenant shall go upon the roof of the Project.

3. As a part of the Tenant Improvements, Tenant shall install new locks in, and re-key, the Premises. Upon the termination of its tenancy, Tenant shall deliver to Landlord the keys to all doors and locks in the Premises.

4. Tenant shall provide Landlord with reasonable evidence that contractors and technicians rendering any service to Tenant have adequate insurance prior to permitting such contractors and technicians to perform any such service. This applies to all work performed in the Building, including but not limited to, installation of telephone and telegraph equipment and electrical devices and installations affecting floors, walls, woodwork, windows, ceilings and any other physical portion of the Building. None of Tenant's contractors or subcontractors shall be entitled to display identification or other signage at the Project.

5. No deliveries shall be made which materially interfere with the operation of the Project. No outside food vendors shall be permitted to operate or sell within the Project.

6. Landlord shall have the right to prescribe the weight, size and position of all equipment, materials, furniture or other property brought into the Building. Heavy objects shall, if considered necessary by Landlord, stand on such platforms as determined by Landlord to be necessary to properly distribute the weight, which platforms shall be provided at Tenant's expense. The persons employed to move such equipment in or out of the Building must be reasonably acceptable to Landlord. Landlord will not be responsible for loss of, or damage to, any such equipment or other property from any cause, and all damage done to the Building by maintaining or moving such equipment or other property shall be repaired at the expense of Tenant.

7. Tenant shall not use or keep in the Premises any kerosene, gasoline or inflammable or combustible fluid or material other than those limited quantities necessary for the operation or maintenance of office equipment or items in Tenant's inventory. Tenant shall not use or permit to be used in the Premises any foul or noxious gas or substance, or permit or allow the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building by reason of noise, odors or vibrations, nor shall Tenant bring into or keep in or about the Premises any birds or animals.

8. Tenant shall not use any method of heating or air conditioning other than that installed in accordance with the provisions of the Lease.

9. Landlord reserves the right, exercisable upon thirty (30) days prior written notice to Tenant, to change the name and/or street address of the Building.

10. Tenant shall not use the Premises for any business or activity other than that specifically provided for in this Lease.

11. Tenant shall not install any radio or television antenna, loudspeaker or other devices on the roof(s) or exterior walls of the Building or Project. Tenant shall not interfere with radio or television broadcasting or reception from or in the Project or elsewhere.

12. Tenant shall not deface the Premises or any part thereof, except in accordance with the provisions of the Lease pertaining to Alterations. Landlord reserves the right to direct electricians as to where and how telephone and telegraph wires are to be introduced to the Premises. Tenant shall not cut or bore holes for wires, except in accordance with the provisions of the Lease pertaining to Alterations. Tenant shall not affix any floor covering to the floor of the Premises in any manner except as approved by Landlord to the extent required by the provisions of the Lease pertaining to Alterations. Tenant shall repair any damage resulting from noncompliance with this rule.

13. Canvassing, soliciting and distribution of handbills or any other written material, and peddling in the Project are prohibited, and Tenant shall cooperate to prevent such activities.

14. Tenant shall store all its trash and garbage within its Premises or in other facilities designated by Landlord. Tenant shall not place in any trash box or receptacle any material which cannot be disposed of in the ordinary and customary manner of trash and garbage disposal. All garbage and refuse disposal shall be made in accordance with reasonable directions issued from time to time by Landlord.

15. Tenant shall comply with all reasonable safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.

16. Tenant's requirements will be attended to only upon appropriate application to the Property Management office by an authorized individual. Employees of Landlord shall not perform any work or do anything outside of their regular duties unless under special instructions from Landlord, and no employee of Landlord will admit any person (Tenant or otherwise) into the Premises without specific instructions from Landlord.

17. There shall be no smoking within the Building or immediately adjacent to Building entrances (except in areas, if any, designated therefor by Landlord).

18. Landlord may waive any one or more of these Rules and Regulations for the benefit of Tenant or any other tenant, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other tenant.

19. These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements and conditions of the Lease.

20. Upon written notice to Tenant, Landlord reserves the right to rescind any of these Rules and Regulations and to make future Rules and Regulations as, in its judgment, may from time to time be needed for safety, comfort and security, for care and cleanliness of the Project and for the preservation of good order therein. Tenant agrees to abide by all such Rules and Regulations herein above stated and any additional rules and regulations which are adopted and of which Tenant has received written notice, subject to Landlord's compliance with the terms of Section 31(a) of the Lease.

21. Tenant shall be responsible for the observance of all of the foregoing rules by Tenant's employees, agents, customers, invitees and guests.

22. Landlord reserves the right to charge as additional Rent to Tenant, any extra costs reasonably incurred by Landlord as a result of Tenant's violation of these Rules and Regulations; provided that, to the extent possible, before assessing any such charge, Landlord shall give Tenant notice and at least three (3) business days to cure any non-compliance.

**EXHIBIT D**

**FORM OF MEMORANDUM OF LEASE**

RECORDING REQUESTED BY, AND  
WHEN RECORDED RETURN TO:

City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attention: City Clerk

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[Space Above For Recorder's Use Only]

The undersigned declare that this Memorandum of Lease is exempt from Recording Fees pursuant to California Government Code Section 27383 and exempt from Documentary Transfer Tax pursuant to California Revenue and Taxation Code Section 11922.

**MEMORANDUM OF LEASE**

THIS MEMORANDUM OF LEASE (this "Memorandum") is dated as of May 15, 2012, and is entered into by and between CITY OF BEVERLY HILLS ("Authority"), and FIRST PICKS BREAD COMPANY IX L.P., a Delaware limited partnership ("Tenant").

**RECITALS**

A. Tenant and Authority have entered into that certain Lease of even date herewith (the "Lease"), pursuant to which Authority has agreed to lease and demise to Tenant, and Tenant has agreed to lease and accept from Authority, a portion of that certain real property located in the City of Beverly Hills, County of Los Angeles, State of California, commonly known as 239 S. Beverly Drive and more particularly described in the Lease (the "Property") which description is also attached hereto and incorporated herein as Exhibit A.

B. Tenant and Authority now desire to enter into this Memorandum to provide record notice of the Lease.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Tenant and Authority agree as follows:

1. Lease. Authority hereby leases and demises to Tenant, and Tenant hereby leases and accepts from Authority, the portion of the Property defined as the "Premises" in the Lease for an initial term of ten (10) years, at the rental and upon the other terms and conditions set forth in the Lease (including two (2) options to extend the Term of the Lease, for five (5) years each), which terms and conditions are incorporated herein by this reference.

2. Purpose. This Memorandum is prepared for the purposes of recordation only and in no way modifies the terms and conditions of the Lease. In the event any provision of this Memorandum is inconsistent with any term or condition of the Lease, the term or condition of the Lease shall prevail.

3. Counterparts. This Memorandum may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, taken together, shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease as of the date first written above.

**AUTHORITY:**

CITY OF BEVERLY HILLS

By: \_\_\_\_\_  
William W. Brien, MD,  
Mayor

ATTEST:

By: \_\_\_\_\_ (SEAL)  
Byron Pope,  
City Clerk

**TENANT:**

FIRST PICKS BREAD COMPANY IX L.P.,  
a Delaware limited partnership

By: FIRST PICKS GP LLC,  
a Delaware limited liability company  
Its: General Partner

By: First Picks Holdings LLC  
a Delaware limited liability  
company  
Its: Sole Member

By: \_\_\_\_\_  
Clarence Mah  
Its: Manager

**ACKNOWLEDGMENT**

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

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)  
Signature of Notary Public

**ACKNOWLEDGMENT**

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

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)  
Signature of Notary Public

Exhibit A

**The land referred to herein is situated in the State of California, County of Los Angeles, and described as follows:**

Lot 23 in Block 3 of Beverly, in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 11 Page 94 of Maps, in the Office of the County Recorder of said County.

APN: 4343-011-903

# **Attachment 2**

## GUARANTY OF LEASE

This GUARANTY OF LEASE (the "Guaranty") is executed concurrently with that certain City of Beverly Hills Lease dated May 15, 2012 between the CITY OF BEVERLY HILLS, a municipal corporation, as landlord ("Landlord"), and FIRST PICKS BREAD COMPANY IX L.P., a Delaware limited partnership ("Tenant"), as tenant (the "Lease"). Capitalized terms used in this Guaranty but not defined shall have the same definitions as set forth in the Lease, and Guarantor hereby acknowledges that the term "Landlord" shall include all successors to the interest of Landlord in the Premises.

In order to induce Landlord to enter into the Lease with Tenant, FIRST PICKS BREAD MANAGEMENT LLC, a Delaware limited liability company ("Guarantor") has agreed to execute and deliver this Guaranty to Landlord. Guarantor acknowledges that Landlord would not enter into the Lease if Guarantor did not execute and deliver this Guaranty to Landlord.

1. **Guaranty.** In consideration of the execution of the Lease by Landlord and as a material inducement to Landlord to execute the Lease Amendment, Guarantor hereby irrevocably, unconditionally, guarantees the full, timely and complete: (a) payment of all rent and other sums payable to Landlord under the Lease, and any amendments or modifications thereto by agreement or course of conduct, and (b) performance of all obligations to be performed by the tenant under the Lease, and any amendments or modifications thereto by agreement or course of conduct. The payment of those amounts and performance of those obligations shall be conducted in accordance with all terms, covenants and conditions set forth in the Lease, without deduction, offset or excuse of any nature and without regard to the enforceability or validity of the Lease, or any part thereof, or any disability of Tenant. This Guaranty is a guaranty of payment and performance, and not of collection.

2. **Landlord's Rights.** Landlord may perform any of the following acts at any time during the Lease Term, without notice to or assent of Guarantor and without in any way releasing, affecting or impairing Guarantor's obligations or liabilities under this Guaranty: (a) alter, modify or amend the Lease by agreement or course of conduct, (b) grant extensions or renewals of the Lease, (c) assign or otherwise transfer its interest in the Lease, the Project, or this Guaranty, (d) consent to any transfer or assignment of Tenant's or any future tenant's interest under the Lease, (e) if applicable, release Guarantor, or amend or modify this Guaranty with respect to Guarantor, without releasing or discharging any other Guarantor from any of such Guarantor's obligations or liabilities under this Guaranty, (f) take and hold security for the payment of this Guaranty and exchange, enforce, waive and release any such security, (g) apply such security and direct the order or manner of sale thereof as Landlord in its sole discretion, deems appropriate, and (h) foreclose upon any such security by judicial or nonjudicial sale, without affecting or impairing in any way the liability of Guarantor under this Guaranty, except to the extent the indebtedness has been paid.

3. **Tenant's Default.** Upon any breach or default by the tenant under the Lease, Landlord may proceed immediately against Guarantor to enforce any of Landlord's rights or remedies against Guarantor pursuant to this Guaranty, the Lease, or at law or in equity without notice to or demand upon either Guarantor. This Guaranty shall not be released, modified or

affected by any failure or delay by Landlord to enforce any of its rights or remedies under the Lease or this Guaranty, or at law or in equity.

4. **Guarantor Waivers.** Guarantor hereby waives (a) presentment, demand for payment and protest of non-performance under the Lease, (b) notice of any kind including, without limitation, notice of acceptance of this Guaranty, protest, presentment, demand for payment, default, nonpayment, or the creation or incurring of new or additional obligations of Tenant to Landlord, (c) any right to require Landlord to enforce its rights or remedies against Tenant under the Lease, or otherwise, or against Guarantor, prior to proceeding against Guarantor, or otherwise, (d) any right to require Landlord to proceed against any security held from Tenant or any other party, (e) any right of subrogation and or other right or remedy of Guarantor against Landlord or any such security, whether resulting from an election by Landlord, or otherwise, (f) the benefit of any statute of limitations affecting the liability of Guarantor under this Guaranty or applicable to this Guaranty; and (g) without limiting the foregoing waivers, all of rights and defenses provided by California Civil Code Sections 2809, 2810, 2815, 2819, 2845, 2849, 2850, and any similar or analogous statutes of California or any other jurisdiction. Any part payment by Tenant or other circumstance which operates to toll any statute of limitations as to Tenant shall operate to toll the statute of limitations as to any Guarantor.

5. **Separate and Distinct Obligations.** Guarantor acknowledges and agrees that such Guarantor's obligations to Landlord under this Guaranty are separate and distinct from Tenant's obligations to Landlord under the Lease. The occurrence of any of the following events shall not have any effect whatsoever on Guarantor's obligations to Landlord hereunder, each of which obligations shall continue in full force or effect as though such event had not occurred: (a) the commencement by Tenant of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended or replaced, or any other applicable federal or state bankruptcy laws, as now constituted or hereafter amended or replaced, or any other applicable federal or state bankruptcy, insolvency or other similar law (collectively, the "Bankruptcy Laws"), (b) the consent by tenant to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or similar official of Tenant or for any substantial part of its property, (c) any assignment by Tenant for the benefit of creditors, (d) the failure of Tenant generally to pay its debts as such debts become due, (e) the taking of corporate action by Tenant in the furtherance of any of the foregoing; or (f) the entry of a creed or order for relief by a court having jurisdiction in respect of Tenant in any involuntary case under the Bankruptcy Laws, or appointing a receiver, liquidator, assignee, custodian, trustee sequestrator (or similar official) of Tenant or for any substantial part of its property, or ordering the winding-up or liquidation of any of its affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days. The liability of Guarantor under this Guaranty is not and shall not be affected or impaired by any payment made to Landlord under or related to the Lease for which Landlord is required to reimburse Tenant pursuant to any court order or in settlement of any dispute, controversy or litigation in any bankruptcy, reorganization, arrangement, moratorium or other federal or state debtor relief proceeding. If, during any such proceeding, the Lease is assumed by Tenant or any trustee, or thereafter assigned by Tenant or any trustee to a third party, this Guaranty shall remain in full force and effect with respect to the full performance of Tenant, any such trustee or any such third party's obligations under the Lease. If the Lease is terminated or rejected during any such proceeding, or if any of the events described

in Subparagraphs (a) through (f) of this Paragraph 5 occur, as between Landlord and Guarantor, Landlord shall have the right to accelerate all of Tenant's obligations under the Lease and Guarantor's obligations under this Guaranty. In such event, all such obligations shall become immediately due and payable by Guarantor to Landlord. Guarantor waives any defense arising by reason of any disability or other defense of Tenant or by reason of the cessation from any cause whatsoever of the liability of Tenant.

6. **Subordinations.** All existing and future liability and indebtedness of Tenant to Guarantor shall be subordinated to all obligations owed to Landlord under this Guaranty. Until all of Tenant's obligations under the Lease are fully and indefeasibly performed, Guarantor: (a) will not have (and hereby waive) any right of offset or subrogation against Tenant by reason of any payments or acts performed by Guarantor under this Guaranty; and (b) subordinate any and all liability and indebtedness of Tenant to Guarantor now existing or hereafter arising to Tenant's obligations to Landlord under the Lease.

7. **Successors and Assigns.** This Guaranty binds Guarantor's personal representatives, heirs, executors, administrators, and successors, and shall inure to the benefit of Landlord and its successors and assigns. Guarantor shall not assign its obligations under this Guaranty, and any purported assignment shall be void and shall not relieve Guarantor of any liability under this Guaranty.

8. **Encumbrances.** If Landlord's interest in the Project or the Lease, or the rents, issues or profits therefrom, are subject to any deed of trust, mortgage or assignment for security, Guarantor's acquisition of Landlord's interest in the Project or Lease shall not affect any of Guarantor's obligations under this Guaranty. In such event, this Guaranty shall nevertheless continue in full force and effect for the benefit of any mortgages, beneficiary, trustee or assignee or any purchaser at any sale by judicial foreclosure or under any private power of sale, and their successors and assigns.

9. **Bankruptcy of Tenant; Guarantor's Obligations.** Guarantor shall not commence, or join with any other person or entity in commencing, any bankruptcy, reorganization or insolvency proceeding against Tenant. Guarantor shall file in any bankruptcy of Tenant or other proceeding relating to Tenant in which the filing of claims is required or permitted by law all claims that Guarantor may have against Tenant relating to any indebtedness of Tenant to Guarantor, and Guarantor hereby assigns to Landlord all such claims (and shall also assign in writing such claims to Landlord as they are filed), and Guarantor hereby also assigns to Landlord all right to payment and distributions to which Guaranty might be entitled. Landlord shall have the sole right to accept or reject any plan proposed in any such proceeding and to take any other action that a person or entity filing a claim may take.

10. **Financial Condition of Tenant.** Guarantor assumes the responsibility to remain informed of the financial condition of Tenant and of all other circumstances bearing upon the risk of Tenant's default, which reasonable inquiry would reveal, and agree that Landlord shall have no duty to advise Guarantor of information known to it regarding such condition or any such circumstances.

11. **Landlord's Reliance.** Landlord shall not be required to inquire into the powers of Tenant or the officers, employees, partners or agents acting or purporting to act on its behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Guaranty.

12. **Review of Lease.** Guarantor represents and warrants to Landlord that such Guarantor has received a copy of the Lease, has read the Lease, and understands the terms of the Lease.

13. **Financial Statements.** Guarantor will, upon ten (10) business days' prior written notice from Landlord, provide Landlord with current fiscal year financial statements, financial statements for up to two years prior to such current financial statement year and such other financial information as may be requested by Landlord (which may include a certification of the Guarantor's net worth and liquidity). Such statements will be prepared in accordance with generally accepted accounting principles.

14. **Governing Law Jurisdiction and Venue.** Guarantor agrees that the laws of the State of California will govern all questions with respect to this Guaranty (without regard to conflict of laws rules) and that any suit, action, or proceeding arising directly or indirectly from this Guaranty, the Lease, or the subject matter of either will be litigated only in courts located within Los Angeles County; Guarantor irrevocably consents to the jurisdiction of any local, state, or federal court located within Los Angeles County. Without limiting the generality of the foregoing, Guarantor waives and agrees not to assert by way of motion, defense, or otherwise in any suit, action, or proceeding any claim that Guarantor is not personally subject to the jurisdiction of such courts, that such suit, action, or proceeding is brought in an inconvenient forum, or that the venue of such action, suit, or proceeding is improper.

15. **Returned Payments Do Not Satisfy Obligations.** If a claim is made on Landlord at any time (whether before or after payment or performance in full of any obligation of Guarantor, and whether such claim is asserted in a bankruptcy proceeding or otherwise) for repayment or recovery of any amount or other value received by Landlord (from any source) in payment of, or on account of, any obligation of Guarantor under this Guaranty, and if Landlord repays such amount, returns value, or otherwise becomes liable for all or part of such claim by reason of (a) any judgment, decree, or order of any court or administrative body or (b) any settlement or compromise of such claim, then the Guarantor will remain jointly and severally liable to Landlord for the amount so repaid or returned or for which Landlord is liable to the same extent as if such payments or value had never been received by Landlord, despite any termination of this Guaranty or the termination of the Lease or cancellation of any document evidencing any obligation of the Guarantor under this Guaranty.

16. **Entire Agreement.** This Guaranty will constitute the entire agreement between Guarantor and Landlord with respect to the subject matter of this Guaranty and supersedes all prior agreements, understandings, negotiations, representations, and discussions, whether verbal or written, of the parties pertaining to that subject matter. Guarantor is not relying on any representations, warranties, or inducements from Landlord that are not expressly stated in this Guaranty.

17. **Waiver of Guaranty Provisions.** No provision of this Guaranty or right of Landlord under it may be waived, nor may Guarantor be released from any obligation under this Guaranty, except by a writing duly executed by an authorized officer of Landlord. The waiver or failure to enforce any provision of this Guaranty will not operate as a waiver of any other breach of such provision or any other provisions of this Guaranty, nor will any single or partial exercise of any right, power, or privilege preclude any other or further such exercise or the exercise of any other right, power, or privilege.

18. **Severability.** If any provision of this Guaranty is determined to be illegal or unenforceable, all other provisions will nevertheless be effective.

19. **Time of Essence.** Time is strictly of the essence under this Guaranty and any amendment, modification, or revision of this Guaranty.

20. **Authority.** Each individual executing this Guaranty on behalf of Guarantor represents and warrants that he or she is duly authorized to execute and deliver this Guaranty on behalf of the entity in accordance with its governing documents, and that this Guaranty is binding on the entity in accordance with its terms.

21. **Attorneys' Fees.** If Landlord participates in an action against a Guarantor arising out of or in connection with this Guaranty or a Guarantor participates in any such action against the Landlord, the prevailing party will be entitled to have and recover from the other party reasonable attorneys' fees, collection costs, and other costs incurred in, and in preparation for, the action, arbitration, mediation or bankruptcy. Sums owed to Landlord under this Section shall be part of the obligations of Guarantor under this Guaranty.

22. **Notices.** Any notice, request, demand, instruction, or other communication to be given under this Guaranty must be in writing and must be delivered by certified mail, return receipt requested, or by personal delivery, or by reputable overnight messenger (such as Federal Express) for overnight delivery, addressed as follows:

To Landlord:	As set forth in the Lease.
To Guarantor:	First Picks Bread Management LLC 205 North Moorpark Road, Suite N Thousand Oaks, CA 91360 Attn: Clarence Mah

Notices shall be deemed given: (a) if delivered by certified mail, then on the date shown on the receipt as the date of delivery or date acceptance of delivery was refused; (b) if personally served, then upon receipt or refusal to accept delivery, as indicated by written confirmation of the person delivering the notice; or (c) twenty-four (24) hours after delivery to a reputable overnight delivery service unless otherwise indicated on the records of the delivery service as being delivered on a later date (in which case delivery shall be deemed to have occurred on such later date). Any party may change its address(es) for notices upon fifteen (15) days' prior written notice to the other.

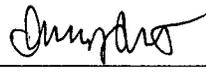
23. **Maximum Liability of Guarantor.** The liability of Guarantor under this Guaranty is limited to Nine Hundred Thousand and No/100 Dollars (\$900,000.00).

**IN WITNESS WHEREOF**, Guarantor has caused this Guaranty of Lease to be executed and delivered as of the date first above written.

**GUARANTOR:**

FIRST PICKS BREAD MANAGEMENT LLC,  
a Delaware limited liability company

By: First Picks Holdings LLC,  
a Delaware limited liability company

By:   
Clarence Mah  
Authorized Person

# **Attachment 3**

RECORDING REQUESTED BY, AND  
WHEN RECORDED RETURN TO:

City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attention: City Clerk

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[Space Above For Recorder's Use Only]

The undersigned declare that this Memorandum of Lease is exempt from Recording Fees pursuant to California Government Code Section 27383 and exempt from Documentary Transfer Tax pursuant to California Revenue and Taxation Code Section 11922.

### **MEMORANDUM OF LEASE**

THIS MEMORANDUM OF LEASE (this "Memorandum") is dated as of May 15, 2012, and is entered into by and between CITY OF BEVERLY HILLS ("Authority"), and FIRST PICKS BREAD COMPANY IX L.P., a Delaware limited partnership ("Tenant").

### **RECITALS**

A. Tenant and Authority have entered into that certain Lease of even date herewith (the "Lease"), pursuant to which Authority has agreed to lease and demise to Tenant, and Tenant has agreed to lease and accept from Authority, a portion of that certain real property located in the City of Beverly Hills, County of Los Angeles, State of California, commonly known as 239 S. Beverly Drive and more particularly described in the Lease (the "Property") which description is also attached hereto and incorporated herein as Exhibit A.

B. Tenant and Authority now desire to enter into this Memorandum to provide record notice of the Lease.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Tenant and Authority agree as follows:

1. Lease. Authority hereby leases and demises to Tenant, and Tenant hereby leases and accepts from Authority, the portion of the Property defined as the "Premises" in the Lease for an initial term of ten (10) years, at the rental and upon the other terms and conditions set forth in the Lease (including two (2) options to extend the Term of the Lease, for five (5) years each), which terms and conditions are incorporated herein by this reference.

2. Purpose. This Memorandum is prepared for the purposes of recordation only and in no way modifies the terms and conditions of the Lease. In the event any provision of this

Memorandum is inconsistent with any term or condition of the Lease, the term or condition of the Lease shall prevail.

3. Counterparts. This Memorandum may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, taken together, shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease as of the date first written above.

**AUTHORITY:**

CITY OF BEVERLY HILLS

By: \_\_\_\_\_  
William W. Brien, MD,  
Mayor

ATTEST:

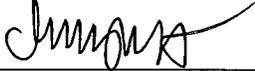
By: \_\_\_\_\_ (SEAL)  
Byron Pope,  
City Clerk

**TENANT:**

FIRST PICKS BREAD COMPANY IX L.P.,  
a Delaware limited partnership

By: FIRST PICKS GP LLC,  
a Delaware limited liability company  
Its: General Partner

By: First Picks Holdings LLC  
a Delaware limited liability  
company  
Its: Sole Member

By:   
Clarence Mah  
Its: Manager

ACKNOWLEDGMENT

State of California )  
County of Ventura )

On May 9, 2012 before me, Casey Allen, Notary Public  
(insert name and title of the officer)

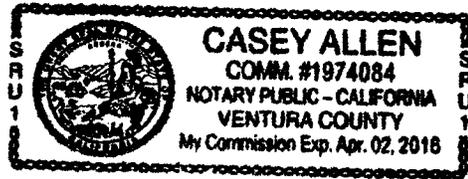
personally appeared Clarence Mah,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature *Casey Allen* (Seal)  
Signature of Notary Public



**ACKNOWLEDGMENT**

State of California )

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

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)  
Signature of Notary Public

Exhibit A

**The land referred to herein is situated in the State of California, County of Los Angeles, and described as follows:**

Lot 23 in Block 3 of Beverly, in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 11 Page 94 of Maps, in the Office of the County Recorder of said County.

APN: 4343-011-903

# **Attachment 4**

**Leasing Commission Agreement  
(Single Prospect)  
239 S. Beverly Drive, Beverly Hills, California - First Pick Bread Company, LLC**

In accordance with our discussion, this letter will confirm the agreement between CB Richard Ellis, Inc. and Dembo Realty ("Brokers") and The City of Beverly Hills ("Owner") concerning the payment of a commission for services rendered in connection with the leasing of the commercial building located at 239 S. Beverly Drive, Beverly Hills, CA (consisting of approximately 6,676 square feet) ("the Property").

Owner agrees to pay Brokers a real estate commission for services rendered, if within one year from the date of this Agreement, the Property is leased to First Pick Bread Company LLC operating under the trade name Panera Bakery-Café ("Tenant"), or its subsidiary, successor or affiliate. The commission payable by Owner to Brokers shall be 4% of the base rent (net of free rent) for the first 60 months of lease term, plus 2% of the total base rental for the next 60 months of lease term, and shall be due and payable 50% upon execution of a lease by Owner and Tenant, and 50% upon occupancy by Tenant. It is expressly understood that this Agreement shall not be construed as a listing agreement, and Owner acknowledges that, with respect to this transaction, Brokers represent only Tenant (notwithstanding the fact that Owner is paying broker's commission). All the funds received shall be shared equally (50%-50%) between CBRE and Dembo Realty.

<b>Monthly Rent</b>	<b>Months</b>	<b>Consideration</b>	<b>%</b>	<b>Commission</b>
\$24,000.00	21	\$504,000.00	4.0%	\$20,160.00
\$25,440.00	30	\$763,200.00	4.0%	\$30,528.00
\$26,966.40	30	\$808,992.00	2.0%	\$16,179.84
\$28,584.38	30	\$857,531.52	2.0%	\$17,150.63
<b>Totals</b>	<b>111</b>	<b>\$2,933,723.52</b>		<b>\$84,018.47</b>

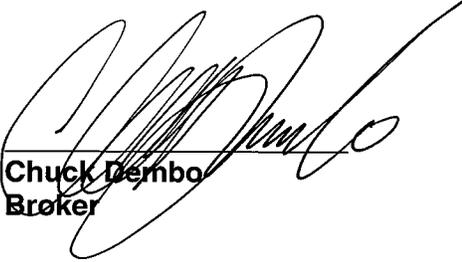
In the event Owner fails to make payments within the time limits set forth herein, then from the date due until paid the delinquent amount shall bear interest at the maximum rate permitted by law. If Brokers are required to institute legal action against Owner relating to this Agreement, Brokers shall be entitled to reasonable attorneys' fees and costs. In the event Owner sells or otherwise disposes of its interest in the Property, Owner shall remain liable for payment of the commissions. The term "Owner" as used herein shall be deemed to include the owner of the Property, a party under contract to acquire the Property and a tenant under a ground lease.

**Signatures Appear on the Following Page**

**Leasing Commission Agreement  
(Single Prospect)  
239 S. Beverly Drive, Beverly Hills, California - First Pick Bread Company, LLC**

**AGREED AND ACCEPTED:**

**Dembo Realty:**

  
\_\_\_\_\_  
**Chuck Dembo  
Broker**

**CBRE, Inc.  
Licensed Real Estate Broker**

  
\_\_\_\_\_  
**Timothy L. Bower  
Senior Vice President**

**CITY:**

**THE CITY OF BEVERLY HILLS**

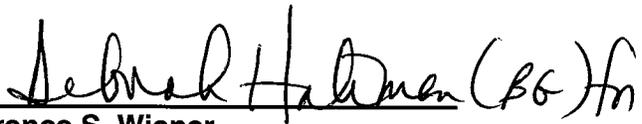
**By:** \_\_\_\_\_  
**William W. Brien, MD,  
Mayor**

**ATTEST:**

\_\_\_\_\_ (SEAL)

**By:** \_\_\_\_\_  
**Byron Pope  
City Clerk**

**APPROVED AS TO FORM:**

**By:**   
\_\_\_\_\_  
**Laurence S. Wiener  
City Attorney**